
AMENDED, RESTATED AND CONSOLIDATED LOAN AGREEMENT

Dated as of July 18, 2017

By and Among

LIFE HOTEL ONE LLC,
as Borrower,

DEUTSCHE BANK AG, NEW YORK BRANCH,
as Agent,

and

DEUTSCHE BANK AG, NEW YORK BRANCH,
and any other lending institutions which may from time to time become a party hereto
as Lenders

PROPERTY: Life Hotel
19 West 31st Street
New York, NY

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AMENDED RESTATED AND CONSOLIDATED LOAN AGREEMENT

THIS AMENDED RESTATED AND CONSOLIDATED LOAN AGREEMENT, dated as of July 18, 2017 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**"), by and among **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services ("**DB**"), having an address at 60 Wall Street, 10th Floor, New York, New York 10005 (together with its successors and permitted assigns hereunder, including any Assignee (as defined herein) hereunder and such other co-lenders as may exist from time to time under this Agreement, each a "**Lender**" and collectively, the "**Lenders**"), **DB**, as administrative agent (including any of its successors and assigns hereunder, "**Agent**") for itself and the other Lenders party hereto from time to time, and **LIFE HOTEL ONE LLC**, a Delaware limited liability company having an address at c/o Mitchell Holdings, 801 Madison Avenue, 4th Floor, New York, New York, 10065 ("**Borrower**").

All capitalized terms used herein shall have the respective meanings set forth in Article 1 hereof.

WITNESSETH:

WHEREAS, on June 3, 2016 (the "**Original Closing Date**"), Agent, Lenders and Borrower entered into (a) that certain Senior Loan Agreement (the "**Original Senior Loan Agreement**") pursuant to which Lenders agreed to make a senior mortgage loan to Borrower in the maximum principal amount of **\$28,249,397.76** (the "**Original Senior Loan**"), which Original Senior Loan was evidenced by, among other things, that certain Amended and Restated Senior Promissory Note dated as of the Original Closing Date in the original principal amount of **\$28,249,397.76** made by Borrower and payable to Agent (the "**Original Senior Note**"), (b) that certain Building Loan Agreement (the "**Original Building Loan Agreement**") pursuant to which Lenders agreed to make a building loan to Borrower in the maximum principal amount of up to **\$6,475,075.51** (the "**Original Building Loan**"), which Original Building Loan was evidenced by, among other things, that certain Building Loan Promissory Note dated as of the Original Closing Date in the maximum principal amount of up to **\$6,475,075.51** made by Borrower and payable to Agent (the "**Original Building Note**"), and (c) that certain Project Loan Agreement (the "**Original Project Loan Agreement**") pursuant to which Lenders agreed to make a project loan to Borrower in the maximum principal amount of up to **\$1,275,526.73** (the "**Original Project Loan**"), which Original Project Loan was evidenced by, among other things, that certain Project Loan Promissory Note dated as of the Original Closing Date in the maximum principal amount of up to **\$1,275,526.73** made by Borrower and payable to Agent (the "**Original Project Note**").

WHEREAS, prior to the date hereof, the Original Building Loan has been fully advanced to Borrower in accordance with the terms of the Original Building Loan Agreement and the Original Project Loan has been fully advanced to Borrower in accordance with the terms of the Original Project Loan Agreement.

WHEREAS, simultaneously with the execution and delivery of this Agreement, Lenders are advancing additional loan proceeds in the amount of **\$5,000,000.00** (the "**Supplemental Loan**") to Borrower, which Supplemental Loan shall be evidenced by that certain Gap Promissory Note executed by Borrower for the benefit of Agent (the "**Supplemental Note**").

Agent, Lenders and Borrower have agreed to consolidate the Original Senior Loan, the Original Building Loan, the Original Project Loan and the Supplemental Loan into one mortgage loan in the maximum principal amount of up to **\$41,000,000.00** (the "**Loan**"). In furtherance of the foregoing, Agent, Lenders and Borrower have agreed to (x) amend, restate and consolidate the terms of the Original Senior Loan Agreement, the Original Building Loan Agreement and Original Project Loan Agreement in their entirety as set forth herein and (y) amend, restate and consolidate the terms of the Original Senior Note, the Original Building Note, the Original Project Note and the Supplemental Note in their entirety as set forth in that certain Amended, Restated and Consolidated Promissory Note in the maximum principal amount of up to **\$41,000,000.00** (as the same may hereafter be amended, supplemented, restated, increased, extended or consolidated from time to time, the "**Note**");

NOW, THEREFORE, in consideration of the premises and the covenants, agreements, representations and warranties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Original Loan Agreement, the Original Building Loan Agreement and the Original Project Loan Agreement are hereby amended, restated and consolidated in their entirety as follows:

ARTICLE 1

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Specific Definitions.

For all purposes of this Agreement, except as otherwise expressly provided:

"Acknowledgment" shall mean the Acknowledgment, dated on or about the date hereof made by Counterparty, or if applicable, an Acknowledgment to be delivered in connection with a Replacement Interest Rate Cap Agreement by an Approved Counterparty.

"Advance" shall mean the any advance of principal made pursuant to this Agreement, including the Earn-Out Advance made pursuant to Section 2.10 hereof.

"Affiliate" shall mean, as to any Person, any other Person that (i) owns directly or indirectly ten percent (10%) or more of all equity interests in such Person, and/or (ii) is in Control of, is Controlled by or is under common ownership or Control with such Person, and/or (iii) is a director or officer of such Person or of an Affiliate of such Person, and/or (iv) is the spouse, issue or parent of such Person or of an Affiliate of such Person.

"ALTA" shall mean American Land Title Association, or any successor thereto.

"Alteration Threshold" shall mean one percent (1%) of the Outstanding Principal Balance.

"Amendment to Loan Documents" that certain Omnibus Amendment to Loan Documents dated as of the date hereof and entered into by and among Agent, Lenders, Borrower and Operating Lessee.

“Annual Budget” shall mean the operating and capital budget for the Property setting forth, on a month-by-month basis, in reasonable detail, each line item of Borrower’s good faith estimate of anticipated Operating Income, Operating Expenses, FF&E Expenditures and Capital Expenditures for the applicable Fiscal Year.

“Approved Capital Expenditures” shall mean the Capital Expenditures incurred by Borrower in connection with the Punchlist Work and either (i) included in the Punchlist Budget or (ii) approved by Agent, which approval shall not be unreasonably withheld or delayed.

“Approved Counterparty” shall mean a bank or other financial institution which has (a) a long-term unsecured debt rating of “A” or higher by S&P; (b) a long-term unsecured debt rating of not less than “A2” by Moody’s; and (c) if the counterparty is rated by Fitch, a long-term unsecured debt rating of “A” or higher by Fitch and a short-term unsecured debt rating of not less than “F-1” from Fitch; provided however, that SMBC Capital Markets, Inc. (with an Acceptable SMBC Credit Support Party as its credit support party) will be an Acceptable Counterparty so long as the rating of its credit support party (provided such credit support party shall be an Acceptable SMBC Credit Support Party) is not downgraded, withdrawn or qualified by S&P or Moody’s or Fitch from the long and short term ratings issued by such rating agencies below the lesser of the above rating (as applicable) or its ratings as of the date hereof. As used herein, an **“Acceptable SMBC Credit Support Party”** shall mean (i) Sumitomo Mitsui Banking Corporation or a replacement guarantor that meets the foregoing rating requirements and provides a guaranty on substantially the same form as the guaranty provided by Sumitomo Mitsui Banking Corporation on the Closing Date and (ii) provided any such credit support party guaranty guaranties all current and future obligations under the Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement, as applicable.

“Approved FF&E Expenditures” shall mean the cost of FF&E Expenditures incurred by Borrower and either (i) included in the Approved Annual Budget or (ii) approved by Agent, which approval shall not be unreasonably withheld or delayed.

“Approved Replacement Guarantor” shall mean a Person (i) that satisfies the conditions set forth in clauses (x) and (y) of the definition of “Qualified Transferee”, (ii) is formed in (or, if such Person is an individual, is a citizen of), maintains its principal place of business in (or, if such Person is an individual, maintains a primary residence in), and is subject to service in the United States or Canada, (iii) has all or substantially all of its assets in the United States or Canada, (iv) whose identity, experience, financial condition and creditworthiness, including net worth and liquidity, is acceptable to Agent in Agent’s sole discretion, and, if the Loan has been included in a Securitization, for which Agent has received a Rating Agency Confirmation from each applicable Rating Agency and (v) who either Controls Borrower (or any Transferee Borrower, as applicable) and owns a direct or indirect interest in Borrower (or any Transferee Borrower, as applicable). If two or more Approved Replacement Guarantors are delivering replacement guaranties and replacement environmental indemnities to Agent (on behalf of Lenders), then (1) only one such Approved Replacement Guarantor must Control Borrower (or any Transferee Borrower, as applicable), directly or indirectly (provided that each such Approved Replacement Guarantor must own a direct or indirect interest in Borrowers (or any Transferee Borrower, as applicable)) and (2) the obligations of all Approved Replacement Guarantors shall be joint and several.

“Assignment of Agreements” shall mean that certain Assignment of Agreements, Licenses, Permits and Contracts, dated as of the Original Closing Date, from Borrower, as assignor, to Agent (on behalf of Lenders), as assignee, as amended by that certain Amendment to Loan Documents.

“Assignment of Leases” shall mean that certain Amended and Restated Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to Agent (on behalf of Lenders), as assignee.

“Assignment of Management Agreement” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees dated as of the Original Closing Date, among Borrower, Manager and Agent (on behalf of Lenders), as amended by that certain Amendment to Loan Documents.

“Award” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect to all or any part of the Property.

“Bankruptcy Code” shall mean Title 11 of the United States Code entitled “Bankruptcy”, as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights.

“Borrower Related Party” means, collectively and individually, Borrower, any Guarantor and any Affiliate of any of the foregoing, and any officer, director, employee or immediate family member of the foregoing, and any Person acting at the direction of any of the foregoing; provided that the following Persons shall not be considered “Borrower Related Parties”: Persons that (a) do not have any authority to bind a Person that is otherwise a Borrower Related Party, and (b) do not own any direct and/or indirect ownership interest in a Borrower, in each case, so long as Borrower and/or one or both of the Guarantors is contesting and/or actively remediating the action by such Persons, and, in the case of any such Persons who are employees of any Borrower Related Party, Borrower and/or Guarantors have terminated (or caused the termination of) such employee for cause.

“Borrower’s Architect” shall mean the architect to be selected by Borrower and approved by Agent.

“Business Day” shall mean any day other than a Saturday, a Sunday or a legal holiday on which national banks are not open for general business in (i) the State of New York, (ii) the state where the corporate trust office of the Trustee is located, or (iii) the state where the servicing offices of the Servicer are located.

“Calculation Date” shall mean the last day of each calendar quarter.

“Capital Expenditures” for any period shall mean amounts expended for replacements and alterations to the Property (excluding tenant improvements) and required to be capitalized according to GAAP.

“Cash Management Agreement” shall mean that certain Cash Management Agreement dated as of June 3, 2016 among Agent (on behalf of Lenders), Borrower, Operating Lessee, Deutsche Bank Trust Company Americas and Manager, as amended by the Amendment to Loan Documents.

“Clearing Account Agreement” shall mean that certain Deposit Account Control Agreement dated as of the Original Closing Date, by and among Borrower, Agent (on behalf of Lenders), Manager and Wells Fargo Bank, National Association, as amended by that certain Amendment to Loan Documents.

“Closing Date” shall mean the date of the funding of the Initial Advance of the Supplemental Loan.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“Collateral Assignment of IRPA” shall mean that certain Collateral Assignment of Interest Rate Protection Agreement made by Borrower for the benefit of Agent (on behalf of Lenders) as amended by the Amendment to Loan Documents.

“Completion Guaranty” shall mean that certain Guaranty of Completion of even date herewith from Guarantors for the benefit of Agent (on behalf of Lenders).

“Condemnation” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control” shall mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

“Counterparty” shall mean, with respect to the Interest Rate Cap Agreement, Commonwealth Bank of Australia, and with respect to any Replacement Interest Rate Cap Agreement, any Approved Counterparty thereunder.

“Debt” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums (including the Spread Maintenance Premium, if applicable) due to Lenders from time to time in respect of the Loan under the Note, this Agreement, the Mortgage, the Environmental Indemnity or any other Loan Document.

“Debt Service” shall mean, with respect to any particular period, the scheduled interest payments due under the Note and, if applicable, the note(s) evidencing any New Mezzanine Loan in such period.

“Debt Yield” shall mean, for any date, as determined by Agent in Agent’s sole discretion, the percentage obtained by dividing the Underwritten Net Cash Flow as of such date by the Maximum Principal Amount as of such date.

“Default” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would constitute an Event of Default.

“Default Rate” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (i) the Maximum Legal Rate or (ii) five percent (5%) above the Interest Rate.

“Deposit Account” shall mean an Eligible Account at the Deposit Bank.

“Deposit Bank” shall mean the bank or banks selected by Agent to maintain the Deposit Account. Agent may in its sole discretion change the Deposit Bank from time to time.

“Earnout Advance” shall mean a one-time advance of principal in the amount of \$1,000,000 made pursuant to Section 2.10 hereof.

“Eligible Account” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (i) an account or accounts (or subaccounts thereof) maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (ii) a segregated trust account or accounts (or subaccounts thereof) maintained with the corporate trust department of a federal depository institution or state chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulations §9.10(b), having in either case corporate trust powers, acting in its fiduciary capacity, and a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by federal and state authorities and having a long-term unsecured debt rating of “BBB-” or higher by S&P and “A2” or higher by Moody’s and a short-term unsecured debt rating of “A-1” or higher by S&P and “P-1” or higher by Moody’s. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“Eligible Assignee” shall mean any of (i) DB, or any Person Controlled by or under common Control with DB, or (ii) one or more of the following:

- (A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (ii)(A) satisfies the Eligibility Requirements;
- (B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as

amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii)(B) satisfies the Eligibility Requirements;

- (C) an investment fund, limited liability company, limited partnership, general partnership, corporation, trust or similar entity or investment vehicle where a Permitted Fund Manager acts as general partner, managing member or, directly or indirectly, as a fund manager, investment manager, asset manager, collateral manager or otherwise acts in a similar management capacity and at least fifty percent (50%) of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more of the following: a Person that is otherwise an Eligible Assignee under the other clauses of this definition, an institutional “accredited investor” within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, and/or a “qualified institutional buyer” within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, provided such institutional “accredited investors” or “qualified institutional buyers” that are used to satisfy the fifty percent (50%) test set forth above in this clause (ii)(C) each satisfies the Eligibility Requirements;
- (D) an institution substantially similar to any of the foregoing entities described in clause (ii)(A), clause (ii)(B) or clause (ii)(C) of this definition that satisfies the Eligibility Requirements; or
- (E) any Person Controlled or managed by or under common Control or management with any of the Persons described in the foregoing clauses (A), (B), (C), and (D).

“Eligible Institution” shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch (and the long term unsecured debt obligations of such depository institution are rated at least “A” by Fitch) in the case of accounts in which funds are held for thirty (30) days or less or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least (i) “A” by S&P, (ii) “A” by Fitch (and the short term deposits or short term unsecured debt obligations or commercial paper of such depository institution are rated no less than “F1” by Fitch), and (iii) “A2” by Moody’s, or in the case of Letters of Credit, the long term unsecured debt obligations of which are rated at least (i) “A+” by S&P, (ii) “A+” by Fitch (and the short term deposits or short term unsecured debt obligations or commercial paper of such depository institution are rated no less than “F1” by Fitch) and (iii) “A1” by Moody’s; provided, however, for purposes of the Deposit Bank, the definition of Eligible Institution shall have the meaning set forth in the Cash Management Agreement.

“Eligibility Requirements” shall mean, with respect to any Person, that such Person has capital/statutory surplus or shareholders’ equity of at least \$25,000,000.00 and assets (in name or under management) of at least \$100,000,000.00.

“Environmental Indemnity” shall mean that certain Environmental Indemnity Agreement dated as of June 3, 2016, executed by Borrower, Operating Lessee and Guarantors in

connection with the Loan for the benefit of Agent (for itself and on behalf of Lenders), as amended by the Amendment to Loan Documents.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) which is a member of the same controlled group of corporations or group of trades or businesses under common control with Borrower or the Guarantors (or any Guarantor), or is treated as a single employer together with Borrower or the Guarantors (or any Guarantor) under Section 414 of the Code or Title IV of ERISA.

“Excluded Taxes” shall mean any of the following Special Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Special Taxes imposed on or measured by net income (however denominated), franchise taxes, and branch profits taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Special Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.9, amounts with respect to such Special Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Special Taxes attributable to such Recipient's failure to comply with Section 10.24 and (d) any U.S. withholding Special Taxes imposed under or in connection with FATCA.

“Extension Fee” shall mean a non-refundable fee equal to 0.50% of the Maximum Principal Amount in connection with Borrower's exercise of an Extension Option and payable one (1) Business Day prior to the first day of the applicable extension term of the Loan.

“Extension Option” shall mean the First Extension Option or the Second Extension Option, as applicable.

“FF&E” shall mean fixtures, furnishings, equipment, furniture, and other items of tangible personal property now or hereafter located in or on the Property or the Improvements or used in connection with the use, occupancy, operation and maintenance of all or any part of the hotel located on the Property, other than Inventory and stocks of food and other supplies held for consumption in normal operation but including, without limitation, appliances, machinery, equipment, signs, artwork, office furnishings and equipment, guest room furnishings, and specialized equipment for kitchens, laundries, bars, restaurant, public rooms, health and recreational facilities, linens, dishware, all partitions, screens, awnings, shades, blinds, floor coverings, hall and lobby equipment, heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevators, escalators, air conditioning and communication plants or systems with appurtenant fixtures, vacuum cleaning systems, call or beeper systems, security systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials; reservation system computer and related equipment; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of, parking areas, walks,

underground ways, truck ways, driveways, common areas, roadways, highways and streets; and the Vehicles (as defined in the Uniform System of Accounts for Hotels, current edition).

“**FF&E Expenditure**” for any period shall mean the amount expended for FF&E Work in, at or to the Property.

“**Final Completion**” shall mean that (a) the PIP Work (including all “punch list items”) shall be complete in accordance with the Plans and Specifications (as the same may be amended in accordance with this Agreement), all applicable Legal Requirements, all Permitted Encumbrances and this Agreement; (b) Borrower has delivered to Agent an AIA Form G704 (Certificate of Substantial Completion) executed by Borrower’s Architect and Borrower in connection with the PIP Work; (c) Borrower has delivered to Agent a Certificate of Borrower’s Architect substantially in the form attached hereto as **Exhibit D**, which shall be executed by Borrower’s Architect and the General Contractor, and closeout letters from all other major contractors, as reasonably required by Agent; (d) the PIP Work shall contain all fixtures, furniture and equipment required for the use and operation of the Improvements for their intended use or which may be required by any Governmental Authority or under any Legal Requirement; (e) all utilities necessary to serve the Property have been connected and are in operation; (f) Agent shall have received either (i) a permanent certificate of occupancy, with regard to the Improvements as a whole or (ii) a temporary certificate of occupancy for the Property for which no conditions to the issuance of a permanent certificate of occupancy exist other than those reasonably approved by Agent acting in its reasonable discretion and to address conditions relating to work done or such other conditions reasonably approved by Agent, in either case together with evidence that all other applicable governmental approvals, to the extent required under applicable Legal Requirements, have been issued and all other applicable Legal Requirements have been satisfied to the extent necessary so as to allow the Improvements to be opened for commercial operations as a hotel in accordance with the Management Agreement and the Loan Documents; (g) all costs and expenses incurred by Borrower in connection with the PIP Work have been paid in full and unconditional Lien waivers from all contractors, consultants, engineers, architects, subcontractors, materialmen, laborers, suppliers and any other Person entitled to file a Lien under the Lien Law who performed any work with regard to all work performed and/or all materials supplied (in each case, in connection with the PIP Work) have been delivered to Agent; and (h) if requested by Agent, Borrower shall have delivered to Agent copies of all operating manuals, warranties and other material documentation relating to the Property, the Improvements and any fixtures, furniture and equipment used in accordance therewith to the extent in Borrower’s possession or control and a final “as built” set of drawings and “as built” survey of the Property in a form reasonably acceptable to Agent; with completion of such requirements set forth in clauses (a) through (g) above to be evidenced to the reasonable satisfaction of Agent.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the Term.

“**Fitch**” shall mean Fitch, Inc.

“**Foreign Lender**” shall mean a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“Franchise Agreement” shall mean any franchise agreement hereafter entered into by Borrower, as franchisee, pursuant to which Borrower has the right to operate the hotel on the Property under a name and hotel system controlled by the franchisor (such franchisor, the **“Franchisor”**).

“GAAP” shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession.

“Governmental Authority” shall mean any court, board, agency, commission, office or authority of any nature whatsoever or any governmental unit (federal, state, commonwealth, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“Gross Revenue” shall mean all revenue derived from the ownership and operation of the Property from whatever source, including Rents and any Insurance Proceeds (whether or not Agent elects to treat any such Insurance Proceeds as business or rental interruption Insurance Proceeds pursuant to Section 5.4(f) hereof).

“Guarantor Financial Covenants” shall mean those covenants set forth in Section 5.2 of the Guaranty.

“Guarantors” shall mean, collectively, Stephen Hanson and David J. Mitchell, each an individual, or any other Person that now or hereafter guarantees any of Borrower’s and Operating Lessee’s obligations under any Loan Document.

“Guaranty” shall mean that certain Guaranty of Recourse Obligations dated as of June 3, 2016 from Guarantors for the benefit of Agent (for itself and on behalf of Lenders), as amended by the Amendment to Loan Documents.

“Hotel Transactions” shall mean, collectively, (i) occupancy arrangements for customary hotel transactions in the ordinary course of Borrower’s business conducted at the hotel located at the Property, including nightly rentals (or licensing) of individual hotel rooms or suites, banquet room use and food and beverage services and (ii) informational or guest services which are terminable on one month’s notice or less without cause and without penalty or premium, including co-marketing, promotional services and outsourced services.

“Indebtedness” shall mean, for any Person, without duplication: (i) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (ii) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (iii) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests, (iv) all indebtedness guaranteed by such Person, directly or indirectly, (v) all obligations under leases that constitute capital leases for which such Person is liable, (vi) all obligations of such Person under interest rate swaps, caps, floors, collars

and other interest hedge agreements, in each case for which such Person is liable or its assets are liable, whether such Person (or its assets) is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss, (vii) all obligations under any PACE loans and (viii) any other contractual obligation for the payment of money which are not settled within thirty (30) days.

“Indemnified Taxes” means (a) Special Taxes, other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not described in clause (a), Other Taxes.

“Independent” shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in Borrower or in any Affiliate of Borrower, (ii) is not connected with Borrower or any Affiliate of Borrower or as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

“Independent Accountant” shall mean (i) SKE Group, LLC, (ii) a firm of nationally recognized, certified public accountants which is Independent and which is selected by Borrower and reasonably acceptable to Agent or (iii) such other certified public accountant(s) selected by Borrower, which is Independent and reasonably acceptable to Agent.

“Initial Advance” shall mean an advance of principal in the amount of **\$4,000,000.00** made on the date hereof.

“Insolvency Opinion” shall mean that certain bankruptcy non-consolidation opinion letter dated as of June 3, 2016 delivered by Katsky Korins LLP in connection with the Original Senior Loan, the Original Project Loan and the Original Building Loan.

“Interest Determination Date” shall mean, with respect to any Interest Period, the date which is two (2) Business Days prior to the ninth (9th) day of each calendar month. When used with respect to an Interest Determination Date, Business Day shall mean any day on which banks are open for dealing in foreign currency and exchange in London.

“Interest Rate” shall mean, with respect to each Interest Period, an interest rate per annum equal to (i) for a LIBOR Loan, the sum of (a) the greater of LIBOR, determined as of the Interest Determination Date immediately preceding the commencement of such Interest Period and the LIBOR Floor, plus (b) the Spread (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate); and (ii) for a Prime Loan, the sum of (a) the greater of the Prime Rate and the Prime Rate Floor, plus (b) the Prime Rate Spread (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).

“Interest Rate Cap Agreement” shall mean the Confirmation and Agreement (together with the confirmation and schedules relating thereto), dated on or about the date hereof, between the Counterparty and Borrower, obtained by Borrower and collaterally assigned to Agent (on behalf of Lenders) pursuant to this Agreement and the Collateral Assignment of IRPA. After delivery of a Replacement Interest Rate Cap Agreement to Agent (on behalf of Lenders), the term Interest Rate Cap Agreement shall be deemed to mean such Replacement Interest Rate Cap

Agreement. The Interest Rate Cap Agreement shall be governed by the laws of the State of New York and shall contain each of the following:

(a) the notional amount of the Interest Rate Cap Agreement shall be equal to the Maximum Principal Amount;

(b) the remaining term of the Interest Rate Cap Agreement shall at all times extend through the end of the Interest Period in which the Maturity Date occurs as the same may have been extended from time to time pursuant to this Agreement and the Loan Documents;

(c) the Interest Rate Cap Agreement shall be issued by the Counterparty to Borrower and shall be pledged to Agent (on behalf of Lenders) by Borrower in accordance with this Agreement;

(d) the Counterparty under the Interest Rate Cap Agreement shall be obligated to make a stream of payments, directly to the Clearing Account (whether or not an Event of Default has occurred) from time to time equal to the product of (i) the notional amount of such Interest Rate Cap Agreement multiplied by (ii) the excess, if any, of LIBOR (including any upward rounding under the definition of LIBOR) over the Strike Price and shall provide that such payment shall be made on a monthly basis in each case not later than (after giving effect to and assuming the passage of any cure period afforded to such Counterparty under the Interest Rate Cap Agreement, which cure period shall not in any event be more than three Business Days) each Monthly Payment Date;

(e) the Counterparty under the Interest Rate Cap Agreement shall execute and deliver the Acknowledgment; and

(f) the Interest Rate Cap Agreement shall impose no material obligation on the beneficiary thereof (after payment of the acquisition cost) and shall be in all material respects satisfactory in form and substance to Agent and shall satisfy applicable Rating Agency standards and requirements, including, without limitation, provisions satisfying Rating Agencies standards, requirements and criteria (i) that incorporate representations by the Counterparty that no withholding taxes shall apply to payments by the Counterparty, and provide for “gross up” payments by the Counterparty for any withholding tax, (ii) whereby the Counterparty agrees not to file or join in the filing of any petition against Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, and (iii) that incorporate, if the Interest Rate Cap Agreement contemplates collateral posting by the Counterparty, a credit support annex setting forth the mechanics for collateral to be calculated and posted that are consistent with Rating Agency standards, requirements and criteria.

“*Inventory*” shall mean, as defined in the UCC, and including items which would be entered on a balance sheet under the line items for “Inventories” or “china, glassware, silver, linen and uniforms” under the Uniform System of Accounts for Hotels, current edition.

“*Key Principals*” shall mean, collectively, David J. Mitchell and Stephen Hanson.

“Lease” shall mean any lease, sublease or sub-sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy, all or any portion of any space in the Property, and every modification, amendment or other agreement (whether written or oral and whether now or hereafter in effect) relating to such lease, sublease, sub-sublease or other agreement entered into in connection with such lease, sublease, sub-sublease or other agreement, and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code. As used herein, the term “Leases” shall not include Hotel Transactions.

“Legal Requirements” shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Loan or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including, without limitation, the Securities Act, the Exchange Act, Regulation AB, the rules and regulations promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, zoning and land use laws, the Americans with Disabilities Act of 1990, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Property or any part thereof, including any which may (i) require repairs, modifications or alterations in or to the Property or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

“Letter of Credit” shall mean an irrevocable, unconditional, transferable (without payment of any transfer fee), clean sight draft letter of credit acceptable to Agent and the Rating Agencies (either an evergreen letter of credit or one which does not expire until at least thirty (30) Business Days after the Stated Maturity Date) in favor of Agent (on behalf of Lenders) and entitling Agent to draw thereon in New York, New York, issued by a domestic Eligible Institution or the U.S. agency or branch of a foreign Eligible Institution. If at any time the bank issuing any such Letter of Credit shall cease to be an Eligible Institution, Agent shall have the right immediately to draw down the same in full and hold the proceeds of such draw in accordance with the applicable provisions hereof.

“LIBOR” shall mean, with respect to each Interest Period and each Interest Determination Date, the rate per annum (rounded upwards, if necessary, to the nearest 1/1,000 of 1%) calculated by the Agent as set forth below:

(a) The rate for deposits in U.S. Dollars for a one-month period that appears on Reuters Screen LIBOR01 Page (or its equivalent) as of 11:00 a.m., London time, on such Interest Determination Date.

(b) If such rate does not appear on Reuters Screen LIBOR01 Page (or its equivalent) as of 11:00 a.m., London time, on the applicable Interest Determination Date, the Agent shall request the principal London office of any four major reference banks in the London interbank market selected by the Agent to provide such reference bank’s offered quotation to prime banks in the London interbank market for deposits in United

States dollars for a one-month period as of 11:00 a.m., London time, on such Interest Determination Date in a principal amount of not less than \$1,000,000 that is representative for a single transaction in the relevant market at the relevant time. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, the Agent shall request any three major banks in New York City selected by the Agent to provide such bank's rates for loans in U.S. Dollars to leading European banks for a one-month period as of 11:00 a.m., New York City time, on such Interest Determination Date in a principal amount not less than \$1,000,000 that is representative for a single transaction in the relevant market at the relevant time, and if at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates.

In no event shall LIBOR be less than zero.

"LIBOR Floor" shall mean one quarter percent (0.75%)

"LIBOR Loan" shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon LIBOR.

"Lien" shall mean any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, PACE Loan or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting all or any portion of the Property or any interest therein, or any direct or indirect interest in Borrower, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances.

"Loan Documents" shall mean, collectively, this Agreement, the Note, the Mortgage, the Assignment of Leases, the Cash Management Agreement, the Clearing Account Agreement, the Assignment of Agreements, the Environmental Indemnity, the Assignment of Management Agreement, the Pledge and Security Agreement, the Collateral Assignment of IRPA, the Completion Guaranty, the Guaranty, the Amendment to Loan Documents (and the Reaffirmation of Guaranties attached thereto) and any other documents, agreements and instruments now or hereafter evidencing, securing or delivered to Agent (on behalf of Lenders) and Lenders in connection with the Loan, as the same may be (and each of the foregoing defined terms shall refer to such documents as they may be) amended, restated, replaced, supplemented or otherwise modified from time to time.

"Loan to Value Ratio" shall mean the ratio, as of a particular date, in which the numerator is equal to the Maximum Principal Amount and the denominator is equal to the then appraised value of the Property, as determined by a licensed real estate appraiser selected by Agent using Agent's customary valuation standards.

"Low Debt Yield Period" shall commence if, as of any Calculation Date, the Debt Yield is less than eight (8%) percent and shall end if the Property has achieved a Debt Yield of at least eight (8%) percent for two consecutive Calculation Dates, as determined by Agent. Borrower

and Lender acknowledge and agree that a Low Debt Yield Period will be continuing as of the Closing Date.

“Major Contract” shall mean (i) any management, brokerage or leasing agreement, (ii) any Hotel Transaction relating to future room reservations, which agreement (x) has a term of more than 30 days and (y) covers more than 10 rooms (unless cancellable on thirty (30) days or less notice without requiring the payment of a termination fee or payments of any kind) (iii) any agreement with an architect, engineer, general contractor or construction manager entered into in connection with any PIP Work or (iv) any cleaning, maintenance, service or other contract or agreement of any kind (other than Leases) of a material nature (materiality for these purposes include, without limitation, contracts which require an annual payment of \$200,000 or more and extend beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind)), or (iv) any contract or agreement with an Affiliate of Borrower, in any case relating to the ownership, leasing, management, use, operation, maintenance, repair or restoration of the Property, whether written or oral.

“Management Agreement” shall mean the management agreement entered into by and between Borrower and the current Manager or any replacement management agreement entered into by and between Borrower and a Manager in accordance with the terms of the Loan Documents, in each case, pursuant to which the Manager is to provide management and other services with respect to the Property.

“Manager” shall mean GAM Hospitality, LLC, a Delaware limited liability company, or any other manager engaged in accordance with the terms and conditions of the Loan Documents.

“Material Alteration” shall mean any alteration affecting structural elements of the Improvements, utility or HVAC system contained in any Improvements or the exterior of the Property, the cost of which exceeds the Alteration Threshold; provided, however, that in no event shall (i) any alteration of the Property that is the subject of any Capital Expenditure included in an Approved Annual Budget (or reasonably approved by Agent) and included as PIP Work, (ii) any tenant improvement work performed pursuant to any Lease existing on the date hereof or entered into hereafter in accordance with the provisions of this Agreement, or (iii) alterations performed as part of a Restoration, constitute a Material Alteration.

“Maturity Date” shall mean the Stated Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.7, the Maturity Date shall be the First Extended Maturity Date and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.7, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the final payment of principal of the Note becomes due and payable as herein or therein provided, whether at the Stated Maturity Date, First Extended Maturity Date, Second Extended Maturity Date, by declaration of acceleration, extension or otherwise.

“Maximum Legal Rate” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents,

under the laws of such Governmental Authority whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“Maximum Principal Amount” shall mean **\$41,000,000**.

“Monthly Operating Expense Budgeted Amount” shall mean the monthly amount set forth in the Approved Annual Budget for Operating Expenses for the calendar month in which such Monthly Payment Date occurs; provided that management fees payable to Manager as part of the Monthly Operating Expense Budgeted Amount shall not exceed three percent (3%) of Rents (the **“Management Fee Cap”**).

“Monthly Payment Date” shall mean the ninth (9th) day of every calendar month occurring during the Term. The first Monthly Payment Date shall be September 9, 2017.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Mortgage” shall mean that certain Consolidated, Amended and Restated Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated the date hereof, executed and delivered by Borrower as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Multiemployer Plan” shall mean a “multiemployer plan” (as defined in Section 4001(a)(3) of ERISA) subject to Title IV of ERISA, (i) to which Borrower, any Guarantor, any ERISA Affiliate or, with respect to the Property, Manager, makes contributions or has an obligation to make contributions, or (ii) with respect to which Borrower, any Guarantor, any ERISA Affiliate or, with respect to the Property, Manager, could be subjected to any liability.

“New Mezzanine Loan Default” shall mean an “Event of Default” under the New Mezzanine Loan and as defined in the New Mezzanine Loan Documents and Agent may conclusively rely on any notice from New Mezzanine Loan Agent of such New Mezzanine Loan Default without any inquiry into the validity thereof.

“New Mezzanine Loan Default Revocation Notice” shall mean a notice from New Mezzanine Lender, with respect to the New Mezzanine Loan (upon which Agent may conclusively rely without any inquiry into the validity thereof) that a New Mezzanine Loan Default under the New Mezzanine Loan of which Agent was previously notified has either been cured or waived.

“NRSRO” shall mean any credit rating agency that has elected to be treated as a nationally recognized statistical rating organization for purposes of Section 15E of the Exchange Act, without regard to whether or not such credit rating agency has been engaged by Agent or its designees in connection with, or in anticipation of, a Securitization.

“Obligations” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“*Officer’s Certificate*” shall mean a certificate delivered to Agent by Borrower which is signed by an authorized senior officer or authorized signatory of Borrower.

“*Operating Expenses*” shall mean, for any period, without duplication, all expenses actually paid or payable by Borrower during such period in connection with the operation, management, maintenance, repair and use of the Property, determined on an accrual basis, and, except to the extent otherwise provided in this definition, in accordance with GAAP, and the Uniform System of Accounts for Hotels, current edition. Operating Expenses specifically shall include (i) all expenses incurred in the immediately preceding twelve (12) month period based on quarterly financial statements delivered to Agent in accordance with Section 4.9.2 hereof, (ii) all payments required to be made pursuant to any Operations Agreements, (iii) property management fees in an amount equal to the management fees actually paid under the Management Agreement, (iv) administrative, payroll, security and general expenses for the Property, (v) the cost of utilities, inventories and fixed asset supplies consumed in the operation of the Property, (vi) a reasonable reserve for uncollectible accounts, (vii) costs and fees of Independent professionals (including, without limitation, legal, accounting, consultants and other professional expenses), technical consultants, operational experts (including quality assurance inspectors) or other third parties retained to perform services required or permitted hereunder, (viii) cost of attendance by employees at training and manpower development programs, (ix) association dues, (x) computer processing charges, (xi) operational equipment and other lease payments, (xii) Taxes and Other Charges (other than income taxes or Other Charges in the nature of income taxes) sales and use taxes or other similar taxes (collectively, the “*Occupancy Taxes*”) and insurance premiums and (xiii) all underwritten reserves required by Agent hereunder (without duplication). Operating Expenses shall also include all franchise fees and expenses incurred in connection with any Franchise Agreement. Notwithstanding the foregoing, Operating Expenses shall not include (1) depreciation or amortization, (2) income taxes or Other Charges in the nature of income taxes, (3) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with the making of the Supplemental Loan or the sale, exchange, transfer, financing or refinancing of all or any portion of the Property or in connection with the recovery of Insurance Proceeds or Awards which are applied to prepay the Note, (4) Capital Expenditures (including the expenses incurred in connection with the PIP Work), (5) Debt Service, and (6) any item of expense which would otherwise be considered within Operating Expenses pursuant to the provisions above but is paid directly by any Tenant.

“*Operating Income*” shall mean, for any period, all income of Borrower during such period from the use, ownership or operation of the Property, including:

- (a) all amounts payable to Borrower by any Person as Rent and other amounts under Leases or other agreements relating to the Property;
- (b) business interruption insurance proceeds allocable to the applicable reporting period; and
- (c) all other amounts which in accordance with GAAP, the Uniform System of Accounts for Hotels, current edition, are included in Borrower’s annual financial statements as operating income attributable to the Property.

Notwithstanding the foregoing, Operating Income shall not include (a) any Insurance Proceeds (other than business interruption and/or rental loss insurance proceeds and only to the extent allocable to the applicable reporting period), (b) any proceeds resulting from the Transfer of all or any portion of the Property, (c) any Rent attributable to a Lease prior to the date in which the Tenant thereunder has taken occupancy or in which the actual payment of rent is required to commence thereunder, (d) any item of income otherwise included in Operating Income but paid directly by any Tenant to a Person other than Borrower as an offset or deduction against Rent payable by such Tenant, provided such item of income is for payment of an item of expense (such as payments for utilities paid directly to a utility company) and such expense is otherwise excluded from the definition of Operating Expenses pursuant to clause (6) of the definition thereof, (e) security deposits received from Tenants until forfeited or applied, and (f) any Rents paid by or on behalf of any Tenant under a Lease which is the subject of any proceeding or action relating to its bankruptcy, reorganization or other arrangement pursuant to federal bankruptcy law or any similar federal or state law or which has been adjudicated a bankrupt or insolvent unless such Lease has been assumed by the trustee in such proceeding or action. Operating Income shall be calculated on the accrual basis of accounting and, except to the extent otherwise provided in this definition, in accordance with GAAP, the Uniform System of Accounts for Hotels, current edition.

“Operations Agreements” shall mean the REA, and any other covenants, restrictions, easements, declarations or agreements of record relating to the construction, operation or use of the Property, together with all amendments, modifications or supplements thereto.

“Other Charges” shall mean all ground rents, maintenance charges, impositions other than Taxes and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“Other Connection Taxes” shall mean, with respect to any Lender, Special Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Obligations” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower contained in any other Loan Document; and (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Agreement, the Note or any other Loan Document.

“Outstanding Principal Balance” shall mean, as of any date, the outstanding principal balance of the Loan.

“PACE Loan” shall mean (x) any “Property-Assessed Clean Energy loan” or (y) any other indebtedness, without regard to the name given to such indebtedness, which is (i) incurred for improvements to the Property for the purpose of increasing energy efficiency, increasing use

of renewable energy sources, resource conservation, or a combination of the foregoing, and (ii) repaid through multi-year assessments against the Property.

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same was restored and amended by Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act (USA FREEDOM Act) of 2015 and as the same may be further amended, extended, replaced or otherwise modified from time to time, and any corresponding provisions of future laws.

“Permitted Encumbrances” shall mean, collectively, (i) the Liens and security interests created by the Loan Documents, (ii) all encumbrances and other matters disclosed in the Title Insurance Policy, (iii) Liens, if any, for Taxes or Other Charges imposed by any Governmental Authority not yet due or delinquent, (iv) any workers’, mechanics’ or other similar Liens on the Property provided that any such Lien is bonded or discharged within thirty (30) days after Borrower first receives written notice of such Lien or which is being contested in good faith in accordance with the requirements of Section 4.3 and (v) such other title and survey exceptions as Agent has approved or may approve in writing in Agent’s reasonable discretion.

“Person” shall mean any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other entity, any Governmental Authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Physical Conditions Report” shall mean that certain Property Condition Report, prepared by Partners and dated as of April 28, 2016, as Project No. 16-160810.1.

“PIP Work” shall mean the work to be performed at the Property, as the same will be or has been developed, renovated and constructed in accordance with the Renovations Budget, the Project Loan Budget and all Legal Requirements.

“Plans and Specifications” shall mean the plans and specifications for the PIP Work, including any architectural, structural, mechanical, electrical, plumbing, fire protection and elevator plans and specifications, prepared by Borrower’s Architect and other design professionals and reviewed and approved by Agent, in Agent’s sole but good faith discretion, taking into consideration any recommendations received by Agent’s construction consultant, in accordance with the terms hereof, as any of the same may be amended and supplemented from time to time in accordance with the terms of this Agreement.

“Pledge and Security Agreement” shall mean the Pledge and Security Agreement dated as of June 3, 2016, made by Pledgor in favor of Agent and Lenders, as amended by the Amendment to Loan Documents and as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with this Agreement from time to time.

“Pledgor” shall mean Life Hotel Company LLC, a Delaware limited liability company.

“Prepayment Notice” shall mean a prior irrevocable written notice to Agent specifying the proposed Business Day on which a prepayment of the Debt is to be made pursuant to Section 2.4 hereof, which date must be a Monthly Payment Date and shall be no earlier than

fifteen (15) days after the date of such Prepayment Notice and no later than sixty (60) days after the date of such Prepayment Notice.

“Prime Rate” shall mean the rate of interest published in *The Wall Street Journal* from time to time as the “Prime Rate”. If more than one “Prime Rate” is published in *The Wall Street Journal* for a day, the average of such “Prime Rates” will be used, and such average will be rounded up to the nearest 1/100th of one percent (0.01%). If *The Wall Street Journal* ceases to publish the “Prime Rate,” Agent will select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Agent will select a comparable interest rate index.

“Prime Rate Floor” shall mean, in connection with any conversion of the Loan from a LIBOR Loan to a Prime Rate Loan, the difference between (a) the sum of the LIBOR Floor plus the Spread, minus (b) the Prime Rate Spread; provided, however, that if such difference is a negative number, then the Prime Rate Floor shall be zero.

“Prime Rate Loan” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon the Prime Rate.

“Prime Rate Spread” shall mean, in connection with any conversion of the Loan from a LIBOR Loan to a Prime Rate Loan, the difference (expressed as the number of basis points) between (a) the sum of (i) LIBOR, determined as of the Interest Determination Date for which LIBOR was last available, plus (ii) the Spread, minus (b) the Prime Rate as of such Interest Determination Date; provided, however, that if such difference is a negative number, then the Prime Rate Spread shall be zero.

“Project Loan Budget” shall mean the budget attached hereto as Schedule IX.

“Property” shall mean the parcel of real property described on Exhibit A attached hereto and made a part hereof, the Improvements now or hereafter erected or installed thereon and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and Improvements, all as more particularly described in the Granting Clauses of the Mortgage.

“Punchlist Budget” shall mean the budget attached hereto as Schedule XI.

“Punchlist Work” shall mean the punchlist items to be performed at the Property, as more particularly described in the Punchlist Budget attached hereto as Schedule XI.

“Qualified Transferee” shall mean a transferee for whom, prior to the Transfer, Agent shall have received: (x) evidence that the proposed transferee (1) has never been convicted of, or pled guilty or no contest to, a felony, (2) has never been indicted or convicted of, or pled guilty or no contest to, a Patriot Act Offense and is not on any Government List, (3) has never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding and (4) has no material outstanding judgments against such proposed transferee and (y) if the proposed transferee will obtain Control of or obtain a direct or indirect interest of 10%

or more in Borrower as a result of such proposed transfer, a credit check against such proposed transferee that is reasonably acceptable to Agent.

“Ratable Share”, **“Ratable”** or **“ratably”** shall mean, with respect to any Lender, its share of the Loan based on the proportion of the Outstanding Principal Balance advanced or held by such Lender to the total outstanding principal amount of the Loan. The Ratable Share of each Lender on the date of this Agreement after giving effect to the funding of the Initial Advance of the Supplemental Loan on the Closing Date is set forth on **Schedule III** attached hereto and made a part hereof.

“Rating Agencies” shall mean any nationally-recognized statistical rating organization (e.g. Standard & Poor’s Ratings Services, Moody’s Investor Service, Inc., Fitch, Inc., DBRS, Inc. or any successor thereto) that has been or will be engaged by Agent or its designees in connection with, or in anticipation of, a Securitization.

“Rating Agency Confirmation” shall mean a written affirmation from each of the Rating Agencies that the credit rating of the Securities by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion.

“REA” shall mean, collectively, those certain agreement(s) more particularly described on **Schedule VI** attached hereto and made a part hereof, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“Recipient” shall mean the Agent and the Lenders, as applicable.

“Regulation AB” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

“Regulatory Change” shall mean, at any time hereafter, (i) any change in any Legal Requirement (including by repeal, amendment or otherwise) or in the interpretation or application thereof by any central bank or other Governmental Authority or (ii) any new or revised request, guidance or directive issued by any central bank or other Governmental Authority and applicable to the Agent and Lenders.

“Related Loan” shall mean a loan to an Affiliate of Borrower or any Guarantor or secured by a Related Property, that is included in a Securitization with the Loan, and any other loan that is cross-collateralized with the Loan.

“Related Property” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related” within the meaning of the definition of Significant Obligor, to the Property.

“REMIC Trust” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Note.

“Renovations Budget” shall mean the budget attached hereto as Schedule IX.

“Rents” shall mean all rents, rent equivalents, “additional rent” (i.e. pass-throughs for operating expenses, real estate tax escalations and/or real estate tax pass-throughs, payments by Tenants on account of electrical consumption, porters’ wage escalations, condenser water charges and tap-in fees, freight elevator and HVAC overtime charges, charges for excessive rubbish removal and other sundry charges), revenues from the rental of rooms, guest suites, conference and banquet rooms, food and beverage facilities, health clubs, spas or other amenities, telephone services, laundry, vending, television and parking, moneys payable as damages (including payments by reason of the rejection of a Lease in a bankruptcy proceeding) or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower, Manager or any of their respective agents or employees from any and all sources arising from or attributable to the Property and the Improvements, including all receivables, signage income, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, Manager or any of their respective agents or employees, and all other items of revenue, receipts or other income as identified in the Uniform System of Accounts, current edition, and Insurance Proceeds, if any, from business interruption or other loss of income insurance, but only to the extent such Insurance Proceeds are treated as business or rental interruption Insurance Proceeds pursuant to Section 5.4(f) hereof.

“Repayment Date” shall mean the date of a prepayment of the Loan pursuant to the provisions of Section 2.4 hereof.

“Replacement Interest Rate Cap Agreement” shall mean an interest rate cap agreement from an Approved Counterparty with terms that are the same in all material respects as the terms of the Interest Rate Cap Agreement except that the same shall be effective as of (i) in connection with a replacement pursuant to Section 2.6.3(c) following a downgrade, withdrawal or qualification of the long-term unsecured debt rating of the Counterparty, the date required in Section 2.6 or (ii) in connection with a replacement (or extension of the then-existing Interest Rate Cap Agreement) in connection with an extension of the Maturity Date pursuant to Section 2.7, the date required in Section 2.7; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements, a Replacement Interest Rate Cap Agreement shall be such interest rate cap agreement approved in writing by Agent, and if the Loan or any portion thereof is included in a Securitization, each of the Rating Agencies with respect thereto.

“Reserve Funds” shall mean, collectively, all funds deposited by Borrower or Clearing Bank with Agent or Deposit Bank pursuant to Article 6 of this Agreement, including, but not limited to, the Capital Expenditure Funds, the Insurance Funds, the Tax Funds, the Shortfall Funds, the Casualty and Condemnation Funds, the Seasonal Working Capital Reserve Funds, the Capital Expenditure Funds and the FF&E Reserve Funds.

“Restoration” shall mean the repair, restoration and re-tenanting of the Property after a Casualty or Condemnation as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Agent.

“S&P” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Companies.

“Significant Obligor” shall have the meaning set forth in Item 1101(k) of Regulation AB under the Securities Act.

“Special Taxes” shall mean any and all present or future taxes, levies, imposts, deductions, charges or withholdings (including back up withholding), assessment fees or other changes imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable there.

“Spread” shall mean (x) during the continuance of a Low Debt Yield Period, five hundred seventy five basis points (5.75%) per annum and (y) during any period when a Low Debt Yield Period is not continuing, five hundred twenty five basis points (5.25%) per annum. For the avoidance of doubt, the Spread as of the Closing Date shall be 5.75%

“Spread Maintenance Date” shall mean the 12th Monthly Payment Date after the Closing Date.

“Spread Maintenance Premium” with respect to any payment or prepayment of principal before the Spread Maintenance Date, an amount equal to the product of the following: (A) the amount of such prepayment (or the amount of principal so accelerated), multiplied by (B) the Spread, multiplied by (C) a fraction (expressed as a percentage) having a numerator equal to the number of months difference between the Spread Maintenance Date (whether or not any extension option is exercised pursuant to Section 2.7 hereof) and the date such prepayment occurs (or the last day of the Interest Period through which interest has been paid by Borrower) and a denominator equal to twelve (12).

“SRO Laws” shall mean those certain single room occupancy laws of the State and/or City of New York, including the State Rent Stabilization Law, Local Law 19 of 1983 or Administrative Code Section 27-198(b), or any replacement, reauthorization or extension of any of the foregoing.

“State” shall mean New York.

“Stated Maturity Date” shall mean February 9, 2019 (the **“Initial Maturity Date”**), as the same may be extended pursuant to Section 2.7 hereof.

“Strike Price” shall mean 2.50%.

“Substantial Completion” shall mean, with respect to any component of PIP Work, the occurrence of all of the following events: (a) the construction of such work substantially in accordance with the budget (subject to cost savings achieved by Borrower, but provided that the

quality of materials is not decreased and no line items are removed) and Plans and Specifications that were approved by Agent in accordance with the Loan Documents (subject to completion of “punch-list items” not to exceed \$50,000), free and clear of all Liens other than Permitted Encumbrances, (b) the payment in full of any and all fees, charges, costs and expenses payable by Borrower to contractors, consultants, engineers, architects, materialmen, laborers, suppliers and any other Person engaged in connection with such work (subject to payment of applicable retainage) and the payment of all fees with respect to any permits, licenses and/or approvals, (c) the issuance of a temporary certificate of occupancy for the Property or such portion of the Property that is the subject of such work, to the extent that a temporary certificate of occupancy is required for the use and occupancy of such space in accordance with Legal Requirements; provided, however, Borrower shall use commercially reasonable efforts to obtain a permanent certificate of occupancy, (d) the Franchisor under any Franchise Agreement has accepted such PIP Work in writing and (e) the delivery of (i) conditional lien waivers from all contactors, consultants, engineers, architects, subcontractors, materialmen, laborers, suppliers and any other Person entitled to file a Lien under the Lien Law for work that is the subject of a particular draw request and (ii) final, unconditional lien waivers from all contactors, consultants, engineers, architects, subcontractors, materialmen, laborers, suppliers and any other Person entitled to file a Lien under the Lien Law. The term “Substantially Completed” shall have a correlative meaning.

“**Survey**” shall mean a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Agent and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Agent.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof, together with all interest and penalties thereon. In no event shall any PACE Loan be considered a Tax for purposes of this Agreement.

“**Tenant**” shall mean any Person obligated by contract or otherwise to pay monies (including a percentage of gross income, revenue or profits) under any Lease now or hereafter affecting all or any part of the Property.

“**Term**” shall mean the entire term of this Agreement, which shall expire upon repayment in full of the Debt and full performance of each and every obligation to be performed by Borrower pursuant to the Loan Documents.

“**Title Insurance Policy**” shall mean an ALTA mortgagee title insurance policy in the form acceptable to Agent issued with respect to the Property and insuring the Lien of the Mortgage.

“**TRIPRA**” shall mean the Terrorism Risk Insurance Program Reauthorization Act of 2015 or any replacement, reauthorization or extension thereof.

“**Trigger Period**” shall commence upon the occurrence of (i) an Event of Default, (ii) the commencement of a Low Debt Yield Period or (iii) the commencement of a New Mezzanine Loan Default; and shall end if, (A) with respect to a Trigger Period continuing pursuant to clause (i), the Event of Default commencing the Trigger Period has been cured and such cure has been

accepted by Agent (and no other Event of Default is then continuing) or (B) with respect to a Trigger Period continuing due to clause (ii), the Low Debt Yield Period has ended pursuant to the terms hereof or (C) with respect to a Trigger Period continuing due to clause (iii), receipt by Agent of a New Mezzanine Loan Default Revocation Notice.

“**Trustee**” shall mean any trustee holding the Loan in a Securitization.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State (with respect to fixtures), the State of New York or the state in which any of the Cash Management Accounts are located, as the case may be.

“**Underwritten Net Cash Flow**” shall mean, as of the end of any calendar quarter for which Underwritten Net Cash Flow is determined (or such other date for which Underwritten Net Cash Flow is determined) the excess of: (a) the sum of: (i) actual Rents received by Borrower for the twelve (12) months preceding such calculation; *over* (b) for the twelve (12) month period preceding the month in which such Underwritten Net Cash Flow is calculated, Operating Expenses over such twelve (12) months, in each case adjusted to reflect Agent’s determination of: (i) subtraction of an imputed capital improvement/FF&E requirement amount equal to (X) 2.00% of Rents per annum during the first year of the Term, (Y) 3.00% of Rents per annum during the second year of the Term and (Z) 4.00% of Rents per annum during the third and fourth year of the Term (regardless of whether a reserve therefor is required hereunder or the amount of such reserve); (ii) an adjustment so that property management fees are equal to the greater of three percent (3%) of Rents and the property management fees actually paid under the Management Agreement, (iii) exclusion of (X) amounts representing non-recurring items and (Y) other than with respect to Hotel Transactions, amounts received from Tenants not currently in occupancy and paying full, unabated rent, from Tenants affiliated with Borrower or any Guarantor, from Tenants in default or in bankruptcy and from Tenants under month-to-month Leases or Leases where the term is about to expire; and (iv) such other adjustments deemed necessary by Agent based upon Agent’s reasonable underwriting criteria and, if the Loan has been included in a Securitization, Agent’s reasonable determination of Rating Agency underwriting and evaluation criteria. Agent’s calculation of Underwritten Net Cash Flow shall be final absent manifest error.

“**U.S. Obligations**” shall mean securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, and (ii) not subject to prepayment, call or early redemption.

“**U.S. Person**” shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

Section 1.2 Index of Other Definitions. The following terms are defined in the sections or Loan Documents as indicated below:

“**Accounts**” - 6.1(a)

“**Act**” - Schedule V

“**Acceptable Blanket Policy**” - 5.1.1(c)

“*Acceptable SMBC Credit Support Party*” - 1.1 (Definition of “Approved Counterparty”)
 “*Agreement*” - Introductory Paragraph
 “*Applicable Taxes*” – 10.24
 “*Approved Annual Budget*” - 4.9.5
 “*Approved Extraordinary Operating Expense*” - 4.9.6
 “*Approved Monthly BI Expenses*” - 5.4(f)
 “*Available Cash*” – 6.8.1
 “*Assignee*” – 10.29
 “*Bail-in Action*” – 10.28
 “*Bail-in Legislation*” – 10.28
 “*Borrower’s Recourse Liabilities*” - 10.1
 “*Breakage Costs*” - 2.2.5
 “*Broker*” - 10.19
 “*Capital Expenditure Account*” – 6.5.3
 “*Capital Expenditure Funds*” – 6.5.3
 “*Cash Management Accounts*” - 6.9
 “*Casualty*” - 5.2
 “*Casualty and Condemnation Account*” - 6.6
 “*Casualty and Condemnation Funds*” - 6.6
 “*Casualty Consultant*” - 5.4(b)(iii)
 “*Casualty Retainage*” - 5.4(b)(iv)
 “*Cause*” - Schedule V
 “*Clarification Agreement*” - Schedule IV
 “*Clearing Account*” - 6.1(a)
 “*Clearing Bank*” - 6.1(a)
 “*Co-Lender Agreement*” - 11.12
 “*Committee*” - Schedule V
 “*Condemnation Proceeds*” - 5.4(b)
 “*Counterparty Opinion*” - 2.6.3
 “*Credit Card Companies*” – 6.1(b)
 “*DB*” - Introductory Paragraph
 “*Disclosure Document*” – 9.2(a)
 “*Earnout Advance Funding Date*” – 2.10.1(a)
 “*Earnout Advance Funding Notice*” – 2.10.1(b)
 “*Easements*” - 3.1.11
 “*EEA Financial Institution*” – 10.28
 “*EEA Member Country*” – 10.28
 “*EEA Resolution Authority*” – 10.28
 “*Embargoed Person*” - 4.32(c)
 “*Equipment*” - Mortgage
 “*ERISA*” - 4.31
 “*EU Bail-In Legislation Schedule*” – 10.28
 “*Event of Default*” - 8.1
 “*Exchange Act*” – 9.2(a)
 “*Exchange Act Filing*” – 9.1(d)
 “*Extraordinary Operating Expense*” - 4.9.6

“FF&E Reserve Account” - 6.5.1
“FF&E Reserve Funds” - 6.5.1
“FF&E Work” - 6.5.1
“First Extended Maturity Date” - 2.7.1
“First Extension Notice” - 2.7.1
“First Extension Option” - 2.7.1
“Franchisor” – 1.1 (Definition of Franchise Agreement)
“Future Funding Obligations” – 10.30
“Government Lists” - 4.32(b)
“Improvements” - Mortgage
“Increased Costs” - 2.9.1
“Indemnified Liabilities” - 4.30
“Independent Director” - Schedule V
“Independent Manager” - Schedule V
“Initial Maturity Date” – 1.1 (Definition of “Stated Maturity Date”)
“Insurance Account” - 6.3.1
“Insurance Funds” - 6.3.1
“Insurance Premiums” - 5.1.1(b)
“Insurance Proceeds” - 5.4(b)
“Intellectual Property” - 3.1.33
“Interest Period” - 2.3.2
“Key Principal Estate” - 7.2(e)(v)
“Lender” - Introductory Paragraph
“Lender Group” - 9.2(b)
“Liabilities” - 9.2(b)
“Licenses” - 3.1.9
“Loan” - Introductory Paragraph
“Management Fee Cap” - 1.1 (Definition of “Monthly Operating Expense Budgeted Amount”)
“Nationally Recognized Service Company” - Schedule V
“Net Proceeds” - 5.4(b)
“Net Proceeds Deficiency” - 5.4(b)(vi)
“New Mezzanine Loan” - 9.3.2
“New Mezzanine Loan Borrower” - 9.3.2
“Note” - Introductory Paragraph
“Notice” - 10.6
“Occupancy Taxes” – 1.1 (Definition of “Operating Expenses”)
“OFAC” - 4.32(b)
“Original Building Loan” – Introductory Paragraph
“Original Building Loan Agreement” – Introductory Paragraph
“Original Building Note” – Introductory Paragraph
“Original Closing Date” – Introductory Paragraph
“Original Project Loan” – Introductory Paragraph
“Original Project Loan Agreement” – Introductory Paragraph
“Original Project Note” – Introductory Paragraph
“Original Senior Loan” – Introductory Paragraph
“Original Senior Loan Agreement” – Introductory Paragraph

“Original Senior Note” – Introductory Paragraph
 “Other Taxes” – 10.24
 “Participant Register” – 10.29(d)
 “Patriot Act Offense” - 4.32(b)
 “Permitted Equipment Financing” - 4.21
 “Permitted Indebtedness” - 4.21
 “Permitted Investments” - Cash Management Agreement
 “Permitted Transfer” - 7.1
 “PML” - 5.1.1(a)
 “Policies” - 5.1.1(b)
 “Qualified Carrier” - 5.1.1(i)
 “Rate Cap Collateral” - 2.6.2
 “Rebalancing Amount” – 6.7.1
 “Replacement Franchise Agreement” – 4.34(d)
 “Register” – 10.28(d)
 “Required Monthly Payments” – 6.7.1
 “Restaurant Lease” – 3.1.17
 “Review Waiver” - 10.3(b)
 “Seasonal Working Capital Reserve Account” - 6.4.1
 “Seasonal Working Capital Reserve Cap” - 6.4.1
 “Seasonal Working Capital Reserve Funds” - 6.4.1
 “Second Extended Maturity Date” - 2.7.1
 “Second Extension Notice” - 2.7.1
 “Second Extension Option” - 2.7.1
 “Secondary Market Transaction” - 9.1(a)
 “Securities” - 9.1(a)
 “Securities Act” - 9.2(a)
 “Securitization” - 9.1(a)
 “SEL” – 5.1.1(a)
 “Servicer” - 10.21
 “Servicing Agreement” - 10.21
 “Servicing Fee” - 10.21
 “SFHA” – 5.1.1(a)
 “Shortfalls” – 6.7.1
 “Shortfall Account” – 6.7.1
 “Shortfall Funds” – 6.7.1
 “Sole Member” – Schedule V
 “Special Member” - Schedule V
 “Special Purpose Bankruptcy Remote Entity” - Schedule V
 “Springing Recourse Event” - 10.1
 “Supplemental Loan” - Introductory Paragraph
 “Supplemental Note” - Introductory Paragraph
 “Tax Account” - 6.2.1
 “Tax Funds” - 6.2.1
 “Transfer” - 4.2
 “Underwriter Group” - 9.2(b)

“*Updated Information*” - 9.1(b)(i)
“*Write-Down and Conversion Powers*” – 10.28
“*U.S. Tax Compliance Certificate*” – 10.24
“*ZLDA*” - Schedule IV
“*ZLDA Recourse Liability*” – 10.1(xii)

Section 1.3 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document as a whole and not to any particular provision hereof or thereof. When used in this Agreement or any other Loan Document, the word “including” shall mean “including but not limited to”. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE 2

THE LOAN

Section 2.1 The Loan.

2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lenders shall make the Initial Advance to Borrower and Borrower shall accept the Initial Advance from Lenders in accordance with the terms hereof. The Supplemental Loan shall be made in a series of advances and shall consist of the Initial Advance and the Earnout Advance. Lenders’ obligation (if any) to make the Earnout Advance is subject to the applicable terms, conditions and limitations set forth in this Agreement.

2.1.2 Disbursements to Borrower. Borrower shall receive the Initial Advance on the date hereof and Borrower shall receive the Earnout Advance in accordance with Section 2.10 hereof. Any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

2.1.3 The Note. The Loan shall be evidenced by the Note in evidence of the Loan and shall be repaid in accordance with the terms of this Agreement, the Note and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use proceeds of the Initial Advance to (i) pay all past-due Taxes, Insurance Premiums and Other Charges, if any, in respect of the Property, (ii) make deposits of the Reserve Funds, (iii) pay costs and expenses incurred in connection with the closing of the Supplemental Loan, and (iv) to the extent any proceeds remain after satisfying clauses (i) through (iii) above, for such lawful purpose as Borrower shall designate, provided such purpose does not violate the terms of any Loan Documents.

Section 2.2 Interest Rate.

2.2.1 Interest Rate.

(a) Interest on the Outstanding Principal Balance shall accrue throughout the Term at the Interest Rate.

(b) Subject to the terms and conditions hereof, the Loan shall be a LIBOR Loan. In the event that Agent shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank Eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Agent shall forthwith give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) day prior to the next succeeding Interest Determination Date. If such notice is given, the Loan shall be converted, as of the first day of the next succeeding Interest Period, to a Prime Rate Loan. Notwithstanding any provision of this Agreement to the contrary, in no event shall Borrower have the right to convert a LIBOR Loan to a Prime Rate Loan.

(c) If, pursuant to the terms hereof, the Loan has been converted to a Prime Rate Loan and Agent shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Agent shall give notice by telephone of such determination, confirmed in writing, to Borrower at least one (1) day prior to the next succeeding Interest Determination Date. If such notice is given, the Loan shall be converted, as of the first day of the next succeeding Interest Period, to a LIBOR Loan. Notwithstanding any provision of this Agreement to the contrary, in no event shall Borrower have the right to convert a Prime Rate Loan to a LIBOR Loan.

(d) If the adoption of any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for any Lender to maintain a LIBOR Loan as contemplated hereunder, (i) the obligation of such Lender hereunder to make or maintain a LIBOR Loan or to convert a Prime Rate Loan to a LIBOR Loan shall be canceled forthwith and (ii) any outstanding LIBOR Loan shall be converted automatically to a Prime Rate Loan on the first day of the next succeeding Interest Period, or upon such earlier date as may be required by law. Borrower hereby agrees to promptly pay to such Lender, upon demand, any additional amounts necessary to compensate such Lender for any costs incurred by such Lender in making any conversion in accordance with this Agreement, including without limitation, any interest or fees payable by such Lender to lenders of funds obtained by it in order to make or maintain the LIBOR Loan hereunder. Such Lender's notice of such costs, as certified to Borrower, shall be conclusive absent manifest error.

2.2.2 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent not prohibited by applicable law, all other portions of the Debt, shall accrue interest at the Default Rate, calculated from the date such payment was due or such Default shall have occurred without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be paid

immediately upon demand, which demand may be made as frequently as Agent shall elect, to the extent not prohibited by applicable law.

2.2.3 Interest Calculation. Interest on the Outstanding Principal Balance shall be calculated by multiplying (A) the actual number of days elapsed in the period for which the calculation is being made by (B) a daily rate based on a three hundred sixty (360) day year (that is, the Interest Rate expressed as an annual rate divided by 360) by (C) the Outstanding Principal Balance. The accrual period for calculating interest due on each Monthly Payment Date shall be the Interest Period in which such Monthly Payment Date occurs.

2.2.4 Usury Savings. This Agreement and the other Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the Outstanding Principal Balance at a rate which could subject Agent or any Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the Outstanding Principal Balance at a rate in excess of the Maximum Legal Rate, the Interest Rate shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Agent or any Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.2.5 Breakage Indemnity. Borrower shall indemnify Agent for its own account or for the account of the applicable Lender(s) (as the case may be) against any loss or expense which Agent or any Lender may actually sustain or incur in liquidating or redeploying deposits from third parties acquired to effect or maintain the Loan or any part thereof as a consequence of (i) any payment or prepayment of the Loan or any portion thereof made on a date other than a Monthly Payment Date and (ii) any default in payment or prepayment of the Loan or any part thereof or interest accrued thereon, as and when due and payable (at the date thereof or otherwise, and whether by acceleration or otherwise) (collectively, "**Breakage Costs**"). Agent shall deliver to Borrower a statement for any such sums which it (or any Lender) is entitled to receive pursuant to this Section 2.2.5, which statement shall be binding and conclusive absent manifest error. Borrower's obligations under this Section 2.2.5 are in addition to Borrower's obligations to pay any Spread Maintenance Premium applicable to a payment or prepayment of the Loan.

Section 2.3 Loan Payments.

2.3.1 Payments. On the date hereof, Borrower shall pay interest on the unpaid outstanding principal balance on the Original Senior Loan, Original Building Loan and Original Project Loan for the period of June 9, 2017 through July 17, 2017. On August 9, 2017, Borrower shall pay interest on the unpaid Outstanding Principal Balance from the Closing Date through August 8, 2017. On September 9, 2017 and each Monthly Payment Date thereafter during the

Term, Borrower shall pay interest on the unpaid Outstanding Principal Balance accruing through the last day of the Interest Period in which such Monthly Payment Date occurs. Borrower shall also pay to Agent all amounts required in respect of Reserve Funds as set forth in Article 6 hereof.

2.3.2 Payments Generally. Each interest accrual period (each, an “*Interest Period*”) shall commence on the ninth (9th) calendar day of each calendar month during the Term and shall end on and include the eighth (8th) calendar day of the following calendar month. For purposes of making payments hereunder, but not for purposes of calculating interest accrual periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day. Agent shall have the right from time to time, in its sole discretion, upon not less than ten (10) days prior written notice to Borrower, to change the Monthly Payment Date to a different calendar day and, if requested by Agent, Borrower shall promptly execute an amendment to this Agreement to evidence such change; provided, however, that if Agent shall have elected to change the Monthly Payment Date as aforesaid, Agent shall have the option, but not the obligation, to adjust the Interest Period and the Interest Determination Date accordingly. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Agent on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest, and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sum due under the Loan Documents (other than the Outstanding Principal Balance due and payable on the Maturity Date) is not paid by Borrower on the date on which it is due, Borrower shall pay to Agent upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by applicable law in order to defray the expense incurred by Agent in handling and processing such delinquent payment and to compensate Lenders for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by law.

2.3.5 Method and Place of Payment.

(a) Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Agent not later than 2:00 p.m., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Agent’s office or at such other place as Agent shall from time to time designate, and any funds received by Agent after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

(b) Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be the immediately preceding Business Day.

(c) All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

2.3.6 Forwarding of Payments by Agent. Except as otherwise agreed by Agent and Lenders, each payment received by Agent under this Agreement or the Note for the account of any Lender shall be paid by Agent promptly to such Lender, in immediately available funds, for the Loan or other portion of the Debt in respect of which such payment is made.

2.3.7 Ratable Shares/Pro Rata Treatment of Payments. Except to the extent otherwise provided herein: (a) the Loan shall be allocated Ratably among the Lenders according to the amounts of their Ratable Share; (b) each payment or prepayment of principal of the Loan by Borrower (including those made from Net Proceeds) shall be made Ratably for the account of the Lenders; (c) each payment of interest on the Loan by Borrower shall be made for the Ratable account of Lenders and (d) all losses, costs and expenses suffered by the Agent and/or the Lenders relating to the Loan, in each case, shall be allocated by Agent *pro rata* among the Lenders in accordance with their respective Ratable Shares.

Section 2.4 Prepayments.

2.4.1 Prepayments. Except as otherwise provided herein, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Stated Maturity Date.

2.4.2 Voluntary Prepayments.

Borrower shall have the right, only on a Business Day, to prepay the Outstanding Principal Balance in whole or in part, upon satisfaction of the following conditions:

- (a) Borrower shall deliver to Agent a Prepayment Notice; and
- (b) Borrower shall comply with the provisions set forth in Section 2.4.5; provided that if such prepayment is made on or after the Spread Maintenance Date, such prepayment shall be without any Spread Maintenance Premium or any other prepayment penalties set forth in clause (iii) of Section 2.4.5(a).

2.4.3 Mandatory Prepayments. If Agent is not obligated to make Net Proceeds available to Borrower for Restoration, on the next occurring Monthly Payment Date following the date on which (a) Agent actually receives any Net Proceeds, and (b) Agent has determined that such Net Proceeds shall be applied against the Debt, Borrower shall prepay, or authorize Agent to apply Net Proceeds as a prepayment of, the Debt in an amount equal to one hundred percent (100%) of such Net Proceeds. Except during an Event of Default, such Net Proceeds shall be applied by Agent as follows in the following order of priority: *First*, to any other amounts (other than principal and interest) then due and payable under the Loan Documents, including any costs and expenses of Agent and Lenders in connection with such prepayment; *Second*; accrued and unpaid interest on the Outstanding Principal Balance at the Interest Rate; and *Third*, to the Outstanding Principal Balance. Notwithstanding anything herein to the contrary, so long as no Event of Default is continuing, no Spread Maintenance Premium or any other prepayment premium, penalty or fee shall be due in connection with any prepayment made

pursuant to this Section 2.4.3. Any partial principal prepayment under this Section 2.4.3 shall be applied to the last payments of principal due under the Loan.

2.4.4 Prepayments After Default. If, during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower and accepted by Agent or is otherwise recovered by Agent (including through application of any Reserve Funds), such tender or recovery shall be deemed to be a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, as part of the Debt, all of: (i) all accrued interest calculated at the Interest Rate on the amount of principal being prepaid through and including the date of such prepayment together with an amount equal to the interest that would have accrued at the Interest Rate on the amount of principal being prepaid through the end of the Interest Period in which such prepayment occurs, notwithstanding that such Interest Period extends beyond the date of prepayment, (ii) Breakage Costs, if any, without duplication of any sums paid pursuant to the preceding clauses (i) and (iii) an amount equal to the Spread Maintenance Premium (if made before the Spread Maintenance Date).

2.4.5 Prepayment/Repayment Conditions.

(a) On the date on which a prepayment, voluntary or mandatory, is made under the Note or as required under this Agreement, which date must be a Business Day, Borrower shall pay to Agent:

(i) all accrued and unpaid interest calculated at the Interest Rate on the amount of principal being prepaid through and including the Repayment Date together with an amount equal to the interest that would have accrued at the Interest Rate on the amount of principal being prepaid through the end of the Interest Period in which such prepayment occurs;

(ii) if the prepayment is made on a day other than a Monthly Payment Date, Breakage Costs, if any, without duplication of any sums paid pursuant to the preceding clause (i);

(iii) the Spread Maintenance Premium applicable thereto (if such prepayment occurs prior to the Spread Maintenance Date); and

(iv) all other sums, then due under the Loan Documents.

(b) Borrower shall pay all reasonable costs and expenses of Agent and Lenders incurred in connection with the repayment or prepayment (including without limitation, any costs and expenses associated with a release of the Lien of the Mortgage as set forth in Section 2.5 below and reasonable attorneys' fees and expenses).

Section 2.5 Release of Property.

(a) Agent shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms and provisions of the Loan Documents, release the Lien of the Mortgage and reconvey the Property to Borrower. In

connection with the release of the Lien, Borrower shall submit to Agent, not less than fifteen (15) days prior to the Repayment Date (or such shorter time as is acceptable to Agent in its sole discretion), a release of Lien (and related Loan Documents) for execution by Agent. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and contain standard provisions protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Agent reasonably requires to be delivered by Borrower in connection with such release. Borrower shall pay all costs, taxes and expenses associated with the release of the Lien of the Mortgage, including Agent's reasonable attorneys' fees.

(b) Notwithstanding the foregoing, upon the request of Borrower, in connection with the release of the Property upon repayment in full of the Debt, Agent shall assign the Mortgage as more particularly set forth in, and subject to the terms and conditions of, Section 15.02(f) of the Mortgage, without recourse, covenant or warranty of any nature, express or implied, to a new lender designated by Borrower and shall execute, acknowledge and deliver to such new lender the assignment of Mortgage, provided that (a) Borrower shall pay Agent's then customary administrative fee for processing assignments of mortgage, the out-of-pocket expenses actually incurred by Agent and Lenders in connection therewith, and Agent's and Lenders' reasonable attorneys' fees for the preparation and delivery of the assignment or release documentation, (b) Borrower shall have caused the delivery of an executed Statement of Oath under Section 255 and Section 275 of the New York Real Property Law, (c) such an assignment is not then prohibited by any federal, state or local law, rule, regulation or order or by any Governmental Authority, and (d) in the event that the original Note cannot be located, Agent's obligations under this Section 2.5(b) are contingent upon such new lender's acceptance of a lost note affidavit and neither Agent nor any Lender shall have any liability hereunder for any new lender's refusal to accept such lost note affidavit.

Section 2.6 Interest Rate Cap Agreement.

2.6.1 Interest Rate Cap Agreement. Prior to or contemporaneously with the Closing Date, Borrower shall have obtained, and thereafter maintain in effect, the Interest Rate Cap Agreement, which shall have a term expiring no earlier than the last day of the Interest Period in which the Stated Maturity Date occurs and have a notional amount which shall not at any time be less than the Maximum Principal Amount. The Interest Rate Cap Agreement shall have a strike rate equal to the Strike Price.

2.6.2 Pledge and Collateral Assignment. As security for the full and punctual payment and performance of the Obligations when due (whether upon stated maturity, by acceleration, early termination or otherwise), Borrower, as pledgor, hereby pledges, assigns, hypothecates, transfers and delivers to Agent (on behalf of Lenders) as collateral and hereby grants to Agent (on behalf of Lenders) a continuing first priority lien on and security interest in, to and under all of the following whether now owned or hereafter acquired and whether now existing or hereafter arising (the "***Rate Cap Collateral***"): all of the right, title and interest of Borrower in and to (i) the Interest Rate Cap Agreement; (ii) all payments, distributions, disbursements or proceeds due, owing, payable or required to be delivered to Borrower in respect of the Interest Rate Cap Agreement or arising out of the Interest Rate Cap Agreement, whether as contractual obligations, damages or otherwise; and (iii) all of Borrower's claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or

arising out of the Interest Rate Cap Agreement, in each case including all accessions and additions to, substitutions for and replacements, products and proceeds of any or all of the foregoing.

2.6.3 Covenants.

(a) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Agent shall be deposited immediately into the Clearing Account pursuant to Section 6.1. Subject to terms hereof, provided no Event of Default has occurred and is continuing, Borrower shall be entitled to exercise all rights, powers and privileges of Borrower under, and to control the prosecution of all claims with respect to, the Interest Rate Cap Agreement and the other Rate Cap Collateral. Borrower shall take all actions reasonably requested by Agent to enforce Borrower's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty thereunder and shall not waive, amend or otherwise modify any of its rights thereunder.

(b) Borrower shall defend Agent's and Lenders' right, title and interest in and to the Rate Cap Collateral pledged by Borrower pursuant hereto or in which it has granted a security interest pursuant hereto against the claims and demands of all other Persons.

(c) In the event of (i) any downgrade of the rating of such bank or other financial institution to (x) a long-term unsecured debt rating of "A-" or lower by S&P; (y) a long-term unsecured debt rating of "A3" or lower by Moody's; or (z) if the counterparty is rated by Fitch, a long-term unsecured debt rating of "A-" or lower by Fitch and a short-term unsecured debt rating of "F-2" or lower from Fitch, or (ii) any withdrawal or qualification of the rating of the Counterparty such that it ceases to qualify as an "Approved Counterparty", Borrower shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement not later than ten (10) Business Days following receipt of notice from Agent or Servicer of such downgrade, withdrawal or qualification.

(d) In the event that Borrower fails to purchase and deliver to Agent the Interest Rate Cap Agreement or any Replacement Interest Rate Cap Agreement as and when required hereunder, Agent may purchase the Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement and the cost incurred by Agent in purchasing the Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement shall be paid by Borrower to Agent with interest thereon at the Default Rate from the date such cost was incurred by Agent until such cost is paid by Borrower to Agent.

(e) Other than as set forth in the Collateral Assignment of IRPA, Borrower shall not sell, assign, or otherwise dispose of, or mortgage, pledge or grant a security interest in, any of the Rate Cap Collateral or any interest therein, and any sale, assignment, mortgage, pledge or security interest whatsoever made in violation of this covenant shall be a nullity and of no force and effect, and upon demand of Agent, shall forthwith be cancelled or satisfied by an appropriate instrument in writing.

(f) Borrower shall not (i) without the prior written consent of Agent, modify, amend or supplement the terms of the Interest Rate Cap Agreement, (ii) without the prior written consent of Agent, except in accordance with the terms of the Interest Rate Cap Agreement, cause the termination of the Interest Rate Cap Agreement prior to its stated maturity date, (iii) without the prior written consent of Agent, except as aforesaid, waive or release any obligation of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) under the Interest Rate Cap Agreement, (iv) without the prior written consent of Agent, consent or agree to any act or omission to act on the part of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) which, without such consent or agreement, would constitute a default under the Interest Rate Cap Agreement, (v) fail to exercise promptly and diligently each and every material right which it may have under the Interest Rate Cap Agreement, (vi) take or intentionally omit to take any action or intentionally suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums payable under the Interest Rate Cap Agreement or any defense by the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) to payment or (vii) fail to give prompt notice to Agent of any notice of default given by or to Borrower under or with respect to the Interest Rate Cap Agreement, together with a complete copy of such notice. If Borrower has received written notice from Agent that a Securitization has occurred, no consent by Agent provided for in this Section 2.6.3(f) shall be given by Agent unless Agent shall have received a Rating Agency Confirmation.

(g) In connection with an Interest Rate Cap Agreement, Borrower shall obtain and deliver to Agent an opinion of counsel from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty upon which Agent and its successors and assigns may rely (the "*Counterparty Opinion*"), under New York law and, if the Counterparty is a non-U.S. entity, the applicable foreign law, which shall provide in relevant part, that: (i) the issuer is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Agreement; (ii) the execution and delivery of the Interest Rate Cap Agreement by the issuer, and any other agreement which the issuer has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property; (iii) all consents, authorizations and approvals required for the execution and delivery by the issuer of the Interest Rate Cap Agreement, and any other agreement which the issuer has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance; and (iv) the Interest Rate Cap Agreement, and any other agreement which the issuer has executed and delivered pursuant thereto, has been duly executed and delivered by the issuer and constitutes the legal, valid and binding obligation of the issuer, enforceable against the issuer in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

2.6.4 Powers of Borrower Prior to an Event of Default. Subject to the provisions of Section 2.6.3(a), provided no Event of Default has occurred and is continuing, Borrower shall be entitled to exercise all rights, powers and privileges of Borrower under, and to control the prosecution of all claims with respect to, the Interest Rate Cap Agreement and the other Rate Cap Collateral.

2.6.5 Representations and Warranties. Borrower hereby covenants with, and represents and warrants to, Agent and Lenders as follows:

(a) The Interest Rate Cap Agreement constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) The Rate Cap Collateral is free and clear of all claims or security interests of every nature whatsoever, except such as are created pursuant to this Agreement, the other Loan Documents, and Borrower has the right to pledge and grant a security interest in the same as herein provided without the consent of any other Person other than any such consent that has been obtained and is in full force and effect.

(c) The Rate Cap Collateral has been duly and validly pledged hereunder. All consents and approvals required to be obtained by Borrower for the consummation of the transactions contemplated by this Agreement and the Interest Rate Cap Agreement have been obtained.

(d) Giving effect to the aforesaid grant and assignment to Agent (on behalf of Lenders), Agent (on behalf of Lenders) has, as of the date of this Agreement, and as to Rate Cap Collateral acquired from time to time after such date, shall have, a valid, and upon proper filing, perfected and continuing first priority lien upon and security interest in the Rate Cap Collateral; provided that no representation or warranty is made with respect to the perfected status of the security interest of Agent (on behalf of Lenders) in the proceeds of Rate Cap Collateral consisting of "cash proceeds" or "non-cash proceeds" as defined in the UCC except if, and to the extent, the provisions of Section 9-306 of the UCC shall be complied with.

(e) Except for financing statements filed or to be filed in favor of Agent (on behalf of Lenders) as secured party, there are no financing statements under the UCC covering any or all of the Rate Cap Collateral and Borrower shall not, without the prior written consent of Agent, until payment in full of all of the Obligations, execute and file in any public office, any enforceable financing statement or statements covering any or all of the Rate Cap Collateral, except financing statements filed or to be filed in favor of Agent (on behalf of Lenders) as secured party.

2.6.6 Payments. If Borrower at any time shall be entitled to receive any payments with respect to the Interest Rate Cap Agreement, such amounts shall, immediately upon becoming payable to Borrower, be deposited by Counterparty into the Clearing Account.

2.6.7 Remedies. Subject to the provisions of the Interest Rate Cap Agreement and in addition to the rights and remedies of Agent and Lenders set forth in Section 8.2 hereof, if an Event of Default shall occur and then be continuing:

(a) To the extent not prohibited by applicable law, Agent, without obligation to resort to any other security, right or remedy granted under any other agreement or instrument, shall have the right to, in addition to all rights, powers and remedies of a secured party pursuant to the UCC, at any time and from time to time, sell, resell, assign and deliver, in its sole discretion, any or all of the Rate Cap Collateral (in one or more parcels and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for future delivery, and in connection therewith Agent may grant options and may impose reasonable conditions such as requiring any purchaser to represent that any "securities" constituting any part of the Rate Cap Collateral are being purchased for investment only, Borrower hereby waiving and releasing any and all equity or right of redemption to the fullest extent permitted by the UCC or applicable law. If all or any of the Rate Cap Collateral is sold by Agent upon credit or for future delivery, Agent shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Agent may resell such Rate Cap Collateral. It is expressly agreed that Agent may exercise its rights with respect to less than all of the Rate Cap Collateral, leaving unexercised its rights with respect to the remainder of the Rate Cap Collateral, provided, however, that such partial exercise shall in no way restrict or jeopardize Agent's right to exercise its rights with respect to all or any other portion of the Rate Cap Collateral at a later time or times.

(b) Agent may exercise, either by itself or by its nominee or designee, in the name of Borrower, all of Agent's rights, powers and remedies in respect of the Rate Cap Collateral, hereunder and under law.

(c) Borrower hereby irrevocably, in the name of Borrower or otherwise, authorizes and empowers Agent and assigns and transfers unto Agent, and constitutes and appoints Agent its true and lawful attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, (i) to exercise and enforce every right, power, remedy, authority, option and privilege of Borrower under the Interest Rate Cap Agreement, including any power to subordinate or modify the Interest Rate Cap Agreement (including the right to terminate or cancel the Interest Rate Cap Agreement), or to give any notices, or to take any action resulting in such subordination, termination, cancellation or modification and (ii) in order to more fully vest in Agent the rights and remedies provided for herein, to exercise all of the rights, remedies and powers granted to Agent in this Agreement, and Borrower further authorizes and empowers Agent, as Borrower's attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, to give any authorization, to furnish any information, to make any demands, to execute any instruments and to take any and all other action on behalf of and in the name of Borrower which in the opinion of Agent may be necessary or appropriate to be given, furnished, made, exercised or taken under the Interest Rate Cap Agreement, in order to comply therewith, to perform the conditions thereof or to prevent or remedy any default by Borrower thereunder or to enforce any of the rights of Borrower thereunder. These powers-of-attorney are irrevocable and coupled with an interest, and any similar or dissimilar powers heretofore given by Borrower in respect of the Rate Cap Collateral to any other Person are hereby revoked.

(d) Agent may, without notice to, or assent by, Borrower or any other Person (to the extent permitted by law), but without affecting any of the Obligations, in the name of Borrower or in the name of Agent, notify the Counterparty, or if applicable, any other counterparty to the Interest Rate Cap Agreement, to make payment and performance directly to Agent; extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to Borrower, or claims of Borrower, under the Interest Rate Cap Agreement; file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by Agent necessary or advisable for the purpose of collecting upon or enforcing the Interest Rate Cap Agreement; and execute any instrument and do all other things deemed necessary and proper by Agent to protect and preserve and realize upon the Rate Cap Collateral and the other rights contemplated hereby.

(e) Pursuant to the powers-of-attorney provided for above, Agent may take any action and exercise and execute any instrument which it may deem necessary or advisable to accomplish the purposes hereof; provided, however, that Agent shall not be permitted to take any action pursuant to said power-of-attorney that would conflict with any limitation on Agent's rights with respect to the Rate Cap Collateral. Without limiting the generality of the foregoing, Agent, after the occurrence of an Event of Default, shall have the right and power to receive, endorse and collect all checks and other orders for the payment of money made payable to Borrower representing: (i) any payment of obligations owed pursuant to the Interest Rate Cap Agreement, (ii) interest accruing on any of the Rate Cap Collateral or (iii) any other payment or distribution payable in respect of the Rate Cap Collateral or any part thereof, and for and in the name, place and stead of Borrower, to execute endorsements, assignments or other instruments of conveyance or transfer in respect of any property which is or may become a part of the Rate Cap Collateral hereunder.

(f) Agent may exercise all of the rights and remedies of a secured party under the UCC.

(g) Without limiting any other provision of this Agreement or any of Borrower's rights hereunder, and without waiving or releasing Borrower from any obligation or default hereunder, Agent shall have the right, but not the obligation, to perform any act or take any appropriate action, as it, in its reasonable judgment, may deem necessary to protect the security of this Agreement, to cure such Event of Default or to cause any term, covenant, condition or obligation required under this Agreement or the Interest Rate Cap Agreement to be performed or observed by Borrower to be promptly performed or observed on behalf of Borrower. All amounts advanced by, or on behalf of, Agent in exercising its rights under this Section 2.6.7(g) (including, but not limited to, reasonable legal expenses and disbursements incurred in connection therewith), together with interest thereon at the Default Rate from the date of each such advance, shall be payable by Borrower to Agent upon demand and shall be secured by this Agreement.

2.6.8 Sales of Rate Cap Collateral. From and after the occurrence of an Event of Default (and during the continuance thereof), no demand, advertisement or notice, all of which are, to the fullest extent permitted by law, hereby expressly waived by Borrower, shall be required in connection with any sale or other disposition of all or any part of the Rate Cap Collateral, except that Agent shall give Borrower at least thirty (30) Business Days' prior written

notice of the time and place of any public sale or of the time when and the place where any private sale or other disposition is to be made, which notice Borrower hereby agrees is reasonable, all other demands, advertisements and notices being hereby waived. To the extent permitted by law, Agent shall not be obligated to make any sale of the Rate Cap Collateral if it shall determine not to do so, regardless of the fact that notice of sale may have been given, and Agent may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each private sale of the Rate Cap Collateral of a type customarily sold in a recognized market and upon each public sale, unless prohibited by any applicable statute which cannot be waived, Agent (or its nominee or designee) may purchase any or all of the Rate Cap Collateral being sold, free and discharged from any trusts, claims, equity or right of redemption of Borrower, all of which are hereby waived and released to the extent permitted by law, and may make payment therefor by credit against any of the Obligations in lieu of cash or any other obligations. In the case of all sales of the Rate Cap Collateral, public or private, Borrower shall pay all reasonable costs and expenses of every kind for sale or delivery, including brokers' and attorneys' fees and disbursements and any tax imposed thereon. However, the proceeds of sale of Rate Cap Collateral shall be available to cover such costs and expenses, and, after deducting such costs and expenses from the proceeds of sale, Agent shall apply any residue to the payment of the Obligations in the order of priority as set forth in this Agreement.

2.6.9 Public Sales Not Possible. Borrower acknowledges that the terms of the Interest Rate Cap Agreement may prohibit public sales, that the Rate Cap Collateral may not be of the type appropriately sold at public sales, and that such sales may be prohibited by law. In light of these considerations, Borrower agrees that private sales of the Rate Cap Collateral shall not be deemed to have been made in a commercially unreasonable manner by mere virtue of having been made privately.

2.6.10 Receipt of Sale Proceeds. Upon any sale of the Rate Cap Collateral by Agent hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt by Agent or the officer making the sale or the proceeds of such sale shall be a sufficient discharge to the purchaser or purchasers of the Rate Cap Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Agent or such officer or be answerable in any way for the misapplication or non-application thereof.

2.6.11 Replacement Interest Rate Cap Agreement. If, in connection with Borrower's exercise of any Extension Option pursuant to Section 2.7 hereof, Borrower delivers a Replacement Interest Rate Cap Agreement, all the provisions of this Section 2.6 applicable to the Interest Rate Cap Agreement delivered on the Closing Date shall be applicable to the Replacement Interest Rate Cap Agreement.

Section 2.7 Extension Options.

2.7.1 Extension Options. Subject to the provisions of this Section 2.7, Borrower shall have the option (the "**First Extension Option**"), by irrevocable written notice (the "**First Extension Notice**") delivered to Agent no later than thirty (30) days prior to the Stated Maturity Date, to extend the Maturity Date to February 9, 2020 (the "**First Extended Maturity Date**"). In

the event Borrower shall have exercised the First Extension Option, Borrower shall have the option (the “**Second Extension Option**”), by irrevocable written notice (the “**Second Extension Notice**”) delivered to Agent no later than thirty (30) days prior to the First Extended Maturity Date, to extend the First Extended Maturity Date to February 9, 2021 (the “**Second Extended Maturity Date**”). Borrower’s right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to such extension hereunder:

(a) (i) no Default or Event of Default shall have occurred and be continuing on the date Borrower delivers the First Extension Notice or the Second Extension Notice, as applicable, and (ii) no Default or Event of Default shall have occurred and be continuing on the Stated Maturity Date, the First Extended Maturity Date, as applicable;

(b) Borrower shall (i) obtain and deliver to Agent not later than one (1) Business Day prior to the first day of the term of the Loan as extended, one or more Replacement Interest Rate Cap Agreements from an Approved Counterparty, in a notional amount equal to the then Maximum Principal Amount, which Replacement Interest Rate Cap Agreement(s) shall be (A) effective for the period commencing on the day immediately following the then applicable Maturity Date (prior to giving effect to the applicable Extension Option) and ending on the last day of the Interest Period in which the applicable extended Maturity Date occurs and (B) otherwise on same terms set forth in Section 2.6 and (ii) execute and deliver an Acknowledgment with respect to each such Replacement Interest Rate Cap Agreement;

(c) Borrower shall deliver a Counterparty Opinion with respect to the Replacement Interest Rate Cap Agreement and the related Acknowledgment;

(d) All amounts due and payable by Borrower and any other Person pursuant to this Agreement or the other Loan Documents as of the originally scheduled Stated Maturity Date or the First Extended Maturity Date, as applicable, and all out-of-pocket costs and expenses actually incurred by Agent and Lenders, including reasonable fees and expenses Agent’s and each Lender’s counsel, in connection with the Loan and/or the applicable extension of the Term shall have been or shall be paid in full on or before the originally scheduled Stated Maturity Date or the First Extended Maturity Date, as applicable;

(e) In connection with Borrower’s option to extend the Loan to the First Extended Maturity Date, on the date Borrower delivers the First Extension Notice and on the originally scheduled Stated Maturity Date, the as-is Loan to Value Ratio of the Property shall be equal to or less than seventy percent (70%); *provided, however*, Borrower shall have the right to make a prepayment of the Outstanding Principal Balance in order to cause the as-is Loan to Value Ratio to be equal to or less than seventy percent (70%);

(f) In connection with Borrower’s option to extend the Loan to the Second Extended Maturity Date, on the date Borrower delivers the Second Extension Notice and on the First Extended Maturity Date, the as-is Loan to Value Ratio of the Property shall be equal to or less than sixty-five percent (65%); *provided, however*, Borrower shall have the right to make a prepayment of the Outstanding Principal Balance in order to cause the as-is Loan to Value Ratio to be equal to or less than sixty-five percent (65%);

(g) on the Stated Maturity Date and the First Extended Maturity Date, Borrower shall pay to Agent the Extension Fee;

(h) the Property shall have achieved (i) on the date that is thirty (30) days prior to the originally scheduled Stated Maturity Date and on the originally scheduled Stated Maturity Date, a minimum Debt Yield of no less than 8% and (ii) on the date that is thirty (30) days prior to the First Extended Maturity Date and on the First Extended Maturity Date, a minimum Debt Yield of no less than 10.0%; provided that if the Property has not achieved the minimum Debt Yield required in the foregoing clauses (i) and (ii), then Borrower shall have the right to make a partial prepayment of the Outstanding Principal Balance in order to achieve such Debt Yield;

(i) Borrower shall have achieved Final Completion of the PIP Work;

(j) Borrower has made, or will make on the originally scheduled Stated Maturity Date, a deposit into the FF&E Reserve Account in the amount required to be deposited into the FF&E Reserve Account pursuant to Section 6.5.1 hereof; and

(k) if a New Mezzanine Loan (or any portion thereof) is outstanding on the originally scheduled Stated Maturity Date or the First Extended Maturity Date, New Mezzanine Loan Borrower shall have (i) timely exercised the applicable extension option to extend the New Mezzanine Loan, (ii) satisfied the conditions to extend the New Mezzanine Loan set forth in the New Mezzanine Loan Documents and (iii) paid any extension fee required pursuant to the terms of the New Mezzanine Loan.

If Borrower is unable to satisfy all of the foregoing conditions within the applicable time frames for each, Agent shall have no obligation to extend the Stated Maturity Date hereunder.

2.7.2 Extension Documentation. As soon as practicable following an extension of the Maturity Date pursuant to this Section 2.7, Borrower shall, if requested by Agent, (x) execute and deliver an amendment of and/or restatement of the Note if Agent determines that such amendment and/or restatement is necessary or appropriate to evidence the extension and (y) enter into such amendments to the related Loan Documents as Agent reasonably determines may be necessary or appropriate to evidence the extension of the Maturity Date as provided in this Section 2.7; provided, however, that no failure by Borrower to enter into any such amendments and/or restatements shall affect the rights or obligations of Borrower or Agent with respect to the extension of the Maturity Date.

Section 2.8 Spread Maintenance Premium. Upon any repayment or prepayment of the Loan (including in connection with an acceleration of the Loan) made prior to the Spread Maintenance Date, Borrower shall pay to Agent on the date of such repayment or prepayment (or acceleration of the Loan) the Spread Maintenance Premium applicable thereto. All Spread Maintenance Premium payments hereunder shall be deemed to be earned by Lenders upon the funding of the Supplemental Loan.

Section 2.9 Regulatory Change; Taxes.

2.9.1 Increased Costs. If as a result of any Regulatory Change or compliance of any Lender therewith, the basis of taxation of payments to any Lender or any entity Controlling any Lender of the principal of or interest on the Loan is changed or any Lender or the company Controlling any Lender shall be subject to (i) any tax, duty, charge or withholding of any kind with respect to this Agreement (excluding (A) Special Taxes and Other Taxes subject to indemnification by Borrower pursuant to Section 10.24(c) hereof, (B) Special Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of any Lender or any company Controlling any Lender is imposed, modified or deemed applicable; or (iii) any other condition affecting loans to borrower subject to LIBOR-based interest rates generally is imposed on any Lender or any company Controlling any Lender and such Lender determines that, by reason thereof, the cost to such Lender or any company Controlling such Lender of making, maintaining or extending the Loan to Borrower is increased, or any amount receivable by such Lender or any company Controlling such Lender hereunder in respect of any portion of the Loan to Borrower is reduced, in each case by an amount deemed by such Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called "**Increased Costs**"), then such Lender shall provide notice thereof to Borrower and furnish to Borrower a statement setting forth in reasonable detail the basis for requesting such compensation and the method for determining the amount thereof and Borrower agrees that they will pay to such Lender within ten (10) Business Days of such Lender's written request such additional amount or amounts as will compensate such Lender or any company Controlling such Lender for such Increased Costs to the extent such Lender determines in good faith that such Increased Costs are allocable to the Loan.

2.9.2 Mitigation Obligations. Agent and Lenders agree to make commercially reasonable efforts (including but not limited to taking any reasonable steps requested by Borrower) in order to mitigate the effect of any Indemnified Taxes, increased costs or reductions in amounts received or receivable hereunder that would entitle a Lender to claim compensation pursuant to Sections 2.9 or 10.24 provided that neither Agent nor any Lender shall be required to take any such action that would otherwise have a material adverse effect on the rights of Agent or Lenders under this Agreement.

Section 2.10 Earnout Advance.

2.10.1 Conditions Precedent. Lenders shall make a one-time disbursement to Borrower of the Earnout Advance upon satisfaction of the following conditions precedent (provided, that, in no event shall any Lender be obligated to advance more than its Ratable Share of such Earnout Advance):

(a) Both immediately prior to the funding date of the Earnout Advance (the "**Earnout Advance Funding Date**") and after giving effect thereto, no Default or Event of Default shall be continuing;

(b) Borrower shall have delivered to Agent on or prior to the date which is not less than ten (10) Business Days prior to the Earnout Advance Funding Date (but not more than thirty (30) days prior to the Earnout Advance Funding Date), a funding request for such Earnout Advance substantially in the form attached hereto as Schedule VIII (the "**Earnout Advance**");

Funding Notice”), which Earnout Advance Funding Notice shall have been executed by an authorized officer of Borrower;

(c) The representations and warranties made by Borrower in this Agreement, in the other Loan Documents shall be true and correct in all material respects on and as of the date of the making of the Earnout Advance with the same force and effect as if made on and as of such date, subject to changes to such representations and warranties disclosed to Agent in writing, so long as such update is not the result of any breach of a covenant of Borrower under the Loan Documents and such changes do not result from any Default or Event of Default by Borrower;

(d) The Property shall have achieved a Debt Yield of at least eight (8%) percent for two consecutive Calculation Dates, as determined by Agent;

(e) The as-is Loan to Value Ratio of the Property shall be equal to or less than sixty eight percent (68%);

(f) If the Earnout Advance Funding Date occurs on a date other than a Monthly Payment Date, Borrower shall make a payment to Agent on the Monthly Payment Date following such Earnout Advance Funding Date in an amount equal to the interest scheduled to accrue at the Interest Rate on the amount of the Earnout Advance from the Earnout Advance Funding Date through the last day of the Interest Period in which such Earnout Advance Funding Date occurs, and, thereafter, Borrower shall make interest payments to Agent on the applicable Monthly Payment Date with respect to such Earnout Advance in accordance with the provisions of Section 2.3;

(g) Agent shall have received, at Borrower’s sole cost and expense, (i) a notice of title continuation showing that since the Closing Date there has been no adverse change in the state of title to the Property and (ii) Agent shall have received an endorsement to the Title Insurance Policy, which endorsement shall have the effect of updating the date of the Title Insurance Policy to the date of the making of the Earnout Advance;

(h) Borrower shall pay all out-of-pocket costs and expenses actually incurred by Agent and Lenders, including reasonable attorneys’ fees, in connection with the proposed Earnout Advance;

(i) All fees and expenses payable to Agent and Lenders hereunder, including the fees and expenses referred to in Section 4.28 hereof, to the extent then due and payable, shall have been (or contemporaneously are being) paid in full, and all title premiums and other title and survey charges shall have been (or contemporaneously are being) paid in full;

(j) Agent shall have received such other documents relating to the Property or the Earnout Advance as Agent may reasonably request and which are in Borrower’s possession or control;

(k) no Legal Requirements shall have been adopted and no order, judgment or decree of any Governmental Authority shall have been issued, which prohibit the making or repayment of such Earnout Advance.

2.10.2 Optional Disbursements.

(a) If any or all conditions precedent to making the Earnout Advance have not been satisfied on the date such Advance was requested to be made, Agent may, at its option and in its sole discretion (subject only to any applicable approvals of Lenders) (i) waive so many of such conditions precedent as it may elect, and/or (ii) disburse only that portion of the requested Earnout Advance for which all of the conditions precedent have been satisfied. To the extent Lenders make the Earnout Advance for which any of the conditions precedent have not been satisfied, the making of such Earnout Advance shall constitute a waiver of such unsatisfied conditions for such Earnout Advance, unless otherwise expressly set forth in a written notice from Agent to Borrower (provided that if the absence of such condition precedent would cause a Default or Event of Default hereunder, Agent's waiver herein shall not constitute a waiver of such Default or Event of Default).

(b) Each Lender shall have the right (but not the obligation), by its own action (and without any request therefor by Borrower), to disburse to Agent or itself (or retain from) any amount from the Earnout Advance to pay interest, fees and any other sums then due and payable to Agent and/or Lenders pursuant to the Loan Documents.

ARTICLE 3 **REPRESENTATIONS AND WARRANTIES**

Section 3.1 Borrower's Representations. Borrower represents and warrants that, except to the extent (if any) disclosed on **Schedule II** hereto with reference to a specific subsection of this **Section 3.1**:

3.1.1 Organization; Special Purpose. Borrower is duly organized, validly existing and in good standing with full power and authority to own its assets and conduct its business, and is duly qualified and in good standing in the jurisdiction in which the Property is located and in all jurisdictions in which the ownership or lease of its property or the conduct of its business requires such qualification, and Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents by it, and has the power and authority to execute, deliver and perform under this Agreement and the other Loan Documents and all the transactions contemplated hereby. Borrower is a Special Purpose Bankruptcy Remote Entity.

3.1.2 Proceedings; Enforceability. This Agreement and the other Loan Documents have been duly authorized, executed and delivered by Borrower and constitute a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantors including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable, and neither Borrower nor any of the Guarantors has asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

3.1.3 No Conflicts. The execution and delivery of this Agreement and the other Loan Documents by Borrower and the performance of its Obligations will not conflict with any provision of any law or regulation to which Borrower is subject, or conflict with, result in a breach of, or constitute a default under, any of the terms, conditions or provisions of Borrower's organizational documents or any agreement or instrument to which Borrower is a party or by which it is bound, or any order or decree applicable to Borrower, or result in the creation or imposition of any Lien on Borrower's assets or property (other than pursuant to the Loan Documents).

3.1.4 Litigation. There is no action, suit, proceeding or investigation pending or, to the best of Borrower's knowledge, threatened in writing against Borrower, any Guarantor, the Manager or the Property in any court or by or before any other Governmental Authority which, if adversely determined, might materially and adversely affect the condition (financial or otherwise) or business of Borrower (including the ability of Borrower to carry out the transactions contemplated by this Agreement), such Guarantor, Manager or the condition or ownership of the Property.

3.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default with respect to any order or decree of any court or any order, regulation or demand of any Governmental Authority, which default might have consequences that would materially and adversely affect the condition (financial or other) or operations of Borrower or its properties or might have consequences that would adversely affect its performance hereunder. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Property is bound.

3.1.6 Consents. No consent, approval, authorization or order of any court or Governmental Authority is required for the execution, delivery and performance by Borrower of, or compliance by Borrower with, this Agreement and the other Loan Documents or the consummation of the transactions contemplated thereby, other than those which have been obtained by Borrower and Operating Lessee.

3.1.7 Property; Title.

(a) Borrower has good, marketable and indefeasible fee simple title to the real property comprising part of the Property and good title to the balance of the Property owned by it, free and clear of all Liens whatsoever except the Permitted Encumbrances. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, if properly and timely filed, will create (i) a valid, third priority, perfected Lien on Borrower's interest in the Property, subject only to Permitted Encumbrances, and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to the Permitted Encumbrances. There are no mechanics', materialman's or other similar Liens or claims which have been filed for work, labor

or materials affecting the Property which are or may be Liens prior to, or equal or coordinate with, the Lien of the Mortgage. None of the Permitted Encumbrances, individually or in the aggregate, (a) materially interfere with the benefits of the security intended to be provided by the Mortgage and this Agreement, (b) materially and adversely affect the value of the Property, (c) materially impair the use or operations of the Property (as currently used), or (d) impair Borrower's ability to pay the Obligations in a timely manner.

(b) All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid under applicable Legal Requirements in connection with the transfer of the Property to Borrower has been paid or are being paid simultaneously herewith. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Mortgage, have been paid or are being paid simultaneously herewith. All taxes and governmental assessments due and owing in respect of the Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established hereunder or are insured against by the Title Insurance Policy.

(c) The Property is comprised of one (1) or more parcels which constitute separate tax lots and do not constitute a portion of any other tax lot not a part of the Property.

(d) No Condemnation or other proceeding has been commenced or, to Borrower's knowledge, is contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

(e) There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

3.1.8 ERISA; No Plan Assets. As of the date hereof and throughout the Term (i) none of the Borrower, Guarantors or the ERISA Affiliates sponsor, are obligated to contribute to, or are themselves an "employee benefit plan," as defined in Section 3(3) of ERISA or Section 4975 of the Code, (ii) none of the assets of Borrower or Guarantors constitute or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 as modified in operation by Section 3(42) of ERISA, (iii) Borrower and Guarantors are not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Borrower or any Guarantor are not and will not be subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans. As of the date hereof, none of the Borrower, nor Guarantors, nor any ERISA Affiliate, nor, with respect to the Property, Manager, maintains, sponsors or contributes to or has any obligations with respect to a "defined benefit plan" (within the meaning of Section 3(35) of ERISA) other than a Multiemployer Plan. Borrower has not engaged in any transaction in connection with which it could be subject to either a material civil penalty assessed pursuant to the provisions of Section 502 of ERISA or a material tax imposed under the provisions of Section 4975 of the Code. As of the date hereof, neither Borrower, a Guarantor nor any ERISA Affiliate, nor, with respect to the Property, Manager, maintains, sponsors or contributes to or has any obligations with respect to a Multiemployer Plan other than the Multiemployer Plans listed on Schedule

3.1.8. Borrower, each Guarantor, each ERISA Affiliate and, with respect to the Property, Manager, have made all contributions required under any Multiemployer Plan and have not incurred a withdrawal or partial withdrawal under Title IV of ERISA from any Multiemployer Plan. At the date hereof, there would be no withdrawal liability of Borrower if it or Manager were to completely withdraw from any Multiemployer Plan which covers employees (or former employees) at the Property. At the date hereof, the aggregate potential withdrawal liability payment, as determined in accordance with Title IV of ERISA and the terms of such Multiemployer Plan, of Borrower, Guarantors, any of its ERISA Affiliates and, with respect to the Property, Manager, with respect to all Multiemployer Plans, does not exceed \$0.00. Manager is the sole employer of the employees at the Property and neither Borrower nor Guarantor nor any ERISA Affiliate is an employer of employees at the Property. Manager is the signatory to all collective bargaining agreements relating to employees at the Property. Neither Borrower, Guarantors nor any ERISA Affiliate have any obligation to employ the employees at the Property or contribute to a Multiemployer Plan relating to employees at the Property.

3.1.9 Compliance. Borrower and the Property (including, but not limited to the Improvements) and the use thereof comply in all material respects with all applicable Legal Requirements, including parking, building and zoning and land use laws, ordinances, regulations and codes, under municipal, state and federal laws. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of Borrower. Borrower has not committed any act which may give any Governmental Authority the right to cause Borrower to forfeit the Property or any part thereof or any monies paid in performance of Borrower's Obligations. The Property is used exclusively as a hotel and other appurtenant and related uses. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to Borrower's knowledge, threatened with respect to the zoning of the Property. Neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property. All certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits required of Borrower for the legal use, occupancy and operation of the Property for its current use (collectively, the "**Licenses**"), have been obtained and are in full force and effect. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property and all other restrictions, covenants and conditions affecting the Property.

3.1.10 Financial Information. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Agent in connection with the Loan (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of the Property as of the date of such reports, and (iii) have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof, except as referred to or reflected in said financial statements. Since the

date of the financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower or the Property from that set forth in said financial statements.

3.1.11 Easements; Utilities and Public Access. All easements, cross easements, licenses, air rights and rights-of-way or other similar property interests (collectively, “*Easements*”), if any, necessary for the full utilization of the Improvements for their intended purposes have been obtained, are described in the Title Insurance Policy and are in full force and effect without, to Borrower’s knowledge, default thereunder. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located in the public right-of-way abutting the Property, and all such utilities are connected so as to serve the Property without passing over other property absent a valid irrevocable easement. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

3.1.12 Assignment of Leases. The Assignment of Leases creates a valid assignment of, or a valid security interest in, certain rights under the Leases, subject only to a license granted to Borrower to exercise certain rights and to perform certain obligations of the lessor under the Leases, including the right to operate the Property. No Person other than Agent and Lenders has any interest in or assignment of the Leases or any portion of the Rents due and payable or to become due and payable thereunder.

3.1.13 Insurance. Borrower has obtained and delivered to Agent original or certified copies of all of the Policies, with all premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made under any of the Policies, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

3.1.14 Flood Zone. None of the Improvements on the Property are located in an area identified by the Federal Emergency Management Agency as a special flood hazard area, or, if so located the flood insurance required pursuant to Section 5.1.1(a) hereof is in full force and effect with respect to the Property.

3.1.15 Physical Condition. Except as may be expressly set forth in the Physical Conditions Report, the Property, including all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or any termination or threatened termination of any policy of insurance or bond.

3.1.16 Boundaries. All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances affecting the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property, except those which are set forth on the Survey and insured against by the Title Insurance Policy.

3.1.17 Leases. The Property is not subject to any Leases other than the restaurant lease agreement by and between Borrower and 19 West 31st Street LLC, as Tenant, (the "**Restaurant Lease**"), which Restaurant Lease provides that Stephen Hanson has day to day control over the food and beverage services at the Property. The Restaurant Lease is in full force and effect and Tenant thereunder has taken possession of the space demised under the Restaurant Lease and has commenced the payment of full unabated Rent thereunder. No Person other than the Tenant under the Restaurant Lease has any possessory interest in the Property or right to occupy the same. Furthermore, there are no "SRO Tenants" (as such term is defined in the SRO Laws) at the Property and Borrower and the Property are in full compliance with all SRO Laws.

3.1.18 Tax Filings. To the extent required, Borrower has filed (or has obtained effective extensions for filing) all federal, state, commonwealth, district and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state, commonwealth, district and local taxes, charges and assessments payable by Borrower. Borrower's tax returns (if any) properly reflect the income and taxes of Borrower for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

3.1.19 No Fraudulent Transfer. Borrower has not entered into the transaction or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and Borrower has received reasonably equivalent value in exchange for its Obligations. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is, and immediately following the making of the Loan, will be, greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Indebtedness and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of the obligations of Borrower). No petition in bankruptcy has been filed against Borrower or any constituent Person of Borrower and neither Borrower nor any constituent Person of Borrower has never made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any of its constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's assets or properties, and Borrower has no any knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

3.1.20 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement, the other Loan Documents.

3.1.21 Organizational Chart. The organizational chart attached as **Schedule I**, relating to Borrower and certain Affiliates and other parties, is true, complete and correct on and as of the date hereof. No Person other than those Persons shown on **Schedule I** has any ownership interest in, or right of Control, directly or indirectly, in any Borrower.

3.1.22 Organizational Status. Borrower’s exact legal name is: Life Hotel One LLC. Borrower is of the following organizational type (e.g., corporation, limited liability company): limited liability company, and the jurisdiction in which Borrower is organized is: Delaware. Borrower’s Tax I.D. number is 81-2661422 and Borrower’s Delaware Organizational I.D. number is 6044187.

3.1.23 Bank Holding Company. Borrower is not a “bank holding company” or a direct or indirect subsidiary of a “bank holding company” as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System.

3.1.24 No Casualty. The Improvements have suffered no material casualty or damage which has not been fully repaired and the cost thereof fully paid.

3.1.25 Purchase Options. Neither the Property nor any part thereof are subject to any purchase options, rights of first refusal, rights of first offer or other similar rights in favor of third parties.

3.1.26 FIRPTA. Borrower is not a “foreign person” within the meaning of Sections 1445 or 7701 of the Code.

3.1.27 Investment Company Act. Borrower is not (i) an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, or (ii) subject to any other United States federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

3.1.28 Fiscal Year. Each fiscal year of Borrower commences on January 1.

3.1.29 Other Debt. There is no indebtedness with respect to the Property or any excess cash flow or any residual interest therein, whether secured or unsecured, other than Permitted Encumbrances and Permitted Indebtedness.

3.1.30 Contracts.

(a) Borrower has not entered into, and is not bound by, any Major Contract which continues in existence, except those previously disclosed in writing to Agent.

(b) Each of the Major Contracts is in full force and effect, there are no monetary or other material defaults by Borrower thereunder and, to Borrower's best knowledge, there are no monetary or other material defaults thereunder by any other party thereto. None of Borrower, Manager or any other Person acting on Borrower's behalf has given or received any notice of default under any of the Major Contracts that remains uncured or in dispute.

(c) Borrower has delivered true, correct and complete copies of the Major Contracts (including all amendments and supplements thereto) to Agent.

(d) Except for the Manager under the Management Agreement, no Major Contract has as a party an Affiliate of Borrower. All fees and other compensation for services previously performed under the Management Agreement have been paid in full.

3.1.31 Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Agent which adversely affects, nor as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or Guarantors.

3.1.32 Other Obligations and Liabilities. Borrower has no liabilities or other obligations that arose or accrued prior to the date hereof that, either individually or in the aggregate, could have a material adverse effect on Borrower, the Property and/or Borrower's ability to pay the Debt. Borrower has no known contingent liabilities not permitted by this Agreement.

3.1.33 Intellectual Property/Websites. Other than as set forth on **Schedule IV**, neither Borrower nor any Affiliate (i) has or holds any tradenames, trademarks, servicemarks, logos, copyrights, patents or other intellectual property (collectively, "**Intellectual Property**") with respect to the Property or the use or operations thereof or is (ii) is the registered holder of any website with respect to the Property (other than Tenant websites).

3.1.34 Operations Agreements. Each Operations Agreement is in full force and effect and neither Borrower nor, to Borrower's knowledge, any other party to any Operations Agreement, is in default thereunder, and, to the best of Borrower's knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. Except as described herein, the REA has not been modified, amended or supplemented.

3.1.35 Franchise Agreement. The hotel located on the Property is operated as an independent hotel and is not the subject of a Franchise Agreement with any Franchisor.

3.1.36 PIP Work. Borrower has caused the PIP Work to be constructed in a good and workmanlike manner in accordance with the Original Building Loan Agreement, the Original Project Loan Agreement and this Agreement and in accordance with the Renovations Budget and Plans and Specifications approved by Agent and any permits, licenses and/or approvals obtained

in connection with such PIP Work and Borrower has achieved Substantial Completion of such PIP Work prior to the date hereof.

3.1.37 Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal commercial activities or commercial activities relating to controlled substances at the Property (including, without limitation, any growing, distributing and/or dispensing of marijuana for commercial purposes, medical or otherwise for so long as the foregoing is a violation of a Legal Requirement of any applicable Governmental Authority).

3.1.38 Securities Laws Compliance. No Legal Requirements have been violated in connection with the issuing, selling, transferring or marketing of tenancy in common interests. Without limiting the foregoing, no Borrower nor any of their Affiliates has made any material untrue statement in any offering memorandum or other offering materials provided to prospective investors in connection with any potential investment in any such tenancy in common interest or has omitted any material fact or information from any such materials.

Section 3.2 Survival of Representations. The representations and warranties set forth in Section 3.1 and elsewhere in this Agreement and the other Loan Documents shall (i) survive until the Obligations have been paid and performed in full and (ii) be deemed to have been relied upon by Agent and Lenders notwithstanding any investigation heretofore or hereafter made by Agent or Lender or on its behalf.

ARTICLE 4

BORROWER COVENANTS

Until the end of the Term, Borrower hereby covenants and agrees with Agent and Lenders that:

Section 4.1 Payment and Performance of Obligations. Borrower shall pay and otherwise perform the Obligations in accordance with the terms of this Agreement, the other Loan Documents.

Section 4.2 Due on Sale and Encumbrance; Transfers of Interests. Borrower acknowledges that Agent and Lenders have examined and relied on the experience of Borrower and its stockholders, general partners and members, as applicable, and principals of Borrower in owning and operating properties such as the Property in agreeing to make the Loan and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Agent and Lenders have a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Agent can recover the Debt by a sale of the Property. Therefore, without the prior written consent of Agent, but, in each instance, subject to the provisions of Article 7, neither Borrower nor any other Person having a direct or indirect ownership or beneficial interest in Borrower shall sell, convey, mortgage, grant, bargain, encumber, pledge, assign or transfer the Property or any part thereof, or any interest, direct or indirect, in Borrower, whether voluntarily or involuntarily or enter into or subject the Property to

a PACE Loan (a "**Transfer**"). A Transfer within the meaning of this Section 4.2 shall be deemed to include (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower for the leasing of all or a substantial part of the Property for any purpose other than the actual occupancy by a space Tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents (other than those in favor of Agent); (iii) if Borrower, any of the Guarantors or any general partner, managing member or controlling shareholder of Borrower, or any of the Guarantors is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock; (iv) if Borrower, any of the Guarantors or any general partner, managing member or controlling shareholder of Borrower or any of the Guarantors is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member; and (v) any pledge, hypothecation, assignment, transfer or other encumbrance of any direct or indirect ownership interest in Borrower.

Section 4.3 Liens. Borrower shall not create, incur, assume or permit to exist any Lien on any direct or indirect interest in Borrower or any portion of the Property, except for the Permitted Encumbrances. After prior notice to Agent, Borrower, at its own expense, may contest by appropriate legal proceeding, conducted in good faith and with due diligence, the amount or validity of any Liens, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with all applicable statutes, laws and ordinances; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Liens, together with all costs, interest and penalties which may be payable in connection therewith; (v) to insure the payment of such Liens, Borrower shall deliver to Agent either (A) cash, or other security as may be approved by Agent, in an amount equal to one hundred twenty-five percent (125%) of the contested amount or (B) a payment and performance bond in an amount equal to one hundred percent (100%) of the contested amount from a surety acceptable to Agent in its reasonable discretion, (vi) failure to pay such Liens will not subject Agent to any civil or criminal liability, (vii) such contest shall not affect the ownership, use or occupancy of the Property, and (viii) Borrower shall, upon request by Agent, give Agent prompt notice of the status of such proceedings and/or confirmation of the continuing satisfaction of the conditions set forth in clauses (i) through (vii) of this Section 4.3. Agent may pay over any such cash or other security held by Agent to the claimant entitled thereto at any time when, in the reasonable judgment of Agent, the entitlement of such claimant is established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

Section 4.4 Special Purpose. Without in any way limiting the provisions of this Article 4, Borrower shall at all times be a Special Purpose Bankruptcy Remote Entity. Borrower shall not directly or indirectly make any change, amendment or modification to its organizational

documents, or otherwise take any action which could result in Borrower not being a Special Purpose Bankruptcy Remote Entity.

Section 4.5 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and all rights, licenses, permits, franchises and all applicable governmental authorizations necessary for the operation of the Property and comply with all Legal Requirements applicable to it and the Property.

Section 4.6 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied, assessed or imposed as the same become due and payable, and shall furnish to Agent receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Borrower need not pay Taxes directly nor furnish such receipts for payment of Taxes to the extent that funds to pay for such Taxes have been deposited into the Tax Account pursuant to Section 6.2). Borrower shall not permit or suffer, and shall promptly discharge, any Lien or charge against the Property with respect to Taxes and Other Charges, and shall promptly pay for all utility services provided to the Property. After prior notice to Agent, Borrower, at its own expense, may contest by appropriate legal proceeding, conducted in good faith and with due diligence, the amount or validity of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with all applicable statutes, laws and ordinances; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of Taxes or Other Charges from the Property; (vi) Borrower shall deposit with Agent cash, or other security as may be approved by Agent, in an amount equal to one hundred twenty-five percent (125%) of the contested amount, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, (vii) failure to pay such Taxes or Other Charges will not subject Agent or any Lenders to any civil or criminal liability, (viii) such contest shall not affect the ownership, use or occupancy of the Property, and (ix) Borrower shall, upon request by Agent, give Agent prompt notice of the status of such proceedings and/or confirmation of the continuing satisfaction of the conditions set forth in clauses (i) through (viii) of this Section 4.6. Agent may pay over any such cash or other security held by Agent to the claimant entitled thereto at any time when, in the reasonable judgment of Agent, the entitlement of such claimant is established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated cancelled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien. Notwithstanding the foregoing, if prior to commencement of such contest Borrower pays the entire amount of any Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith to the applicable Governmental Authority and delivers evidence reasonably satisfactory to Agent of such payment, the security described in clause (vi) of this Section 4.6 shall not be required.

Section 4.7 Litigation. Borrower shall give prompt notice to Agent of any litigation or governmental proceedings pending or threatened in writing against the Property, Borrower, Manager or Guarantors which might materially adversely affect the Property or Borrower's,

Manager's or Guarantor's condition (financial or otherwise) or business (including Borrower's ability to perform the Obligations).

Section 4.8 Title to the Property. Borrower shall warrant and defend (a) its title to the Property and every part thereof, subject only to Permitted Encumbrances and (b) the validity and priority of the Lien of the Mortgage, the Assignment of Leases, this Agreement on the Property, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Agent and Lenders for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Agent and Lenders if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

Section 4.9 Financial Reporting.

4.9.1 Generally. Borrower shall keep and maintain or will cause to be kept and maintained proper and accurate books and records, in accordance with GAAP, the Uniform System of Accounts for Hotels, current edition, and, to the extent required under Section 9.1 hereof, the requirements of Regulation AB, reflecting the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Agent shall have the right from time to time during normal business hours upon reasonable notice (which may be given verbally) to Borrower to examine such books and records at the office of Borrower or other Person maintaining such books and records and to make such copies or extracts thereof as Agent shall desire. After an Event of Default, Borrower shall pay any costs incurred by Agent to examine such books, records and accounts, as Agent shall determine to be necessary or appropriate in the protection of Agent's and Lenders' interests.

4.9.2 Quarterly Reports. Not later than forty-five (45) days following the end of each fiscal quarter (or each calendar month prior to a Securitization of the Loan), Borrower shall deliver to Agent:

(i) unaudited financial statements, internally prepared on an accrual basis including a balance sheet and profit and loss statement as of the end of such quarter (or month) and for the corresponding quarter (or month) of the previous year, and a statement of revenues and expenses for such quarter (or month) and the year to date, a comparison of the year to date results with (i) the results for the same period of the previous year, (ii) the results that had been projected by Borrower for such period and (iii) the Annual Budget for such period and the Fiscal Year, and a summary report detailing monthly occupancy, including average daily rate. Such statements for each quarter (or month) shall be accompanied by an Officer's Certificate certifying to the best of the signer's knowledge, (A) that such statements fairly represent the financial condition and results of operations of Borrower, (B) that as of the date of such Officer's Certificate, no Event of Default exists under this Agreement, the Note or any other Loan Document or, if so, specifying the nature and status of each such Event of Default and the action then being taken by Borrower or proposed to be taken to remedy such Event of Default, (C) that as of the date of each Officer's Certificate, no litigation exists involving Borrower or the Property in which the amount involved is \$500,000 (in the aggregate) or more or in which all or substantially all of the potential liability is not covered by insurance, or, if so, specifying such litigation and the actions being taking in relation

thereto and (D) the amount by which actual Operating Expenses were greater than or less than the Operating Expenses anticipated in the applicable Annual Budget. Such financial statements shall contain such other information as shall be reasonably requested by Agent for purposes of calculations to be made by Agent pursuant to the terms hereto.

(ii) a true, correct and complete rent roll for the Property, dated as of the last month of such fiscal quarter (or month), showing the percentage of gross leasable area of the Property, if any, leased as of the last day of the preceding calendar quarter (or month), the current annual rent for the Property, the expiration date of each Lease, whether to Borrower's knowledge any portion of the Property has been sublet, and if it has, the name of the subtenant, and such rent roll shall be accompanied by an Officer's Certificate certifying that such rent roll is true, correct and complete in all material respects as of its date and stating whether Borrower, within the past three (3) months, has issued a notice of default with respect to any Lease which has not been cured and the nature of such default.

(iii) if a Franchise Agreement is then in effect, all franchise inspection reports, if any, received by Borrower during such quarter (or month).

4.9.3 Annual Reports. Borrower shall deliver to Agent:

(i) Not later than seventy-five (75) days after the end of each Fiscal Year of Borrower's operations, unaudited financial statements, internally prepared on a cash basis, covering the Property, including a balance sheet as of the end of such year, a statement of revenues and expenses for such year and the fourth quarter thereof, and stating in comparative form the figures for the previous Fiscal Year and the Annual Budget for such Fiscal Year, as well as the supplemental schedule of net income or loss presenting the net income or loss for the Property and occupancy statistics for the Property, and copies of all federal income tax returns to be filed. Such annual financial statements shall be accompanied by an Officer's Certificate in the form required pursuant to Section 4.9.2(i) above;

(ii) Not later than ninety (90) days after the end of each Fiscal Year of Borrower's operations, audited financial statements certified by an Independent Accountant in accordance with GAAP, the Uniform System of Accounts for Hotels, current edition, and, to the extent required under Section 9.1 hereof, the requirements of Regulation AB, covering the Property, including a balance sheet as of the end of such year, a statement of revenues and expenses for such year and the fourth quarter thereof, and stating in comparative form the figures for the previous Fiscal Year and the Annual Budget for such Fiscal Year, as well as the supplemental schedule of net income or loss presenting the net income or loss for the Property and occupancy statistics for the Property, and copies of all federal income tax returns to be filed. Such annual financial statements shall be accompanied by an Officer's Certificate in the form required pursuant to Section 4.9.2(i) above; and

(iii) Not later than ninety (90) days after the end of each Fiscal Year of Borrower's operations, an annual summary of any and all Capital Expenditures made at the Property during the prior twelve (12) month period.

4.9.4 Other Reports.

(a) Borrower shall deliver to Agent, within ten (10) Business Days of the receipt thereof by Borrower, a copy of all reports prepared by Manager pursuant to the Management Agreement, including, without limitation, the Annual Budget and any inspection reports.

(b) Borrower shall, within ten (10) Business Days after request by Agent or, if all or part of the Loan is being or has been included in a Securitization, by the Rating Agencies, furnish or cause to be furnished to Agent and, if applicable, the Rating Agencies, in such manner and in such detail as may be reasonably requested by Agent or the Rating Agencies, such reasonable additional information as may be reasonably requested with respect to the Property.

(c) Borrower shall submit to Agent the financial data and financial statements required, and within the time periods required, under clauses (f) and (g) of Section 9.1, if and when available.

(d) Borrower shall furnish or cause to be furnished to Agent, within thirty (30) days after the end of each calendar month, the most current Smith Travel Research Reports then available to Borrower reflecting market penetration and relevant hotel properties competing with the Property.

4.9.5 Annual Budget. Borrower shall submit to Agent by November 1 of each year the Annual Budget for the succeeding Fiscal Year. Agent shall have the right to approve each Annual Budget (which approval shall not be unreasonably withheld so long as no Event of Default is continuing). Annual Budgets approved by Agent shall hereinafter be referred to as an "**Approved Annual Budget**". Until such time that any Annual Budget has been approved by Agent, the prior Approved Annual Budget shall apply for all purposes hereunder (with such adjustments as reasonably determined by Agent to reflect actual increases in Taxes, Insurance Premiums and utilities expenses). Neither Borrower nor Manager shall change or modify the Annual Budget that has been approved by Agent without the prior written consent of Agent not to be unreasonably withheld or delayed. During the continuance of a Trigger Period, Agent may require Borrower, on a quarterly basis, to furnish to Agent for approval (which approval shall not be unreasonably withheld or delayed provided no Event of Default exists) an updated Annual Budget. In no event shall management fees in excess of the Management Fee Cap or any incentive management fees be paid to Manager as part of the Monthly Operating Expense Budgeted Amount or Approved Extraordinary Operating Expense funds distributed to Borrower pursuant to Section 6.8.1, unless expressly approved by Agent in advance, which approval, only with respect to management fees in excess of the Management Fee Cap (and not with respect to incentive management fees that are discretionary in nature), shall be deemed given by Agent if Agent approves the Management Agreement which provides for such fees.

4.9.6 Extraordinary Operating Expenses: In the event that Borrower incurs an extraordinary operating expense not set forth in the Approved Annual Budget (each an “*Extraordinary Operating Expense*”), then Borrower shall promptly deliver to Agent a reasonably detailed explanation of such proposed Extraordinary Operating Expense for Agent’s approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any Extraordinary Operating Expense approved by Agent is referred to herein as an (“*Approved Extraordinary Operating Expense*”). Any Funds distributed to Borrower for the payment of Approved Extraordinary Operating Expenses pursuant to Section 6.8.1 shall be used by Borrower only to pay for such Approved Extraordinary Operating Expenses or reimburse Borrower for such Approved Extraordinary Operating Expenses, as applicable.

4.9.7 Hotel Accounting. All monthly and other operating statements to be delivered by or on behalf of Borrower hereunder shall be (and all accompanying Officer’s Certificates shall state that they have been) prepared based upon the Uniform System of Accounts for Hotels, current edition.

4.9.8 Access to Property. Borrower shall permit agents, representatives, consultants and employees of Agent to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally). Agent or its agents, representatives, consultants and employees as part of any inspection may take soil, air, water, building material and other samples from the Property, subject to the rights of Tenants under Leases.

Section 4.10 Leases.

4.10.1 Generally. Upon request, Borrower shall furnish Agent with executed copies of all Leases then in effect. All renewals of Leases and all proposed leases shall provide for rental rates and terms comparable to existing local market rates and shall be arm’s length transactions with bona fide, independent third-party Tenants. Within ten (10) days after the execution of a Lease or any renewals, amendments or modification of a Lease, Borrower shall deliver to Agent a copy thereof, together with Borrower’s certification that such Lease (or such renewal, amendment or modification) was entered into in accordance with the terms of this Agreement.

4.10.2 Approvals. Borrower shall not enter into any Lease (or any renewals, amendments or modifications of a Lease) without Agent’s prior consent.

4.10.3 Covenants. Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenants thereunder to be observed or performed in a commercially reasonable manner, provided, however, neither Borrower shall not terminate or accept a surrender of a Lease without Agent’s prior approval; (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any assignment of lessor’s interest in the Leases or the Rents (except as contemplated by the Loan Documents); and (v) shall not alter, modify or change any Lease so as to change the amount of or payment date for rent, change the expiration date, grant any option for additional space or term, materially reduce the obligations of the Tenant or increase the obligations of the lessor. Upon request, Borrower shall furnish Agent with executed

copies of all Leases. Borrower shall promptly send copies to Agent of all written notices of material default which Borrower shall receive under the Leases.

4.10.4 Security Deposits. All security deposits of Tenants, whether held in cash or any other form, shall be held in compliance with all Legal Requirements, shall not be commingled with any other funds of Borrower. During the continuance of an Event of Default, Borrower shall, upon Agent's request, if permitted by applicable Legal Requirements, cause all such security deposits (and any interest theretofore earned thereon) to be transferred into the Deposit Account (which shall then be held by Deposit Bank in a separate Account), which shall be held by Deposit Bank subject to the terms of the Leases. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable Legal Requirements (i) shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as herein above described, (ii) shall be issued by an institution reasonably satisfactory to Agent, (iii) shall, if permitted pursuant to any Legal Requirements, name Agent as payee or mortgagee thereunder (or at Agent's option, be fully assignable to Agent), and (iv) shall in all respects comply with any applicable Legal Requirements and otherwise be satisfactory to Agent. Borrower shall, upon request, provide Agent with evidence satisfactory to Agent of Borrower's compliance with the foregoing.

Section 4.11 Repairs; Maintenance and Compliance; Alterations.

4.11.1 Repairs; Maintenance and Compliance. Borrower shall at all times maintain, preserve and protect all franchises and trade names, and Borrower shall cause the Property to be maintained in a good and safe condition and repair and shall not remove, demolish or alter the Improvements or Equipment (except in connection with the PIP Work performed in accordance with the Building Loan Agreement and except for alterations performed in accordance with Section 4.12.2 below and normal replacement of Equipment with Equipment of equivalent value and functionality). Subject to Borrower's right to contest as set forth in Section 4.5, Borrower shall promptly comply with all Legal Requirements (including but not limited to municipal, state and federal laws) and immediately cure properly any violation of a Legal Requirement. Borrower also hereby covenants and agrees that it shall not commit, permit or suffer to exist any illegal commercial activities or commercial activities relating to controlled substances at the Property (including, without limitation, any growing, distributing and/or dispensing of marijuana for commercial purposes, medical or otherwise for so long as the foregoing is a violation of a Legal Requirement of any applicable Governmental Authority). Borrower shall notify Agent in writing within one (1) Business Day after Borrower first receives notice of any such non-compliance. Borrower shall promptly repair, replace or rebuild any part of the Property that becomes damaged, worn or dilapidated and shall complete and pay for any Improvements at any time in the process of construction or repair.

4.11.2 Alterations. Borrower may, without Agent's consent, perform alterations to the Improvements and Equipment which (i) do not constitute a Material Alteration, (ii) do not adversely affect Borrower's financial condition or the value or net operating income of the Property and (iii) are in the ordinary course of Borrower's business. Borrower shall not perform any Material Alteration without Agent's prior written consent. Agent may, as a condition to giving its consent to a Material Alteration, require that Borrower deliver to Agent security for payment of the cost of such Material Alteration and as additional security for Borrower's

Obligations, which security may be any of the following: (i) cash, (ii) a Letter of Credit, (iii) U.S. Obligations, (iv) other securities acceptable to Agent, provided that, if the Loan has been included in a Securitization, Agent shall have received a Rating Agency Confirmation as to the form and issuer of same, or (v) a completion bond. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Alteration Threshold, and Agent may apply such security from time to time at the option of Agent to pay for such alterations. Upon substantial completion of any Material Alteration, Borrower shall provide evidence reasonably satisfactory to Agent that (i) the Material Alteration was constructed in accordance with applicable Legal Requirements, (ii) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with the Material Alteration have been paid in full and have delivered unconditional releases of liens, and (iii) all material licenses and permits necessary for the use, operation and occupancy of the Material Alteration (other than those which depend on the performance of tenant improvement work) have been issued. If Borrower has provided cash security, as provided above, such cash shall be released by Agent to fund such Material Alterations, and if Borrower has provided non-cash security, as provided above, except to the extent applied by Agent to fund such Material Alterations, Agent shall release and return such security upon Borrower's satisfaction of the requirements of the preceding sentence

Section 4.12 Approval of Major Contracts. Borrower shall be required to obtain Agent's prior written approval of any and all Major Contracts affecting the Property, which approval may be granted or withheld in Agent's sole discretion.

Section 4.13 Property Management.

4.13.1 Management Agreement. Borrower shall (i) cause Manager to manage the Property in accordance with the Management Agreement, (ii) diligently perform and observe all of the terms, covenants and conditions of the Management Agreement on the part of Borrower to be performed and observed, (iii) promptly notify Agent of any default under the Management Agreement of which it is aware, (iv) promptly deliver to Agent a copy of each financial statement, business plan, capital expenditures plan, report and estimate received by it under the Management Agreement, and (v) promptly enforce the performance and observance of all of the covenants required to be performed and observed by Manager under the Management Agreement. If Borrower shall default in the performance or observance of any material term, covenant or condition of the Management Agreement on the part of Borrower to be performed or observed, then, without limiting Agent's other rights or remedies under this Agreement and the other Loan Documents, and without waiving or releasing Borrower from any of its Obligations or under the Management Agreement, Agent shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of the Management Agreement on the part of Borrower to be performed or observed.

4.13.2 Prohibition Against Termination or Modification. Borrower shall not (i) surrender, terminate, cancel, modify, renew or extend the Management Agreement, (ii) enter into any other agreement relating to the management or operation of the Property with Manager or any other Person, (iii) consent to the assignment by the Manager of its interest under the

Management Agreement, or (iv) waive or release any of its rights and remedies under the Management Agreement, in each case without the express consent of Agent (including Agent's review and approval of any management fees set forth in such new or amended Management Agreement), which consent shall not be unreasonably withheld; provided, however, if the Loan has been included in a Securitization, such consent may be conditioned upon Borrower delivering a Rating Agency Confirmation from each applicable Rating Agency as to such new property manager and management agreement. If at any time Agent consents to the appointment of a new property manager, such new property manager and Borrower shall, as a condition of Agent's consent, execute (a) a management agreement in form and substance reasonably acceptable to Agent, (b) a subordination of management agreement in a form reasonably acceptable to Agent and (c) deliver an updated Insolvency Opinion if such manager is an Affiliate of Borrower, any Guarantor or any Key Principal.

4.13.3 Replacement of Manager. Agent shall have the right to require Borrower to replace the Manager with another property manager chosen by Borrower and approved by Agent in its sole discretion (which approval may be conditioned upon Borrower delivering a Rating Agency Confirmation as to such new property manager and management agreement if, at such time, the Loan has been included in a Securitization) upon the occurrence of any one or more of the following events: (i) at any time following the occurrence of an Event of Default, (ii) if Manager shall be in default under the Management Agreement beyond any applicable notice and cure period, (iii) if Manager shall become insolvent or a debtor in any bankruptcy or insolvency proceeding, or (iv) if at any time the Manager has engaged in gross negligence, fraud, willful misconduct or misappropriation of funds.

Section 4.14 Performance by Borrower; Compliance with Agreements.

(a) Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior consent of Agent.

(b) Borrower shall at all times comply in all material respects with all Operations Agreements. Borrower agrees that without the prior written consent of Agent, Borrower will not amend, modify or terminate any of the Operations Agreements.

Section 4.15 Licenses; Intellectual Property; Website.

4.15.1 Licenses. Borrower shall keep and maintain all Licenses necessary for the operation of the Property as a hotel. Borrower shall not transfer any Licenses required for the operation of the Property.

4.15.2 Intellectual Property. Borrower shall keep and maintain all Intellectual Property relating to the use or operation of the Property and all Intellectual Property shall be held by and (if applicable) registered in the name of the Borrower. Borrower shall not Transfer or let lapse any Intellectual Property without Agent's prior consent.

4.15.3 Website. Any website with respect to the Property (other than Tenant websites) shall be maintained by or on behalf of Borrower and any such website shall be registered in the name of Borrower. Borrower shall not Transfer any such website without Agent's prior consent.

Section 4.16 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Agent all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Agent in connection therewith;

(b) cure any defects in the execution and delivery of the Loan Documents and execute and deliver, or cause to be executed and delivered, to Agent such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to correct any omissions in the Loan Documents to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Obligations, as Agent may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement, the other Loan Documents, as Agent may reasonably require from time to time.

Section 4.17 Estoppel Statement.

(a) After request by Agent, which request shall be made no more frequently than twice in any twelve (12) month period, Borrower shall within ten (10) Business Days furnish Agent with a statement, duly acknowledged and certified, stating (i) the Outstanding Principal Balance, (ii) the Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment and performance of the Obligations, if any, and (v) that this Agreement and the other Loan Documents have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall deliver to Agent, upon request, an estoppel certificate from each Tenant under any Lease (provided that Borrower shall only be required to use commercially reasonable efforts to obtain an estoppel certificate from any Tenant not required to provide an estoppel certificate under its Lease) in form and substance reasonably satisfactory to Agent; provided, that Borrower shall not be required to deliver such certificates more frequently than three (3) times in any calendar year.

(c) Borrower shall deliver to Agent, upon request, estoppel certificates from each party under any Operations Agreement, in form and substance reasonably satisfactory to Agent; provided, that Borrower shall not be required to deliver such certificates more than three (3) times during the Term and not more frequently than once per calendar year (or twice during any calendar year in which a Securitization occurs).

(d) Borrower shall deliver to Agent, upon request, estoppel certificates from any Franchisor (if any), in form and substance reasonably satisfactory to Agent; provided, that Borrower shall not be required to deliver such certificates more than three (3) times during the Term and not more frequently than once per calendar year (or twice during any calendar year in which a Securitization occurs).

Section 4.18 Notice of Default. Borrower shall promptly advise Agent of the occurrence of any Default or Event of Default of which Borrower has knowledge.

Section 4.19 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Agent with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Agent or any Lender hereunder or any rights obtained by Agent or any Lender under any of the other Loan Documents and, in connection therewith, permit Agent, at its election, to participate in any such proceedings.

Section 4.20 Indebtedness. Borrower shall not directly or indirectly create, incur or assume any indebtedness other than (i) the Debt, (ii) unsecured trade payables incurred in the ordinary course of business relating to the ownership and operation of the Property, and (iii) Permitted Equipment Financing (hereinafter defined), which in the case of such unsecured trade payables and Permitted Equipment Financing (A) are not evidenced by a note, (B) do not exceed, at any time, a maximum aggregate amount of two percent (2%) of the Outstanding Principal Balance and (C) are paid within thirty (30) days of the date incurred (collectively, “**Permitted Indebtedness**”). As used herein, “**Permitted Equipment Financing**” means equipment financing that is (i) entered into in the ordinary course of Borrower’s business, (ii) for equipment related to the ownership and/or operation of the Property whose removal would not materially damage or impair the value of the Property, and (iii) which is secured only by the financed equipment.

Section 4.21 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Property.

Section 4.22 Dissolution. Borrower shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) engage in any business activity not related to the ownership and operation of the Property, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of Borrower except to the extent expressly permitted by the Loan Documents, or (iv) cause, permit or suffer Borrower to (A) dissolve, wind up or liquidate or take any action, or omit to take any action, as a result of which Borrower would be dissolved, wound up or liquidated in whole or in part, or (B) amend, modify, waive or terminate the certificate of incorporation, bylaws, certificate of formation or operating agreement of Borrower, in each case without obtaining the prior consent of Agent.

Section 4.23 Debt Cancellation. Borrower shall cancel or otherwise forgive or release any claim or debt (other than the termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower’s business.

Section 4.24 Affiliate Transactions. Borrower shall not enter into, or be a party to, any transaction with an Affiliate of Borrower or any of the partners, members or shareholders, as applicable, of Borrower except in the ordinary course of business and on terms which are no less favorable to Borrower or such Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party.

Section 4.25 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property (i) with any other real property constituting a tax lot separate from the Property, and (ii) with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

Section 4.26 Principal Place of Business. Borrower shall not change its principal place of business from the address set forth on the first page of this Agreement without first giving Agent thirty (30) days prior written notice.

Section 4.27 Change of Name, Identity or Structure. Borrower shall not change Borrower's name, identity (including its trade name or names) or convert from a limited liability company structure without notifying Agent of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior written consent of Agent; provided, however, that Borrower shall at all times be a Delaware limited liability company. Borrower shall deliver to Agent, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Agent to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Agent, Borrower shall execute a certificate in form satisfactory to Agent listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 4.28 Costs and Expenses.

(a) Except as otherwise expressed herein or in any of the other Loan Documents, Borrower shall pay or, if Borrower fails to pay, reimburse Agent and Lenders, as applicable within five (5) Business Days upon receipt of notice from Agent, for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Agent and/or Lenders in connection with, without duplication (i) Borrower's ongoing performance of and compliance with Borrower's agreements and covenants contained in this Agreement and the other Loan Documents on their part to be performed or complied with after the Original Closing Date, including confirming compliance with environmental and insurance requirements (except to the extent expressly set forth in Section 10.21(a) hereof); (ii) Agent's and Lenders' ongoing performance of and compliance with all agreements and covenants contained in this Agreement, and the other Loan Documents on its part to be performed or complied with after the Original Closing Date (except to the extent expressly set forth in Section 10.21(a) hereof); (iii) the negotiation, preparation, execution and delivery of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents requested by Borrower and any other documents or matters requested by Borrower; (iv) filing and recording of any Loan Documents; (v) title insurance, surveys, inspections and appraisals; (vi) the creation, perfection or protection of Agent's and Lenders' Liens in the Property and the Accounts (including fees and

expenses for title and lien searches, intangibles taxes, personal property taxes, mortgage recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Agent's Consultant, surveys and engineering reports); (vii) enforcing or preserving any rights in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, the Loan Documents, the Property, or any other security given for the Loan; (viii) fees charged by Servicer (except to the extent expressly set forth in Section 10.21) or, if a Securitization has occurred, the Rating Agencies in connection with the Loan or any modification thereof; and (ix) enforcing any Obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings (including fees and expenses for title and lien searches, intangible taxes, personal property taxes, mortgage recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Agent's Consultant, surveys and engineering reports); provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the active gross negligence, illegal acts, fraud or willful misconduct of Agent.

(b) In addition, if the Loan has been included in a Securitization, in connection with any Rating Agency Confirmation, Review Waiver or other Rating Agency consent, approval or review requested or required hereunder (other than the initial review of the Loan by the Rating Agencies in connection with a Securitization), Borrower shall pay all of the costs and expenses of Agent, Lenders, Servicer and each Rating Agency in connection therewith, and, if applicable, shall pay any fees imposed by any Rating Agency in connection therewith.

(c) Any costs and expenses due and payable by Borrower hereunder which are not paid by Borrower within ten (10) Business Days after demand may be paid from any amounts in the Deposit Account, with notice thereof to Borrower. The obligations and liabilities of Borrower under this Section 4.29 shall (i) become part of the Obligations, (ii) be secured by the Loan Documents and (iii) survive the Term and the exercise by Agent of any of its rights or remedies under the Loan Documents, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

Section 4.29 Indemnity. Borrower shall indemnify, defend and hold harmless Agent, Lenders and Servicer from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Agent and Lenders in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Agent and/or any Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Agent or any Lender in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents; (ii) the use or intended use of the proceeds of the Loan; (iii) any information provided by or on behalf of Borrower, or contained in any documentation approved by Borrower; (iv) ownership of the Mortgage, the Property or any interest therein, or receipt of any Rents (including due to any Increased Costs, Special Taxes or Other Taxes); (v) any accident, injury to or death of persons or

loss of or damage to property occurring in, on or about the Property or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vi) any use, nonuse or condition in, on or about the Property or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Property; (viii) any failure of the Property to comply with any Legal Requirement; (ix) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof, or any liability asserted against Agent or any Lender with respect thereto; and (x) the claims of any lessee of any portion of the Property or any Person acting through or under any lessee or otherwise arising under or as a consequence of any Lease (collectively, the “*Indemnified Liabilities*”); provided, however, that Borrower shall not have any obligation to Agents and/or Lenders hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Agent and/or any Lender, as applicable. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Agent and Lenders.

Section 4.30 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Agent, any Lender or any assignee of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended (“*ERISA*”) or Section 4975 of the Code.

(b) Borrower shall not maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any Manager, with respect to the Property, or any ERISA Affiliate of Borrower or Guarantor to, maintain, sponsor, contribute to or become obligated to contribute to, any “defined benefit plan” (within the meaning of Section 3(35) of ERISA) other than a Multiemployer Plan or permit the assets of Borrower to become “plan assets,” within the meaning of 29 C.F.R. 2510.3-101, as modified in application by Section 3(42) of ERISA.

(c) Neither Borrower nor any Guarantor shall, and shall not permit any ERISA Affiliate or, with respect to the Property, Manager, to (i) withdraw or effect a partial or complete withdrawal (as described in ERISA Section 4203 or 4205) from any Multiemployer Plan, if such termination or withdrawal would subject Borrower, any Guarantor or any ERISA Affiliate to material liability, whether directly or indirectly or through a contractual arrangement, (ii) fail to make any contribution or payment to any Multiemployer Plan which it is required to make under any agreement relating to such Multiemployer Plan; (iii) allow or permit to exist any other event or condition known or that reasonably should be known, which event or condition could subject Borrower, any Guarantor or an ERISA Affiliate to material liability under ERISA or section 4975 of the Code, whether directly or indirectly or through a contractual arrangement; or (iv) have any obligation with respect to any Multiemployer Plan if the aggregate potential withdrawal liability or obligation with respect to all Multiemployer Plans would be material.

Borrower shall notify Agent in writing within ten (10) days of the date that Borrower or any Guarantor or any ERISA Affiliate or, with respect to the Property, Manager, incurs any material liability, or the occurrence of any event or action that could reasonably be expected to cause Borrower or any Guarantor or any ERISA Affiliate or, with respect to the Property, Manager, to incur any material liability, or the occurrence of a “reportable event” within the meaning of section 4043 of ERISA for which notice is required to be given to the Pension Benefit Guarantor, (x) under Title IV of ERISA or (y) on account of a partial or complete withdrawal (as such terms are defined in Section 4203 and 4205 of ERISA, respectively) from, or unpaid contributions to, any Multiemployer Plan, or the termination, reorganization or insolvency of any such Multiemployer Plan.

(d) Borrower shall deliver to Agent such certifications or other evidence from time to time throughout the Term, as requested by Agent in its sole discretion, that (A) Borrower and Guarantors are not and do not maintain an “employee benefit plan” as defined in Section 3(32) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (B) Borrower and Guarantors are not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) the assets of Borrower and Guarantors do not constitute “plan assets” within the meaning of the Plan Assets Regulation of any “benefit plan investor” as defined in Section 3(42) of ERISA, or if the assets of Borrower do constitute “plan assets” within the meaning of the Plan Assets Regulation, as described in Section 3.1.9(b), that the obligation or action taken or to be taken, hereunder (or the exercise by Agent, any Lender or any assignee of any of its rights under the Note, this Agreement or the other Loan Documents) is not and will not be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code.

Section 4.31 Patriot Act Compliance.

(a) Borrower will use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Property, including those relating to money laundering and terrorism. Agent shall have the right to audit Borrower’s compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Property, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Agent may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Agent and any Lender in connection therewith shall be secured by the Mortgage and the other Loan Documents and shall be immediately due and payable.

(b) Neither Borrower nor any owner of a direct or indirect interest in Borrower (i) is listed on any Government Lists, (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) is currently under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof,

the term “**Patriot Act Offense**” means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) the Bank Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. “**Patriot Act Offense**” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “**Government Lists**” means (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control (“**OFAC**”), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Agent notified Borrower in writing is now included in “**Government Lists**”, or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Agent notified Borrower in writing is now included in “**Government Lists**”.

(c) At all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, or any Key Principal or any of the Guarantors shall constitute property of, or shall be beneficially owned, directly or indirectly, by any Person subject to trade restrictions under United States law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder, with the result that the investment in Borrower, such Key Principal or such Guarantor, as applicable (whether directly or indirectly), would be prohibited by law (each, an “**Embargoed Person**”), or the Loan made by Lenders would be in violation of law, (b) no Embargoed Person shall have any interest of any nature whatsoever in such Borrower, Operating Lessee, such Key Principal or such Guarantor, as applicable, with the result that the investment in Borrower, such Key Principal or such Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law, and (c) none of the funds of Borrower, any Key Principal or any Guarantor, as applicable, shall be derived from any unlawful activity with the result that the investment in Borrower, such Key Principal or such Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law.

Section 4.32 Hotel Covenants.

(a) Agent and Lenders hereby acknowledge that as of the Closing Date, no Franchise Agreement is in place at the Property. Borrower shall not enter into any Franchise Agreement without the prior written consent of Agent, which consent may be conditioned upon (i) the receipt by Agent of a comfort letter from the Franchisor in form and substance acceptable to Agent and (ii) after the occurrence of Securitization, the delivery by Borrower of a Rating Agency Confirmation from each applicable Rating Agency.

(b) If Agent consents to any such Franchise Agreement and Borrower enters into any such Franchise Agreement:

(i) Borrower shall cause the hotel located on the Property to be operated pursuant to the Franchise Agreement.

(ii) Borrower shall (i) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Franchise Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Agent of any default under the Franchise Agreement of which it is aware; (iii) promptly deliver to Agent a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Franchise Agreement; and (iv) promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the Franchisor under the Franchise Agreement.

(iii) If Borrower shall enter into any new or amended Franchise Agreement, Agent shall receive within thirty (30) days following the execution of such Franchise Agreement a comfort letter from the Franchisor in which Franchisor shall agree (i) that Agent and Lenders shall have the right, but not the obligation, to cure any defaults under the Franchise Agreement, (ii) to give Agent written notice of, and a reasonable time to cure, any default of Borrower under the Franchise Agreement, (iii) not to assert against Agent or any Lender any defaults which by their nature are personal to Borrower and not curable by Agent or any Lender; (iv) to allow Agent to change managers of the hotel operated at the Property; (v) that, if Agent, any Lender or its Affiliate shall acquire title to the Property, Agent, such Lender or its Affiliate shall have an option to succeed to the interest of Borrower under the Franchise Agreement (or to be granted a new license agreement on the same terms as the Franchise Agreement) without payment of any fees to Franchisor; (vi) that the Franchise Agreement will remain in effect during any foreclosure proceedings by Agent or any Lender provided Agent or such Lender cures all monetary defaults under the Franchise Agreement; (vii) not to modify, cancel, surrender or otherwise terminate the Franchise Agreement during the Term without the consent of Agent and (viii) that if Agent or any Lender or its Affiliate succeeds to Borrower's interest under the Franchise Agreement, Agent or such Lender may assign its rights therein to any entity which acquires the Property from Agent or such Lender or its Affiliate (subject to Franchisor's reasonable approval). The foregoing to the contrary notwithstanding, Agent will not unreasonably withhold approval of Franchisor's standard form of "comfort letter" addressing those matters set forth above.

(iv) Borrower shall not, without Agent's prior written consent, which consent may be granted or withheld in Agent's sole discretion, (A) surrender, terminate or cancel the Franchise Agreement; (B) reduce or consent to the reduction of the term of the Franchise Agreement; (C) increase or the amount of any charges under the Franchise Agreement; or (D) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Franchise Agreement.

(c) Without in any way limiting the covenants set forth in the Loan Documents, Borrower shall: (i) following Final Completion of the PIP Work, cause the hotel located on the Property to be operated, repaired and maintained as a well-maintained "first-class hotel" which shall mean a hotel providing amenities, services and facilities substantially

equivalent or superior to hotels of similar average room rate and targeted market segment from time to time operating in the same or comparable geographic area of the Property, taking into consideration the age and location of the hotel located on the Property and (ii) maintain Inventory in amounts sufficient to meet the hotel industry standard for hotels comparable to the hotel located on the Property and at levels sufficient for the operation of the hotel located on the Property at full occupancy levels.

Section 4.33 Construction Covenants.

(a) PIP Work. Borrower shall cause the PIP Work to be constructed and achieve Final Completion in a good and workmanlike manner in accordance with this Agreement and in accordance with the Renovations Budget and Plans and Specifications approved by Agent and any permits, licenses and/or approvals obtained in connection with such PIP Work.

(b) Construction Budgets. No amendment and/or modifications to either the Renovations Budget or the Project Loan Budget shall be made without Agent's approval, which approval shall be in Agent's sole but good faith discretion, taking into consideration any recommendations received by Agent's construction consultant. In the event that Borrower has bought out a trade contract with respect to any PIP Work, for the same scope of work at a lower price pursuant to a commercially reasonable bid process, Borrower may reallocate any hard cost line item in the Renovations Budget to another hard cost line item in the Renovations Budget. Borrower shall provide to Agent information on the bid process, as reasonably requested by Agent. Borrower may allocate contingency line items in the Renovations Budget in Borrower's commercially reasonable discretion, without Agent's consent, provided that the amount of such contingency line item used for a particular project does not exceed the portion of such project which has actually been completed.

Section 4.34 Punchlist Work. Subject to delays for Force Majeure (but in no event shall any delays due to Force Majeure continue for longer than sixty (60) days), Borrower shall continue to diligently perform the Punchlist Work in accordance with the Punchlist Budget and shall complete the Punchlist Work on or prior to January 15, 2018.

ARTICLE 5

INSURANCE, CASUALTY AND CONDEMNATION

Section 5.1 Insurance.

5.1.1 Insurance Policies.

(a) Borrower, at its sole cost and expense, shall obtain and maintain during the entire Term, or cause to be maintained, insurance policies for Borrower and the Property providing at least the following coverages:

(i) Property insurance against loss or damage by fire, any type of wind (including named storms), lightning and such other perils as are included in a standard "special form" or "all-risk" policy, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy, with no exclusion for

damage or destruction caused by acts of terrorism (or, subject to Section 5.1.1(i) below, standalone coverage with respect thereto) riot and civil commotion, vandalism, malicious mischief, burglary and theft (A) in an amount equal to one hundred percent (100%) of the “**Full Replacement Cost**” of the Property, which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) to be written on a no coinsurance form or containing an agreed amount endorsement with respect to the Improvements and personal property at the Property waiving all co-insurance provisions; and (C) containing “**Ordinance or Law Coverage**” if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, and compensating for loss to the undamaged portion of the building (with a limit equal to replacement cost), the cost of demolition and the increased costs of construction, each in amounts as required by Agent. In addition, Borrower shall obtain: (y) if any portion of the Improvements or Personal Property is currently or at any time in the future located in a federally designated special flood hazard area (“**SFHA**”), flood hazard insurance for all such Improvements and/or Personal Property located in the SFHA in an amount equal to the lesser of (1) the Outstanding Principal Balance or (2) the maximum amount of building and, if applicable, contents insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended plus (3) such additional coverage as Agent shall require; and (z) earthquake insurance in amounts and in form and substance satisfactory to Agent (*provided* that Agent shall not require earthquake insurance unless the Property is located in an area with a high degree of seismic activity and a Probable Maximum Loss (“**PML**”) or Scenario Expected Loss (“**SEL**”) of greater than 20%), provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including coverages against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called “occurrence” form and containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000.00), with a combined limit per policy year, excluding umbrella coverage, of not less than Two Million and No/100 Dollars (\$2,000,000.00); (B) to continue at not less than the aforesaid limit until required to be changed by Agent by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an “if any” basis; (3) independent contractors; and (4) contractual liability for all insured contracts to the extent the same is available;

(iii) rental loss and/or business income interruption insurance (A) with loss payable to Agent; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above, subsection (vi) below and Section 5.1.1(h) below; (C) covering a period of restoration of eighteen (18) months and containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or

the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred percent (100%) of the projected Gross Revenue from the Property (less non-continuing expenses) for a period of eighteen (18) months. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the Gross Revenue from the Property (less non-continuing expenses) for the succeeding eighteen (18) month period. All proceeds payable to Agent pursuant to this subsection shall be held by Agent and shall be applied to the Obligations secured by the Loan Documents from time to time due and payable hereunder, thereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its Obligations to pay the Debt on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the property or liability coverage forms do not otherwise apply, (A) commercial general liability and umbrella liability insurance covering claims related to the construction, repairs or alterations being made which are not covered by or under the terms or provisions of the commercial general liability and umbrella liability insurance policy required herein this Section 5.1.1(a); and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property with no limitation, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with limits which are required from time to time by Agent in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) comprehensive boiler and machinery/equipment breakdown insurance, including testing of such equipment, if applicable, in amounts as shall be reasonably required by Agent on terms consistent with the commercial property insurance policy required under subsection (i) above or with the builders risk policy described in subsection (iv) above;

(vii) umbrella liability insurance in addition to primary coverage in an amount not less than **\$25,000,000** per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above and subsection (viii) below;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence,

including umbrella coverage, with limits which are required from time to time by Agent (if applicable);

(ix) intentionally omitted;

(x) insurance against employee dishonesty with respect to any employees of Borrower in an amount not less than one (1) month of Gross Revenue from the Property and with a deductible not greater than Twenty Five Thousand and No/100 Dollars (\$25,000.00); and

(xi) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Agent from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 5.1.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**") and shall be subject to the approval of Agent as to form and substance, including insurance companies, amounts, deductibles, loss payees and insureds. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Agent, certificates of insurance evidencing the Policies (and, upon the written request of Agent, copies of such Policies) accompanied by evidence satisfactory to Agent of payment of the premiums then due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Agent.

(c) Any blanket insurance Policy shall be subject to Agent approval and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 5.1.1(a) (any such blanket policy, an "**Acceptable Blanket Policy**").

(d) All Policies of insurance provided for or contemplated by Section 5.1.1(a), shall name Borrower as a named insured and, with respect to Policies of liability insurance, except for the Policies referenced in Section 5.1.1(a)(v) and (viii), shall name Agent (on behalf of Lenders) and its successors and/or assigns additional insured, as its interests may appear, and in the case of Policies of property insurance, including but not limited to special form/all-risk, boiler and machinery, terrorism, windstorm, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Agent (on behalf of Lenders) providing that the loss thereunder shall be payable to Agent unless below the threshold for Borrower to handle such claim without Agent intervention as provided in Section 5.2 below. Additionally, if Borrower obtains property insurance coverage in addition to or in excess of that required by Section 5.1.1(a)(i), then such insurance policies shall also contain a standard non-contributing mortgagee clause in favor of Agent (on behalf of Lenders) providing that the loss thereunder shall be payable to Agent.

(e) All Policies of insurance provided for in Section 5.1.1(a), shall:

(i) with respect to the Policies of property insurance, contain clauses or endorsements to the effect that, (1) no act or negligence of Borrower, or anyone acting

for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, or foreclosure or similar action, shall in any way affect the validity or enforceability of the insurance insofar as Agent is concerned (2) the Policies shall not be cancelled without at least 30 days' written notice to Agent, except ten (10) days' notice for non-payment of premium and (3) the issuer(s) of the Policies shall give written notice to Agent if the issuers elect not to renew the Policies prior to its expiration;

(ii) with respect to all Policies of liability insurance, if obtainable by Borrower using commercially reasonable efforts, contain clauses or endorsements to the effect that, (1) the Policy shall not be canceled without at least thirty (30) days' written notice to Agent and any other party named therein as an additional insured (other than in the case of non-payment in which case only ten days prior notice, or the shortest time allowed by applicable Legal Requirement (whichever is longer), will be required) and shall not be materially changed (other than to increase the coverage provided thereby) without such a thirty (30) day notice and (2) the issuers thereof shall give notice to Agent if the issuers elect not to renew such Policies prior to its expiration. If the issuers cannot or will not provide notice, the Borrower shall be obligated to provide such notice; and

(iii) not contain any clause or provision that would make either Agent or any Lender liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Agent is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Agent shall have the right, without notice to Borrower, to take such action as Agent deems necessary to protect its interest in the Property, including the obtaining of such insurance coverage as Agent in its sole discretion deems appropriate and all premiums incurred by Agent in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Agent upon demand and until paid shall be secured by the Mortgage and shall bear interest at the Default Rate.

(g) In the event of foreclosure of the Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Agent or other transferee in the event of such other transfer of title.

(h) The property insurance, commercial general liability, umbrella liability insurance and rental loss and/or business interruption insurance required under Sections 5.1.1(a)(i), (ii), (iii) and (vii) above shall cover perils of terrorism and acts of terrorism (or at least not specifically exclude same) and Borrower shall maintain property insurance, commercial general liability, umbrella liability insurance and rental loss and/or business interruption insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 5.1.1(a)(i), (ii), (iii) and (vii) above (or at least not specifically excluding same) at all times during the term of the Loan. For so long as TRIPRA is in effect and continues to cover both foreign and domestic acts, Agent shall accept terrorism insurance with coverage against acts which are "certified" within the meaning of TRIPRA.

(i) Notwithstanding anything in subsection (a)(i) or (h) above to the contrary, Borrower shall be required to obtain and maintain coverage in its property insurance Policy (or by a separate Policy) against loss or damage by terrorist acts in an amount equal to 100% of the “Full Replacement Cost” of the Property plus the rental loss and/or business interruption coverage under subsection (a)(iii) above; provided that such coverage is available. In the event that such coverage with respect to terrorist acts is not included as part of the “all risk” property policy required by subsection (a)(i) above, Borrower shall, nevertheless be required to obtain coverage for terrorism (as standalone coverage) in an amount equal to 100% of the “Full Replacement Cost” of the Property plus the rental loss and/or business interruption coverage under subsection (a)(iii) above; provided that such coverage is available. Borrower shall obtain the coverage required under this clause (i) from a carrier which otherwise satisfies the rating criteria specified in Section 5.1.2 below (a “*Qualified Carrier*”) or in the event that such coverage is not available from a Qualified Carrier, Borrower shall obtain such coverage from the highest rated insurance company providing such coverage.

5.1.2 Insurance Company. All Policies required pursuant to Section 5.1.1: (i) shall be issued by companies authorized or licensed to do business in the state where the Property is located, with a financial strength and claims paying ability rating of (1) “A” or better by S&P (provided, however for multi-layered policies, (A) if four (4) or fewer insurance companies issue the Policies, then at least 75% of the insurance coverage represented by the Policies must be provided by insurance companies with a rating of “A” or better by S&P, with no carrier below “BBB” with S&P, or (B) if five (5) or more insurance companies issue the Policies, then at least sixty percent (60%) of the insurance coverage represented by the Policies must be provided by insurance companies with a rating of “A” or better by S&P, with no carrier below “BBB” with S&P), and (2) “A:X” or better in the current Best’s Insurance Reports; (ii) shall, with respect to all property insurance policies and rental loss and/or business interruption insurance policies, contain a Standard Mortgagee Clause/Lender’s Loss Payable Endorsement, or their equivalents, naming Agent (on behalf of Lenders) as the person to whom all payments made by such insurance company shall be paid; (iii) shall contain a waiver of subrogation against Lender; (iv) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including endorsements providing (A) that neither Borrower, Agent, Lender nor any other party shall be a co-insurer under said Policies and (B) for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of properties with a standard of operation and maintenance comparable to and in the general vicinity of the Property, but in no event in excess of an amount reasonably acceptable to Agent; and (v) shall be satisfactory in form and substance to Agent and shall be approved by Agent as to amounts, form, risk coverage, deductibles, loss payees and insureds. In addition to the insurance coverages described in Section 5.1.1 above, Borrower shall obtain such other insurance as may from time to time be reasonably required by Agent in order to protect its interests. Certified copies of the Policies shall be delivered to Agent at the address below (or to such other address or Person as Agent shall designate from time to time by notice to Borrower) on the date hereof with respect to the current Policies and within thirty (30) days after the effective date thereof with respect to all renewal Policies:

DEUTSCHE BANK AG, NEW YORK BRANCH, its successors and/or assigns, as their interests may appear
60 Wall Street, 10th Floor

New York, NY 10005
Attn: Karen Bernsohn

Borrower shall pay the Insurance Premiums annually in advance as the same become due and payable and shall furnish to Agent evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Agent (provided, however, that Borrower shall not be required to pay such Insurance Premiums nor furnish such evidence of payment to Agent in the event that the amounts required to pay such Insurance Premiums have been deposited into the Insurance Account pursuant to Section 6.3 hereof). Within thirty (30) days after request by Agent, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Agent, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices.

Section 5.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "*Casualty*"), Borrower shall give prompt notice thereof to Agent. Following the occurrence of a Casualty, Borrower shall, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the Property in accordance with Legal Requirements to be of at least equal value and of substantially the same character as prior to such damage or destruction. Agent may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Agent may participate in any settlement discussions with any insurance companies (and shall approve any final settlement) (i) if an Event of Default is continuing or (ii) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than One Million and No/100 Dollars (\$1,000,000) and Borrower shall deliver to Agent all instruments required by Agent to permit such participation. Except as set forth in the foregoing sentence, any Insurance Proceeds in connection with any Casualty (whether or not Agent elects to settle and adjust the claim or Borrower settles such claim) shall be due and payable solely to Agent and held by Agent in accordance with the terms of this Agreement. In the event Borrower or any party other than Agent is a payee on any check representing Insurance Proceeds with respect to any Casualty, Borrower shall immediately endorse, and cause all such third parties to endorse, such check payable to the order of Agent (on behalf of Lenders). Borrower hereby irrevocably appoints Agent as its attorney-in-fact, coupled with an interest, to endorse any such check payable to the order of Agent (on behalf of Lenders). Borrower hereby releases Agent and Lenders from any and all liability (other than liability resulting from Agent or any Lender's gross negligence or willful misconduct) with respect to the settlement and adjustment by Agent of any claims in respect of any Casualty.

Section 5.3 Condemnation. Borrower shall promptly give Agent notice of the actual or threatened commencement of any proceeding for the Condemnation of all or any portion of the Property and shall deliver to Agent copies of any and all papers served in connection with such proceedings. Agent may participate in any such proceedings, and Borrower shall from time to time deliver to Agent all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Agent, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in

anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Agent, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Agent shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the provisions of Section 5.4, whether or not an Award is available to pay the costs of such Restoration. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Agent of the Award, Agent shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 5.4 Restoration. The following provisions shall apply in connection with the Restoration:

(a) If the Net Proceeds shall be less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) and provided no Event of Default is continuing, the Net Proceeds will be disbursed by Agent to Borrower upon receipt, provided that all of the conditions set forth in Section 5.4(b)(i) are met and Borrower delivers to Agent a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000), the Net Proceeds will be held by Agent and Agent shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 5.4. The term "**Net Proceeds**" shall mean: (i) the net amount of all insurance proceeds received by Agent pursuant to Section 5.1.1 (a)(i), (iii), (iv), and (vi) and Section 5.1.1(h) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration upon the determination of Agent, in its sole discretion, that the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements on the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Property is taken, and such

land is located along the perimeter or periphery of the Property, and no portion of the Improvements is located on such land;

(C) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(D) Agent shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 5.1.1(a)(iii), if applicable, or (3) by other funds of Borrower;

(E) Agent shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) the date six (6) months prior to the Stated Maturity Date, (2) the earliest date required for such completion under the terms of any Lease, (3) such time as may be required under applicable Legal Requirements or (4) six (6) months prior to the expiration of the insurance coverage referred to in Section 5.1.1(a)(iii);

(F) Agent shall be satisfied that the Restoration will be completed in accordance with any requirements under the Franchise Agreement (if applicable);

(G) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(H) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the related Improvements;

(I) the Debt Yield, after giving effect to the Restoration, shall be equal to or greater than 8%;

(J) the Loan to Value Ratio after giving effect to the Restoration, shall be equal to or less than seventy percent (70%);

(K) Borrower shall deliver, or cause to be delivered, to Agent a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Agent; and

(L) the Net Proceeds together with any cash or cash equivalent to be deposited by Borrower with Agent are sufficient in Agent's discretion to cover the cost of the Restoration.

(ii) The Net Proceeds shall be held by Agent in the Casualty and Condemnation Account and, until disbursed in accordance with the provisions of this Section 5.4(b), shall constitute additional security for the Debt and other obligations under the Loan Documents. The Net Proceeds shall be disbursed by Agent to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Agent that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration, to the extent of such request, have been paid for in full (other than customary retainage), and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the reasonable satisfaction of Agent and discharged of record or in the alternative fully insured to the satisfaction of Agent by the title company issuing the Title Insurance Policy.

(iii) All plans and specifications required in connection with the Restoration shall be subject to the prior reasonable approval of Agent and an independent consulting engineer selected by Agent (the "**Casualty Consultant**"). Agent shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to the reasonable approval of Agent and the Casualty Consultant. All actual out-of-pocket costs and expenses incurred by Agent and any Lender in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's fees and disbursements, shall be paid by Borrower.

(iv) In no event shall Agent be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "**Casualty Retainage**" shall mean, as to each contractor, subcontractor or materialman engaged in the Restoration, an amount equal to (i) ten percent (10%) of the costs actually incurred for work in place as part of the Restoration until one-half (1/2) of such work has been substantially completed, and thereafter (ii) five percent (5%) of such costs, in each case as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 5.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Agent that the Restoration has been completed in accordance with the provisions of this Section 5.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Agent receives evidence satisfactory to Agent that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Agent will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or

materialman engaged in the Restoration as of the date upon which (i) the Casualty Consultant certifies to Agent that such contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of such contractor's, subcontractor's or materialman's contract, (ii) the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Agent or by the title company issuing the Title Insurance Policy, and (iii) Agent receives a title search evidencing the continued priority of the Lien of the Mortgage and evidence of payment of any costs associated with such title search. If required by Agent, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Agent shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Agent in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "*Net Proceeds Deficiency*") with Agent (for deposit into the Casualty and Condemnation Account) before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Agent shall be deposited by Agent into the Casualty and Condemnation Account and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 5.4(b) shall constitute additional security for the Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Agent after the Casualty Consultant certifies to Agent that the Restoration has been completed in accordance with the provisions of this Section 5.4(b), and the receipt by Agent of evidence satisfactory to Agent that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Agent to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) Notwithstanding anything to the contrary set forth in this Agreement, including the provisions of this Section 5.4, if the Loan is included in a REMIC Trust and, immediately following a release of any portion of the Lien of the Mortgage following a Casualty or Condemnation (but taking into account any proposed Restoration of the remaining Property), the ratio of the unpaid principal balance of the Loan to the value of the remaining Property is greater than 125% (such value to be determined, in Agent's sole discretion, by any commercially reasonable method permitted to a REMIC Trust; and which shall exclude the value of personal property or going concern value, if any), the Outstanding Principal Balance must be paid down by an amount equal to the least of the following amounts: (i) the net Award (after payment of Agent's and Lenders' costs and expenses and any other fees and expenses that have been approved by Agent) or the net Insurance Proceeds (after payment of Agent's and Lenders' costs

and expenses and any other fees and expenses that have been approved by Agent), as the case may be, or (ii) a “qualified amount” as that term is defined in the IRS Revenue Procedure 2010-30, as the same may be amended, replaced, supplemented or modified from time to time, unless Agent receives an opinion of counsel that if such amount is not paid, the applicable Securitization will not fail to maintain its status as a REMIC Trust as a result of the related release of such portion of the Lien of the Mortgage. If and to the extent the preceding sentence applies, only such amount of the net Award or net Insurance Proceeds (as applicable), if any, in excess of the amount required to pay down the principal balance of the Loan may be released for purposes of Restoration or released to Borrower as otherwise expressly provided in this Section 5.4.

(d) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 5.4(b)(vii) may be retained and applied by Agent in accordance with Section 2.4.3 hereof toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Agent in its sole discretion shall deem proper, or, at the discretion of Agent, the same may be paid, either in whole or in part, to Borrower for such purposes as Agent shall approve, in its discretion. Additionally, throughout the Term if an Event of Default is continuing, then Borrower shall pay to Agent, with respect to any payment of the Debt pursuant to this Section 5.4(d), an additional amount equal to the Spread Maintenance Premium applicable thereto; provided, however, that if an Event of Default (other than an Event of Default attributed solely to such Casualty or Condemnation) is not continuing, then no Spread Maintenance Premium shall be payable.

(e) In the event of foreclosure of the Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Agent or other transferee in the event of such other transfer of title.

(f) Notwithstanding anything to the contrary contained herein, if in connection with a Casualty, any insurance company makes a payment under a property or business or rental interruption insurance Policy that Borrower proposes be treated as business or rental interruption insurance, then, notwithstanding any designation (or lack of designation) by the insurance company as to the purpose of such payment, as between Agent and Borrower, such payment shall not be treated as business or rental interruption Insurance Proceeds unless Borrower (i) has demonstrated to Agent’s satisfaction that the remaining Net Proceeds that have been received from the property insurance companies are sufficient to pay 100% of the cost of the Restoration or, if such Net Proceeds are to be applied to repay the Obligations in accordance with the terms hereof, that such remaining Net Proceeds will be sufficient to satisfy the Obligations in full or (ii) to the extent Borrower is not able to satisfy Agent as to the sufficiency of the remaining funds to pay 100% of the Restoration or to satisfy the Obligations in full prior to distribution of Net Proceeds, Borrower has agreed to fund any shortfall from funds other than from Gross Revenues or borrowed funds and has provided such security as Agent may require to insure payment of such shortfalls. To the extent any payment under a property or business or rental interruption insurance Policy is treated as business or rental interruption insurance in accordance with this paragraph (f), such funds shall be deposited into the Casualty and Condemnation Account. Provided that no Event of Default then exists, Insurance Proceeds

treated as business or rental interruption insurance in accordance with this paragraph (f) (to the extent of available funds) shall be (A) first applied by Agent, on each Monthly Payment Date, to pay for Debt Service, deposits of Reserve Funds and payments of Monthly Operating Expense Budgeted Amount and Approved Extraordinary Operating Expenses actually incurred (collectively, the “**Approved Monthly BI Expenses**”) for such month pursuant to, and in the priorities set forth in, Section 6.8.1, and (B) second, to the extent that Agent determines that the amount of business or rental interruption Insurance Proceeds then remaining in the Casualty and Condemnation Account is sufficient to pay for all future Approved Monthly BI Expenses through the completion of the subject Restoration, disbursed by Agent to Borrower in an aggregate amount under this clause (B) not to exceed the Approved Monthly BI Expenses actually incurred by Borrower from the date of the applicable Casualty to the date of the first installment of business or rental interruption Insurance Proceeds advanced by the applicable insurance company (as evidenced by supporting documentation by Borrower that is acceptable to Agent). Provided no Trigger Period then exists, all remaining business or rental interruption insurance proceeds shall be disbursed to Borrower upon the completion of the subject Restoration and the recommencement of full unabated rent being paid by the Tenants under the Leases required to remain in place pursuant to Section 5.4(b)(i)(C).

ARTICLE 6

CASH MANAGEMENT AND RESERVE FUNDS

Section 6.1 Cash Management Arrangements.

(a) Borrower and Manager shall cause all Rents (i) to be transmitted directly by non-residential Tenants of the Property and (ii) in the nature of sums payable by issuers of credit cards accepted at the Property, to be transmitted directly by such issuer into a trust account (the “**Clearing Account**”) established and maintained by Borrower at an Eligible Institution selected by Borrower and reasonably approved by Agent (the “**Clearing Bank**”) as more fully described in the Clearing Account Agreement. Without in any way limiting the foregoing, if Borrower or Manager receive any Gross Revenue from the Property, then (a) such amounts shall be deemed to be collateral for the Obligations and shall be held in trust for the benefit, and as the property, of Agent (on behalf of Lenders), (b) such amounts shall not be commingled with any other funds or property of Borrowers or Manager, and (c) Borrower or Manager shall deposit such amounts in the Clearing Account within one (1) Business Day of receipt. Funds deposited into the Clearing Account shall be swept by the Clearing Bank on a daily basis into the Deposit Account in accordance with the Clearing Account Agreement and applied and disbursed in accordance with this Agreement. Funds in the Deposit Account shall be invested in Permitted Investments, as more particularly set forth in the Cash Management Agreement. Agent may also establish subaccounts of the Deposit Account which shall at all times be Eligible Accounts (and may be ledger or book entry accounts and not actual accounts) (such subaccounts are referred to herein as “**Accounts**”). The Deposit Account and all other Accounts will be under the sole control and dominion of Agent, and Borrower shall have no right of withdrawal therefrom. Borrower shall pay for all reasonable out-of-pocket expenses of opening and maintaining all of the above accounts.

(b) Additionally, Borrower shall instruct and shall continuously hereafter instruct each of the credit card companies with which Borrower has entered into merchants agreements (collectively, "***Credit Card Companies***") that all credit card receipts with respect to the Property (net of any expenses charged for such processing) received by such Credit Card Companies shall be transferred by such Credit Card Companies by wire transfer or the ACH system to Clearing Bank for deposit in the Clearing Account pursuant to an instruction letter in the form of Schedule VII attached hereto.

Section 6.2 Tax Funds.

6.2.1 Deposits of Tax Funds. Borrower shall deposit with Agent, on August 9, 2017 and on each Monthly Payment Date thereafter, an amount equal to one-twelfth of the Taxes that Agent estimates will be payable during the next ensuing twelve (12) months (initially, **\$48,756.82**), in order to accumulate sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, which amounts shall be transferred into an Account (the "***Tax Account***"). Amounts deposited from time to time into the Tax Account pursuant to this Section 6.2.1 are referred to herein as the "***Tax Funds***". If at any time Agent reasonably determines that the Tax Funds will not be sufficient to pay the Taxes, Agent shall notify Borrower of such determination and the monthly deposits for Taxes shall be increased by the amount that Agent estimates is sufficient to make up the deficiency at least ten (10) days prior to the respective due dates for the Taxes; provided, that if Borrower receives notice of any deficiency after the date that is ten (10) days prior to the date that Taxes are due, Borrower will deposit with or on behalf of Agent such amount within one (1) Business Day after its receipt of such notice.

6.2.2 Release of Tax Funds. Provided no Event of Default shall exist and remain uncured, Agent shall direct Servicer to apply Tax Funds in the Tax Account to payments of Taxes. In making any payment relating to Taxes, Agent may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax Funds shall exceed the amounts due for Taxes and provided that no Trigger Period exists, Agent shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax Funds. Any Tax Funds remaining in the Tax Account after the Obligations have been paid in full shall be returned to Borrower.

Section 6.3 Insurance Funds.

6.3.1 Deposits of Insurance Funds. Borrower shall deposit with or on behalf of Agent on August 9, 2017 and on each Monthly Payment Date thereafter, an amount equal to one-twelfth of the Insurance Premiums that Agent estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof, in order to accumulate sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies, which amounts shall be transferred into an Account established at Deposit Bank to hold such funds (the "***Insurance Account***"). Amounts deposited from time to time into the Insurance Account pursuant to this Section 6.3.1 are referred to herein as the "***Insurance Funds***". If at any time Agent reasonably determines that the Insurance Funds will not be sufficient to pay the

Insurance Premiums, Agent shall notify Borrower of such determination and the monthly deposits for Insurance Premiums shall be increased by the amount that Agent estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the Policies.

6.3.2 Release of Insurance Funds. Provided no Event of Default shall exist and remain uncured, Agent shall direct Servicer to apply Insurance Funds in the Insurance Account to the timely payment of Insurance Premiums, provided Borrower shall furnish Agent with all bills, invoices and statements for the Insurance Premiums for which such funds are required at least thirty (30) days prior to the date on which such charges first become payable. In making any payment relating to Insurance Premiums, Agent may do so according to any bill, statement or estimate procured from the insurer or its agent, without inquiry into the accuracy of such bill, statement or estimate. If the amount of the Insurance Funds shall exceed the amounts due for Insurance Premiums and provided that no Trigger Period exists, Agent shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Insurance Funds. Any Insurance Funds remaining in the Insurance Account after the Obligations have been paid in full shall be returned to Borrower.

6.3.3 Acceptable Blanket Policy. Notwithstanding anything to the contrary contained in Section 6.3.1, in the event that an Acceptable Blanket Policy is in effect with respect to the Policies required pursuant to Section 5.1, deposits into the Insurance Account required for Insurance Premiums pursuant to Section 6.3.1 above shall be suspended to the extent that Insurance Premiums relate to such Acceptable Blanket Policy. As of the date hereof, an Acceptable Blanket Policy is in effect with respect to the Policies required as of the Closing Date pursuant to Section 5.1.

Section 6.4 Seasonal Working Capital Reserve.

6.4.1 Deposit of Seasonal Working Capital Funds. Upon the Property achieving a Debt Yield of at least ten percent (10%), Borrower shall deposit with Agent, on each Monthly Payment Date, an amount equal to \$20,833, for the purpose of funding a seasonal working capital reserve account (the "*Seasonal Working Capital Reserve Account*") to provide some protection for required payments due under the Note and this Agreement during seasonal periods when the Rents may be reduced; provided, however, in no event shall Borrower be required to deposit any Seasonal Working Capital Reserve Funds with Lender that would result in the Seasonal Working Capital Reserve Funds being in excess of \$250,000 (the "*Seasonal Working Capital Reserve Cap*"). Amounts deposited pursuant to this Section 6.4.1 are referred to herein as the "*Seasonal Working Capital Reserve Funds*".

6.4.2 Release of Seasonal Working Capital Funds. Provided no Event of Default is continuing, if at any time there are insufficient funds in the Deposit Account to make any monthly payment referenced in clauses (i) - (x) of Section 6.8.1 hereof, Agent shall disburse Seasonal Working Capital Reserve Funds to the extent necessary to make such payments. On each Monthly Payment Date subsequent to any such disbursement by Agent, all Available Cash shall be deposited with Agent into the Seasonal Working Capital Reserve Account until such time that the aggregate amount that has been disbursed therefrom has been replenished; provided, that in no event shall the Seasonal Working Capital Reserve Funds exceed the Seasonal Working Capital Reserve Cap.

Section 6.5 FF&E Reserve Funds; Capital Expenditure Funds.

6.5.1 Deposits of FF&E Reserve Funds. On the originally scheduled Stated Maturity Date, if Borrower validly extend the Loan in accordance with Section 2.7.1 hereof, and every Monthly Payment Date thereafter, Borrower shall deposit with or on behalf of Agent an amount equal to the greatest of (i) four percent (4.0%) of the Rents for the Property for the prior month, (ii) the then-current amount required by the Management Agreement and (iii) the then-current amount required by the Franchise Agreement (if any) for the repair and replacement of the FF&E (such FF&E, collectively, the "***FF&E Work***") that may be incurred following the date hereof, which amounts shall be transferred into an Account established (the "***FF&E Reserve Account***"). Agent may from time to time, in its reasonable discretion, reassess its estimate of the required monthly amount necessary for the FF&E Work and, upon notice to Borrower, Borrower shall be required to deposit with or on behalf of Agent each month such reassessed amount, which shall be transferred into the FF&E Reserve Account. Amounts deposited from time to time into the FF&E Reserve Account pursuant to this Section 6.5.1 are referred to herein as the "***FF&E Reserve Funds***".

6.5.2 Release of FF&E Reserve Funds. Provided no Event of Default is continuing, Agent shall direct Servicer to disburse FF&E Reserve Funds to Borrower out of the FF&E Reserve Account, within ten (10) days after the delivery by Borrower to Agent of a request therefor (but not more often than once per month), in increments of at least \$10,000 (or a lesser amount if the total amount in the FF&E Reserve Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made) provided that: (i) such disbursement is for an Approved FF&E Expenditure; (ii) the request for disbursement is accompanied by (A) an Officer's Certificate from Borrower (1) stating that the items to be funded by the requested disbursement are Approved FF&E Expenditure, and a description thereof, (2) stating that all Approved FF&E Expenditure (or the relevant portions thereof) to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, (3) stating that the Approved FF&E Expenditure to be funded have not been the subject of a previous disbursement, (4) stating that all previous disbursements of FF&E Reserve Funds have been used to pay the previously identified Approved FF&E Expenditure, and (5) stating that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (B) a copy of any license, permit or other approval required by any Governmental Authority in connection with the Approved FF&E Expenditure and not previously delivered to Agent, (C) copies of appropriate lien waivers or other evidence of payment satisfactory to Agent, (D) if such disbursement request is for \$50,000 or more, at Agent's option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Agent, (E) such other evidence as Agent shall reasonably request to demonstrate that the Approved FF&E Expenditure to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower and (iii) if such disbursement request is for \$50,000 or more, Agent shall have (if it desires) verified (by an inspection conducted at Borrower's expense) performance of the work associated with such Approved FF&E Expenditure. Notwithstanding the foregoing, to the extent any mechanic's Liens arise after the Closing Date, if such Lien is not timely discharged by Borrower in accordance with the terms of this Agreement, Agent shall use funds on deposit in the FF&E Reserve Account to remove such Liens.

6.5.3 Deposits of Capital Expenditure Funds. Borrower shall deposit with or on behalf of Agent (i) **\$1,197,379.74** on the Closing Date on account of certain Approved Capital Expenditures incurred by Borrower in connection with the Room Upgrades, which amounts shall be transferred into an Account (the "**Capital Expenditure Account**"). Amounts deposited into the Capital Expenditure Account pursuant to this Section 6.5.3 are referred to herein as the "**Capital Expenditure Funds**".

6.5.4 Release of Capital Expenditure Funds. Provided no Event of Default is continuing, Agent shall direct Servicer to disburse Capital Expenditure Funds to Borrower out of the Capital Expenditure Account, within five (5) days after the delivery by Borrower to Agent of a request therefor (but not more often than once per month), in increments of at least \$10,000 (or a lesser amount if the total amount in the Capital Expenditure Account is less than \$10,000, in which case only one disbursement of the amount remaining in the account shall be made) provided that: (i) such disbursement is for a payment or reimbursement of an Approved Capital Expenditure; (ii) the request for disbursement is accompanied by (A) an Officer's Certificate from Borrower (1) stating that the items to be funded by the requested disbursement are Approved Capital Expenditures, and a description thereof, (2) stating that all Approved Capital Expenditures to be funded by the requested disbursement have been completed (or completed to the extent of the requested disbursement) in a good and workmanlike manner and in accordance with all applicable Legal Requirements, (3) stating that the Approved Capital Expenditures (or the relevant portions thereof) to be funded from the disbursement in question have not been the subject of a previous disbursement, (4) stating that all previous disbursements of Capital Expenditure Funds have been used to pay the previously identified Approved Capital Expenditures, and (5) stating that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (B) a copy of any license, permit or other approval required by any Governmental Authority in connection with the Approved Capital Expenditures and not previously delivered to Agent, (C) copies of appropriate lien waivers, conditional lien waivers, or other evidence of payment reasonably satisfactory to Agent, (D) at Agent's option, if such disbursement request is for \$50,000 or more, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Agent, and (E) such other evidence as Agent shall reasonably request to demonstrate that the Approved Capital Expenditures to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower (or the portion thereof as to which such request for disbursement has been submitted has been completed and is paid for (other than any retention amount which is not a part of such disbursement request) or will be paid upon such disbursement to Borrower) and (iii) if such disbursement request is for \$50,000 or more, Agent shall have (if it desires) verified (by an inspection conducted at Borrower's expense) performance of the work associated with such Approved Capital Expenditure. At Borrower's request, upon Agent's confirmation that the Punchlist Work has been completed in accordance with Section 4.34 hereof, any remaining funds on deposit in the Capital Reserve Account shall be disbursed on the next Monthly Payment Date pursuant to Section 6.8.1. Notwithstanding the foregoing, to the extent any mechanic's Liens arise after the Closing Date, if such Lien is not timely discharged by Borrower in accordance with the terms of this Agreement, Agent shall use funds on deposit in the Capital Expenditure Account to remove such Liens.

Section 6.6 Casualty and Condemnation Account. Borrower shall pay, or cause to be paid, to Agent all Insurance Proceeds or Awards due to any Casualty or Condemnation in accordance with the provisions of Sections 5.2 and 5.3, which amounts shall be transferred by Agent into an Account (the "*Casualty and Condemnation Account*"). Amounts deposited from time to time into the Casualty and Condemnation Account pursuant to this Section 6.6 are referred to herein as the "*Casualty and Condemnation Funds*". All Casualty and Condemnation Funds shall be held, disbursed and/or applied in accordance with the provisions of Section 5.4 hereof.

Section 6.7 Shortfall Reserve Funds.

6.7.1 Deposit of Shortfall Reserve Funds. (i) Borrower shall deposit with or on behalf of Agent on the Closing Date, an amount equal to **\$1,431,204.96**, on account of shortfalls in Rents available to make the monthly payments set forth in clauses (i) through (x) of Section 6.8.1 (insufficiencies for such payments being the "*Shortfalls*" and such monthly payments under Section 6.8.1 being the "*Required Monthly Payments*") that Agent estimates may occur during the Term. Such amount shall be transferred into an Account (the "*Shortfall Account*") and (ii) if a Trigger Period shall be continuing, all Available Cash shall be paid to Agent, which amounts shall be transferred by Agent into the Shortfall Account to be held by Agent as cash collateral for the Debt. The amounts deposited into the Shortfall Account pursuant to this Section 6.7.1 shall be referred to herein as the "*Shortfall Funds*". If at any time Agent determines, in its reasonable discretion, that the amount on deposit in the Shortfall Account is insufficient to pay projected Shortfalls for the remainder of the Term, Borrower shall, within five (5) Business Days after notice thereof from Agent or Servicer, deposit such additional amount (the "*Rebalancing Amount*") into the Shortfall Account, so that the amount therein shall be equal to the aggregate amount of projected Shortfalls of Required Monthly Payments for the remainder of the Term.

6.7.2 Release of Shortfall Reserve Funds.

(a) Provided no Event of Default exists, if as of any Monthly Payment Date the amount in the Deposit Account is insufficient to pay the Required Monthly Payments on such Monthly Payment Date, then Agent shall direct Servicer to add a portion of the Shortfall Funds in the amount of the Shortfall (to the extent of funds then on deposit in the Shortfall Account) to the Rents disbursed pursuant to Section 6.8.1. Provided that such funds are adequate to cover such Shortfall, no Event of Default shall be deemed to have occurred as a result of such Shortfall.

(b) Upon the termination of any Trigger Period, any Shortfall Funds on deposit in the Shortfall Account in excess of \$2,000,000 (if any), shall be disbursed on the next Monthly Payment Date pursuant to Section 6.8.1.

(c) Upon notice from Agent that the Property has achieved a Debt Yield of at least eight percent (8%) for two (2) consecutive calendar quarters, provided no Event of Default is then continuing, to the extent Shortfall Funds on deposit in the Shortfall Account exceed \$250,000, Agent shall disperse the amount of Shortfall Funds then on deposit in the Shortfall Account in excess of \$250,000 to Borrower and upon notice from Agent that the Property has achieved a Debt Yield of at least ten percent (10%) for two (2) consecutive calendar quarters,

provided no Event of Default is then continuing, Agent shall disburse any remaining Shortfall Funds then on deposit in the Shortfall Account.

(d) Notwithstanding the foregoing, Agent shall have the right, but not the obligation, at any time during the continuance of an Event of Default, in its sole and absolute discretion to apply any and all Shortfall Funds then on deposit in the Shortfall Account to the Debt or Obligations, in such order and in such manner as Agent shall elect in its sole and absolute discretion, including to make a prepayment of principal (together with the applicable Spread Maintenance Premium, if any, applicable thereto) or any other amounts due hereunder.

Section 6.8 Property Cash Flow Allocation.

6.8.1 Order of Priority of Funds in Deposit Account. On August 9, 2017 and on each Monthly Payment Date thereafter during the Term, except during the continuance of an Event of Default, all funds deposited into the Deposit Account during the immediately preceding Interest Period shall be applied on such Monthly Payment Date in the following order of priority:

(i) First, to the payment of all fees, costs and expenses due to Lender and/or Agent under the Loan Documents, including, without limitation, any Servicing Fees that are due and unpaid (which payment of Servicing Fees, at Agent's option, may be made directly to Servicer);

(ii) Second, to the Tax Account, to make the required payments of Tax Funds as required under Section 6.2;

(iii) Third, to the Insurance Account, to make any required payments of Insurance Funds as required under Section 6.3;

(iv) Fourth, during any Trigger Period or while a New Mezzanine Loan is outstanding, to Borrowers, funds in an amount equal to the Occupancy Taxes due for the calendar month in which such Monthly Payment Date occurs;

(v) Fifth, to Agent, funds sufficient to pay the interest due under the Loan on such Monthly Payment Date;

(vi) Sixth, during any Trigger Period or while a New Mezzanine Loan is outstanding, to Borrowers, funds in an amount equal to the Monthly Operating Expense Budgeted Amount (excluding any Monthly Operating Expense Budgeted Amount attributable to Occupancy Taxes);

(vii) Seventh, during any Trigger Period or while a New Mezzanine Loan is outstanding, to Borrowers, payments for Approved Extraordinary Operating Expenses, if any;

(viii) Eighth, to the FF&E Reserve Account, to make the required payments of FF&E Reserve Funds as required under Section 6.5;

(ix) Ninth, to the Seasonal Working Capital Reserve Account, to make the required payments of Seasonal Working Capital Reserve Funds as required under Section 6.4;

(x) Tenth, to Agent, of any other amounts then due and payable under the Loan Documents;

(xi) Eleventh, if a New Mezzanine Loan (or any portion thereof) is outstanding and a Trigger Period is continuing, to make payments in the amount of the monthly interest payment payable under the terms of the New Mezzanine Loan, to the lender under the New Mezzanine Loan; and

(xii) Lastly all amounts remaining after payment of the amounts set forth in clauses (i) through (xi) above (the “*Available Cash*”):

(A) during a Trigger Period, to the Shortfall Account to be held or disbursed in accordance with Section 6.7; or

(B) provided no Trigger Period is continuing, either (x) if a New Mezzanine Loan (or any portion thereof) is outstanding, to the lender under the New Mezzanine Loan, to be applied in accordance with the New Mezzanine Loan Documents, to pay any amount due to the lender under the New Mezzanine Loan, before any remainder is disbursed to the applicable New Mezzanine Loan Borrower or (y) otherwise to Borrower.

6.8.2 Failure to Make Payments. The failure of Borrower to make all of the payments required under clauses (i) through (x) of Section 6.8.1 in full on each Monthly Payment Date shall constitute an Event of Default under this Agreement; provided, however, if adequate funds are available in the Deposit Account for such payments, and Borrower is not otherwise in Default hereunder, the failure by the Deposit Bank to allocate such funds into the appropriate Accounts or Servicer to disburse funds in accordance with this Agreement shall not constitute an Event of Default.

6.8.3 Application After Event of Default. Notwithstanding anything to the contrary contained in this Article 6, upon the occurrence and during the continuance of an Event of Default, Agent, at its option, may apply any Gross Revenue then in the possession of Agent, Servicer or Deposit Bank (including any Reserve Funds on deposit in any Cash Management Account) to the payment of the Debt in such order, proportion and priority as Agent may determine in its sole and absolute discretion. Agent’s right to withdraw and apply any of the foregoing funds shall be in addition to all other rights and remedies provided to Agent under the Loan Documents.

Section 6.9 Security Interest in Reserve Funds. As security for payment of the Debt and the performance by Borrower of all other terms, conditions and provisions of the Loan Documents, Borrower hereby pledges and assigns to Agent and Lenders, and grants to Agent and Lenders a security interest in, all Borrower’s right, title and interest in and to all Gross Revenue and in and to all payments to or monies held in the Clearing Account, the Deposit Account and Accounts created pursuant to this Agreement (collectively, the “*Cash Management Accounts*”).

Borrower hereby grants to Agent and Lenders a continuing security interest in, and agrees to hold in trust for the benefit of Agent and Lenders, all Rents in its possession prior to the (i) payment of such Gross Revenue to Agent or (ii) deposit of such Gross Revenue into the Clearing Account. Borrower shall not, without obtaining the prior written consent of Agent, further pledge, assign or grant any security interest in any Cash Management Account, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC Financing Statements, except those naming Agent (on behalf of Lenders) as the secured party, to be filed with respect thereto. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default, Agent may apply any sums in any Cash Management Account in any order and in any manner as Agent shall elect in Agent's discretion without seeking the appointment of a receiver and without adversely affecting the rights of Agent to foreclose the Lien of the Mortgage or exercise its other rights under the Loan Documents. Cash Management Accounts shall not constitute trust funds and may be commingled with other monies held by Agent. All interest which accrues on the funds in any Account shall accrue for the benefit of Agent and shall be taxable to Borrower. Upon repayment in full of the Debt, all remaining funds in the Accounts, if any, shall be promptly disbursed to Borrower.

ARTICLE 7

PERMITTED TRANSFERS

Section 7.1 Permitted Transfers. Notwithstanding anything to the contrary contained in Section 4.2, the following Transfers (herein, the "*Permitted Transfers*") shall be permitted hereunder:

- (a) a Lease entered into in accordance with the Loan Documents and any Hotel Transactions;
- (b) a Permitted Encumbrance;
- (c) the transfer of publicly traded shares on a nationally or internationally recognized stock exchange in any indirect equity owner of Borrower;
- (d) provided no Event of Default shall then exist, a Transfer of any direct or indirect interest in Borrower related to or in connection with the estate planning of such transferor to (1) an immediate family member of such interest holder (or to partnerships or limited liability companies Controlled solely by one or more of such family members) or (2) a trust established for the benefit of such immediate family member, provided that:
 - (i) Borrower shall provide to Agent ten (10) Business Days prior written notice thereof;
 - (ii) such Transfer shall not otherwise result in a change of Control of Borrower to a Person other than Key Principals or change of the day to day management and operations of the Property;

(iii) Borrower shall continue to be a Special Purpose Bankruptcy Remote Entity;

(iv) if such Transfer would cause the transferee (other than Key Principals), together with its Affiliates, to increase its direct or indirect interest in Borrower to an amount which equals or exceeds ten percent (10%), such transferee shall be a Qualified Transferee;

(v) if such Transfer shall cause the transferee together with its Affiliates to acquire or to increase its direct or indirect interest in Borrower to an amount which equals or exceeds forty-nine percent (49%), to the extent that Agent determines that the pairings in the most recently delivered non-consolidation opinion with respect to the Loan no longer apply, Borrower shall deliver to Agent a non-consolidation opinion in form and substance reasonably satisfactory to Agent and satisfactory to the applicable Rating Agencies;

(e) a Transfer of any direct or indirect interest in Borrower that occurs by devise or bequest or by operation of law upon the death of a natural person that was the holder of such interest, provided that:

(i) Borrower shall give Agent notice of such Transfer together with copies of all instruments effecting such Transfer not less than thirty (30) days after the date of such Transfer;

(ii) Borrower shall continue to be a Special Purpose Bankruptcy Remote Entity;

(iii) the Property shall continue to be managed by a property manager acceptable to Agent in its sole discretion and acceptable to the applicable Rating Agencies;

(iv) if such Transfer would cause the transferee (other than the Key Principals), together with its Affiliates, to increase its direct or indirect interest in Borrower to an amount which equals or exceeds ten percent (10%), such transferee shall be a Qualified Transferee;

(v) if such Transfer results in a change of Control of Borrower to a Person other than (A) the Key Principals (directly or indirectly) or (B) the estate of any Key Principal (during the pendency of the settlement by the estate of such Key Principal and if such Transfer occurs as a result of the death of such Key Principal (the "**Key Principal Estate**")); (x) if such Transfer occurs prior to the occurrence of a Securitization, such Transfer is approved by Agent in writing within 30 days after any such Transfer, which approval shall not be unreasonably withheld or (y) from and after a Securitization, then Borrower shall deliver a Rating Agency Confirmation from each applicable Rating Agency within sixty (60) days after any such Transfer (or such longer time as may reasonably be necessary for Borrower to obtain the Rating Agency Confirmations, provided Borrower is diligently pursuing same); and

(vi) if such Transfer shall cause (x) a change of Control of Borrower or (y) the transferee together with its Affiliates to acquire or to increase its direct or indirect interest in Borrower to an amount which equals or exceeds forty-nine percent (49%), then, to the extent that Agent determines that the pairings in the most recently delivered non-consolidation opinion with respect to the Loan no longer apply, Borrower shall deliver to Agent a non-consolidation opinion in form and substance reasonably satisfactory to Agent and the applicable Rating Agencies within thirty (30) days of Agent's request for such non-consolidation opinion;

(f) provided that no Event of Default shall then exist, a Transfer of a direct or indirect interest in Borrower shall be permitted without Agent's consent provided that:

(i) such Transfer shall not (x) cause the transferee (other than the owners of the equity interests in Borrower as of the Closing Date (the "**Original Owners**")), together with its Affiliates, to increase its direct or indirect interest in Borrower to an amount which equals or exceeds forty-nine percent (49%) or (y) result in a change in Control of Borrower to a Person other than the Key Principals;

(ii) Borrower shall continue to be a Special Purpose Bankruptcy Remote Entity;

(iii) if such Transfer would cause the transferee (other than the Original Owners of Borrower), together with its Affiliates, to increase its direct or indirect interest in Borrower to an amount which equals or exceeds ten percent (10%), (x) such transferee is a Qualified Transferee and (y) Borrower shall provide to Agent ten (10) Business Days prior written notice thereof; and

(iv) after giving effect to such Transfer, (x) David Mitchell shall continue to control the day to day operations of Borrower and the Key Principals, collectively, shall continue to own at least fifteen percent (15%) of all equity interests (direct or indirect) in Borrower and (y) the Original Owners, in the aggregate, of Borrower shall continue to own at least fifty-one percent (51%) of all equity interests (direct or indirect) in Borrower; and

(v) the Property shall continue to be managed by a property manager acceptable to Agent in its sole discretion and acceptable to the applicable Rating Agencies.

For purposes of clause (d) above, "immediate family member" shall mean a sibling, family trust, parent, spouse, child (or step-child), grandchild or other lineal descendant of the interest holder.

Notwithstanding anything to the contrary contained in this Section 7.1, if, as a result of any Permitted Transfer, any Guarantor no longer Controls Borrower, it shall also be a condition hereunder that one or more Approved Replacement Guarantors shall execute and deliver a guaranty of recourse obligations (in the same form as the guaranty of recourse obligations delivered to Agent (on behalf of Lenders) by Guarantors on the Original Closing Date) and an environmental indemnity agreement (in the same form as the environmental indemnity agreement delivered to Agent (on behalf of Lenders) by Guarantors on the Original Closing

Date) on or prior to the date of such Permitted Transfer (or, in the case of a Permitted Transfer described in clause (e), within thirty (30) days after the date of such Permitted Transfer), pursuant to which, in each case, the Approved Replacement Guarantor(s) agree(s) to be liable under each such guaranty of recourse obligations and environmental indemnity agreement and completion guaranty from and after the date of such Permitted Transfer (whereupon the previous guarantor shall be released from any further liability under the guaranty of recourse obligations and environmental indemnity agreement from acts that arise from and after the date of such Permitted Transfer and such Approved Replacement Guarantor(s) shall be the "Guarantors" for all purposes set forth in this Agreement, provided however the previous guarantors shall have the burden of proof with respect to any events or acts that such guarantors allege to have occurred after the date of any such release in accordance with the terms hereof and the replacement guarantors shall have the burden of proof with respect to any events or acts that such replacement guarantors allege to have occurred prior to the date such guarantors became replacement guarantors hereunder). Notwithstanding the foregoing, with respect to the Completion Guaranty (i) in the event that (a) all Guaranteed Work (as defined in the Completion Guaranty) has been completed in accordance with the Loan Documents and (b) Agent has determined that there are no outstanding liabilities or obligations remaining under the Completion Guaranty (and Agent shall have the right to request such documentation from Borrower and/or Guarantors reasonably necessary to make such determination), no replacement guarantor shall be required with respect to the Completion Guaranty or (ii) if such Guaranteed Work has not been completed in accordance with the Loan Documents, Agent shall have the right to audit the progress of the Guaranteed Work in order to determine the going-forward obligations for the replacement guarantor.

Notwithstanding anything to the contrary contained in this Section 7.1, no Transfer shall be a Permitted Transfer unless such Transfer is made in compliance with the Tenant in Common Agreement, the Management Agreement and any Franchise Agreement (if a Franchise Agreement is then in effect).

Section 7.2 Cost and Expenses; Searches; Copies.

(a) Borrower shall pay all out-of-pocket costs and expenses actually incurred by Agent and Lenders in connection with any Transfer, whether or not such Transfer is deemed to be a Permitted Transfer, including, without limitation, all reasonable fees and expenses of Agent's and Lenders' counsel, whether internal or outside, and the cost of any required counsel opinions related to REMIC or other securitization or tax issues and any Rating Agency fees (if the Loan has been included in a Securitization).

(b) Borrower shall provide Agent with copies of all organizational documents (if any) relating to any Permitted Transfer.

(c) In connection with any Permitted Transfer, to the extent a transferee shall own ten percent (10%) or more of the direct or indirect ownership interests in Borrower immediately following such transfer (provided such transferee owned less than ten percent (10%) of the direct or indirect ownership interests in Borrower as of the Closing Date), Borrower shall deliver (and Borrower shall be responsible for any reasonable out of pocket costs and expenses in connection therewith), customary searches reasonably requested by Agent in writing

(including credit, judgment, lien, litigation, bankruptcy, criminal and watch list) reasonably acceptable to Agent with respect to such transferee.

ARTICLE 8

DEFAULTS

Section 8.1 Events of Default. Each of the following events shall constitute an event of default hereunder (an "*Event of Default*"):

(i) if (A) the Obligations are not paid in full on the Maturity Date, (B) any regularly scheduled monthly payment of interest, and, if applicable, principal due under the Note is not paid in full on the applicable Monthly Payment Date (subject to the provisions of Section 6.8.2), (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Spread Maintenance Premium is not paid when due, or (E) any deposit to the Reserve Funds is not made on the required deposit date therefor;

(ii) if any other amount payable pursuant to this Agreement, the Note or any other Loan Document (other than as set forth in the foregoing clause (i)) is not paid in full when due and payable in accordance with the provisions of the applicable Loan Document, with such failure continuing for ten (10) Business Days after Agent delivers written notice thereof to Borrower;

(iii) if any of the Taxes or Other Charges are not paid when due (provided that it shall not be an Event of Default if there are sufficient funds in the Tax Account to pay such amounts when due, no other Event of Default is then continuing and Agent or Servicer fails to make such payment in violation of this Agreement);

(iv) if the Policies are not (A) delivered to Agent within five (5) days of Agent's written request and (B) kept in full force and effect (provided that it shall not be an Event of Default if there are sufficient funds in the Insurance Account to pay such amounts when due, no other Event of Default is then continuing and Servicer fails to make such payment in violation of this Agreement, each in accordance with the terms and conditions hereof);

(v) a Transfer other than a Permitted Transfer occurs;

(vi) if any certification, representation or warranty made by Borrower or any Guarantor herein, in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Agent shall have been false or misleading in any material respect as of the date such representation or warranty was made;

(vii) if Borrower or either or both of the Guarantors shall make an assignment for the benefit of creditors;

(viii) if a receiver, liquidator or trustee shall be appointed for Borrower or either or both of the Guarantors or if Borrower or either or both of the Guarantors shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any Guarantor, or if any proceeding for the dissolution or liquidation of Borrower or either or both of the Guarantors shall be instituted, or if Borrower is substantively consolidated with any other Person; provided, however, if such appointment, adjudication, petition, proceeding or consolidation was involuntary and not consented to by Borrower or such Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days following its filing;

(ix) if Borrower assigns its rights under this Agreement, any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(x) if any of the assumptions contained in the Insolvency Opinion, or in any other non-consolidation opinion delivered to Agent in connection with the Loan or in any other non-consolidation opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xi) a breach of the covenants set forth in Sections 4.23 or 4.31 hereof;

(xii) a breach of the covenants set forth in Section 4.4 hereof, provided, however, that such breach shall not constitute an Event of Default if (A) such breach was inadvertent, immaterial and non-recurring, (B) if such breach is curable, Borrower shall promptly cure such breach within ten (10) Business Days after the earlier to occur of (x) Borrower's actual knowledge thereof and (y) notice from Agent and (C) if requested by Agent, within ten (10) days after such request, Borrower causes counsel to deliver a new non-consolidation opinion to the effect that the breach shall not in any material manner impair, negate or amend the opinions rendered in the Insolvency Opinion (or such other non-consolidation opinion most recently delivered to Lender), which opinion shall be acceptable to Lender in its reasonable discretion and, following a Securitization, acceptable to the Rating Agencies;

(xiii) if Borrower shall be in default beyond any notice and cure periods under any mortgage or security agreement covering any part of the Property whether it be superior, *pari passu* or junior in Lien to the Mortgage;

(xiv) subject to Borrower's right to contest set forth in Section 4.6 of this Agreement, if the Property becomes subject to any mechanic's, materialman's or other Lien except a Permitted Encumbrance or a Lien for Taxes not then due and payable;

(xv) the alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Agent, other than in accordance with this

Agreement and the Leases at the Property entered into in accordance with the Loan Documents;

(xvi) if, without Agent's prior written consent, (i) the Management Agreement is terminated, (ii) the ownership, management or control of Manager is transferred, (iii) there is a material change in the Management Agreement, or (iv) if there shall be a material default by Borrower under the Management Agreement beyond any applicable notice or grace period;

(xvii) if Borrower or any Person owning a direct or indirect ownership interest in Borrower shall be convicted of a Patriot Act Offense by a court of competent jurisdiction;

(xviii) a breach of any representation, warranty or covenant contained Section 3.1.18 hereof;

(xix) if Borrower breaches any covenant contained in Section 4.9 hereof and such breach is not cured by Borrower within ten (10) Business Days following receipt of notice from Agent;

(xx) if without Agent's prior consent, Borrower enter into a Franchise Agreement or there is any material change in any Franchise Agreement;

(xxi) if a default has occurred and continues beyond any applicable cure period under any Franchise Agreement if such default permits the Franchisor to terminate or cancel such Franchise Agreement;

(xxii) if there shall be a default under any of the other Loan Documents beyond any applicable cure periods contained in such Loan Documents, whether as to Borrower, any Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Obligations or to permit Agent to accelerate the maturity of all or any portion of the Obligations;

(xxiii) if Borrower fails to obtain or maintain an Interest Rate Cap Agreement or replacement thereof in accordance with Section 2.6 and/or Section 2.7 hereof; or

(xxiv) any Guarantor breaches any of the Guarantor Financial Covenants;
or

(xxv) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or any other Loan Document not specified in subsections (i) to (xx) above, and such Default shall continue for ten (10) days after notice to Borrower from Agent (or such shorter time as specified in this Agreement or any other Loan Documents), in the case of any such Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice to Borrower from Agent (or such shorter time as specified in this Agreement or any other Loan

Documents) in the case of any other such Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such 30-day period, and provided further that Borrower shall have commenced to cure such Default within such 30-day period shall and thereafter diligently and expeditiously proceed to cure the same, such 30-day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

Borrower hereby agrees that with respect to any action taken by Borrower that constitutes a default or an Event of Default hereunder or under the other Loan Documents, it shall also be a default or Event of Default, as applicable, if Operating Lessee takes such action even if such action by Operating Lessee is not expressly stated to constitute a default or Event of Default hereunder, under the other Loan Documents.

Section 8.2 Remedies.

8.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vii), (viii) or (ix) of Section 8.1 above) and at any time during the continuance thereof, Agent may, in addition to any other rights or remedies available to Agent and Lenders pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action, without notice or demand (and Borrower hereby expressly waives any such notice or demand), that Agent deems advisable to protect and enforce its and Lenders' rights against any or all Borrower and in and to the Property, including declaring the Debt to be immediately due and payable, and Agent may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vii), (viii) or (ix) of Section 8.1 above, the Debt shall immediately and automatically become due and payable in full, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

8.2.2 Remedies Cumulative. During the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Agent and Lenders against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Agent at any time and from time to time, whether or not all or any of the Obligations shall be declared due and payable, and whether or not Agent shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. The rights, powers and remedies of Agent under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Agent and Lenders may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Agent's and Lenders' rights, powers and remedies may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Agent may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Agent and Lenders permitted by law or contract or as set forth herein or in the other Loan Documents or by equity. Without limiting the generality of the foregoing, if an Event of Default is continuing (i) to the extent

permitted by applicable law, Agent shall not be subject to any “one action” or “election of remedies” law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent and Lenders shall remain in full force and effect until Agent (on behalf of the Lenders) has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Obligations or the Obligations have been paid in full. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

8.2.3 Severance.

(a) During the continuance of an Event of Default, Agent shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Agent in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Agent may foreclose the Mortgage to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire Outstanding Principal Balance, Agent may foreclose the Mortgage to recover so much of the principal balance of the Loan as Agent may accelerate and such other sums secured by the Mortgage as Agent may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of the sums secured by the Mortgage and not previously recovered.

(b) During the continuance of an Event of Default, Agent shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents in such denominations as Agent shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Agent from time to time, promptly after the request of Agent, a severance agreement and such other documents as Agent shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Agent. Borrower hereby absolutely and irrevocably appoints Agent as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Agent shall not make or execute any such documents under such power until five (5) days after notice has been given to Borrower by Agent of Agent’s intent to exercise its rights under such power (and only provided that Borrower has not executed the same within such five (5) day period).

(c) During the continuance of an Event of Default, any amounts recovered from the Property or any other collateral for the Loan after an Event of Default may be applied by Agent toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents, in such order, priority and proportions as Agent in its sole discretion shall determine.

8.2.4 Agent's Right to Perform. If Borrower fails to perform any covenant or obligation contained herein and such failure shall continue for a period of five (5) Business Days after Borrower's receipt of written notice thereof from Agent, without in any way limiting Agent's right to exercise any of its rights, powers or remedies as provided hereunder, or under any of the other Loan Documents, Agent may, but shall have no obligation to, perform, or cause the performance of, such covenant or obligation, and all costs, expenses, liabilities, penalties and fines of Agent incurred or paid in connection therewith shall be payable by Borrower to Agent upon demand and if not paid shall be added to the Debt (and to the extent permitted under applicable laws, secured by the Mortgage and the other Loan Documents) and shall bear interest thereafter at the Default Rate. Notwithstanding the foregoing, Agent shall have no obligation to send notice to Borrower of any such failure.

ARTICLE 9

SALE AND SECURITIZATION OF MORTGAGE

Section 9.1 Sale of Mortgage and Securitization. Subject to Section 9.4 hereof:

(a) Agent and Lenders shall have the right (i) to sell or otherwise transfer the Loan or any portion thereof as a whole loan, (ii) to sell participation interests in the Loan, or (iii) to securitize the Loan or any portion thereof in a single asset securitization or one or more pooled loan securitizations. (The transactions referred to in clauses (i), (ii) and (iii) are each hereinafter referred to as a "**Secondary Market Transaction**" and the transactions referred to in clause (iii) shall hereinafter be referred to as a "**Securitization**". Any certificates, notes or other securities issued in connection with a Secondary Market Transaction are hereinafter referred to as "**Securities**"). At Agent's election, each note and/or component comprising the Loan may be subject to one or more Secondary Market Transactions.

(b) If requested by Agent, Borrower shall assist Agent in satisfying the market standards to which Agent customarily adheres or which may be required in the marketplace, by prospective investors, the Rating Agencies, applicable Legal Requirements and/or otherwise in the marketplace in connection with any Secondary Market Transactions, including to:

(i) (A) provide updated financial and other information with respect to the Property, the business operated at the Property, Borrower and the Manager, including, without limitation, the information set forth on Exhibit B attached hereto, (B) provide updated budgets and rent rolls (including itemized percentage of floor area occupied and percentage of aggregate base rent for each Tenant) relating to the Property, and (C) provide updated appraisals, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), property condition reports and other due diligence investigations of the Property (the "**Updated Information**"), together, if customary, with appropriate verification of the Updated Information through letters of auditors or opinions of counsel acceptable to Agent and the Rating Agencies;

(ii) provide opinions of counsel, which may be relied upon by Agent, trustee in any Securitization, underwriters, NRSROs and their respective counsel, agents and representatives, as to non-consolidation, fraudulent conveyance and true sale or any

other opinion customary in Secondary Market Transactions or required by the Rating Agencies with respect to the Property, the Loan Documents and Borrower and its Affiliates, which counsel and opinions shall be satisfactory to Agent and the Rating Agencies;

(iii) provide updated, as of the closing date of any Secondary Market Transaction, representations and warranties made in the Loan Documents and such additional representations and warranties as the Rating Agencies may require; and

(iv) (A) review any Disclosure Document or any interim draft thereof furnished by Agent to Borrower with respect to information contained therein that was furnished to Agent by or on behalf of Borrower in connection with the preparation of such Disclosure Document or in connection with the underwriting or closing of the Loan, including financial statements of Borrower and Guarantors, operating statements and rent rolls with respect to the Property, and (B) within three (3) Business Days following Borrower's receipt thereof, provide to Agent in writing any revisions to such Disclosure Document or interim draft thereof necessary or advisable to insure that such reviewed information does not contain any untrue statement of a material fact or omit to state any material fact necessary to make statements contained therein not misleading.

(c) If, at the time a Disclosure Document is being prepared for a Securitization, Agent expects that Borrower alone or Borrower and one or more Affiliates of Borrower (including any guarantor or other Person that is directly or indirectly committed by contract or otherwise to make payments on all or a part of the Loan) collectively, or the Property alone or the Property and Related Properties collectively, will be a Significant Obligor, Borrower shall furnish to Agent upon request the following financial information:

(i) if Agent expects that the principal amount of the Loan together with any Related Loans, as of the cut-off date for such Securitization, may equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included in the Securitization, net operating income for the Property and the Related Properties for the most recent Fiscal Year and interim period as required under Item 1112(b)(1) of Regulation AB (or, if the Loan is not treated as a non-recourse loan under Instruction 3 for Item 1101(k) of Regulation AB, selected financial data meeting the requirements and covering the time periods specified in Item 301 of Regulation S-K and Item 1112(b)(1) of Regulation AB), or

(ii) if Agent expects that the principal amount of the Loan together with any Related Loans, as of the cut-off date for such Securitization, may equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included in the Securitization, the financial statements required under Item 1112(b)(2) of Regulation AB (which includes, but may not be limited to, a balance sheet with respect to the entity that Agent determines to be a Significant Obligor for the two most recent Fiscal Years and applicable interim periods, meeting the requirements of Rule 3-01 of Regulation S-X, and statements of income and statements of cash flows with respect to the Property for the three most recent Fiscal

Years and applicable interim periods, meeting the requirements of Rule 3-02 of Regulation S-X (or if Agent determines that the Property is the Significant Obligor and the Property (other than properties that are hotels, nursing homes, or other properties that would be deemed to constitute a business and not real estate under Regulation S-X or other legal requirements) was acquired from an unaffiliated third party and the other conditions set forth in Rule 3-14 of Regulation S-X have been met, the financial statements required by Rule 3-14 of Regulation S-X)).

(d) Further, if requested by Agent, Borrower shall, promptly upon Agent's request, furnish to Agent financial data or financial statements meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Agent, for any Tenant of the Property if, in connection with a Securitization, Agent expects there to be, as of the cutoff date for such Securitization, a concentration with respect to such Tenant or group of Affiliated Tenants within all of the mortgage loans included or expected to be included in the Securitization such that such Tenant or group of Affiliated Tenants would constitute a Significant Obligor. Borrower shall furnish to Agent, in connection with the preparation of the Disclosure Documents and on an ongoing basis, financial data and/or financial statements with respect to such Tenants meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Agent, but only for so long as such entity or entities are a Significant Obligor and either (x) filings pursuant to the Exchange Act in connection with or relating to the Securitization (an "**Exchange Act Filing**") are required to be made under applicable Legal Requirements or (y) comparable information is required to otherwise be "available" to holders of the Securities under Regulation AB or applicable Legal Requirements.

(e) If Agent determines that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Property alone or the Property and Related Properties collectively, are a Significant Obligor, then Borrower shall furnish to Agent, on an ongoing basis, selected financial data or financial statements meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Agent, but only for so long as such entity or entities are a Significant Obligor and either (x) Exchange Act Filings are required to be made under applicable Legal Requirements or (y) comparable information is required to otherwise be "available" to holders of the Securities under Regulation AB or applicable Legal Requirements.

(f) Any financial data or financial statements provided pursuant to this Section 9.1 shall be furnished to Agent within the following time periods:

(i) with respect to information requested in connection with the preparation of Disclosure Documents for a Securitization, within ten (10) Business Days after notice from Agent; and

(ii) with respect to ongoing information required under Section 9.1(d) and (e) above, (1) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (2) not later than seventy-five (75) days after the end of each Fiscal Year of Borrower.

(g) If requested by Agent, Borrower shall provide Agent, promptly, and in any event within three (3) Business Days following Agent's request therefor, with any other or

additional financial statements, or financial, statistical or operating information, as Agent shall reasonably determine to be required pursuant to Regulation S-K or Regulation S-X, as applicable, Regulation AB, or any amendment, modification or replacement thereto or other Legal Requirements relating to a Securitization or as shall otherwise be reasonably requested by the Agent.

(h) If requested by Agent, whether in connection with a Securitization or at any time thereafter during which the Loan and any Related Loans are included in a Securitization, Borrower shall provide Agent, promptly upon request, a list of Tenants (including all affiliates of such Tenants) that in the aggregate (1) occupy 10% or more (but less than 20%) of the total floor area of the improvements or represent 10% or more (but less than 20%) of aggregate base rent, and (2) occupy 20% or more of the total floor area of the improvements or represent 20% or more of aggregate base.

(i) All financial statements provided by Borrower pursuant to this Section 9.1(c), (d), (e) or (f) shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB, and other applicable Legal Requirements. All financial statements relating to a Fiscal Year shall be audited by Independent Accountants in accordance with generally accepted auditing standards, Regulation S-X or Regulation S-K, as applicable, Regulation AB, and all other applicable Legal Requirements, shall be accompanied by the manually executed report of the Independent Accountants thereon, which report shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB, and all other applicable Legal Requirements, and shall be further accompanied by a manually executed written consent of the Independent Accountants, in form and substance acceptable to Agent, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such Independent Accountants and the reference to such Independent Accountants as “experts” in any Disclosure Document and Exchange Act Filing (or comparable information is required to otherwise be available to holders of the Securities under Regulation AB or applicable Legal Requirements), all of which shall be provided at the same time as the related financial statements are required to be provided. All other financial statements shall be certified by the chief financial officer of Borrower, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this paragraph.

(j) In connection with any Secondary Market Transaction, Agent shall have the right, and Borrower hereby authorizes Agent, to disclose any and all information in Agent’s possession regarding Borrower, Guarantors, any Manager, the Property and/or the Loan in any Disclosure Document, in any promotional or marketing materials that are prepared by or on behalf of Agent in connection with such Secondary Market Transaction or in connection with any oral or written presentation made by or on behalf of Agent, including without limitation, to any actual or potential investors and any Rating Agencies and other NRSROs.

Section 9.2 Securitization Indemnification.

(a) Borrower understands that information provided to Agent by Borrower and its agents, counsel and representatives may be included in preliminary and final disclosure documents in connection with any Secondary Market Transaction, including a Securitization,

including an offering circular, a prospectus, prospectus supplement, private placement memorandum or other offering document (each, a “**Disclosure Document**”) and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), or the Securities and Exchange Act of 1934, as amended (the “**Exchange Act**”), and may be made available to investors or prospective investors in the Securities, investment banking firms, NRSROs, accounting firms, law firms and other third-party advisory and service providers relating to any Secondary Market Transaction, including a Securitization. Borrower also understands that the findings and conclusions of any third-party due diligence report obtained by the Agent, the Issuer or the Securitization placement agent or underwriter may be made publicly available if required, and in the manner prescribed, by Section 15E(s)(4)(A) of the Exchange Act and any rules promulgated thereunder.

(b) Borrower hereby agrees to indemnify Agent (and for purposes of this Section 9.2, Agent shall include the initial agent, initial lenders, its successors and assigns, and their respective officers and directors) and each Person who controls the Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Lender Group**”), the issuer of the Securities (the “**Issuer**” and for purposes of this Section 9.2, Issuer shall include its officers, director and each Person who controls the Issuer within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act), and any placement agent or underwriter with respect to the Securitization, each of their respective officers and directors and each Person who controls the placement agent or underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “**Underwriter Group**”) for any losses, claims, damages or liabilities (collectively, the “**Liabilities**”) to which Agent, Lenders, the Lender Group, the Issuer or the Underwriter Group may become subject insofar as the Liabilities arise out of, or are based upon, (A) any untrue statement or alleged untrue statement of any material fact contained in the information provided to Agent by Borrower and its agents, counsel and representatives, (B) the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, in light of the circumstances under which they were made, not misleading, or (C) a breach of the representations and warranties made by Borrower in Section 3.1.31 of this Agreement (Full and Accurate Disclosure). Borrower also agrees to reimburse Agent, Lenders, the Lender Group, the Issuer and/or the Underwriter Group for any legal or other expenses reasonably incurred by Agent, Lenders, the Lender Group, the Issuer and/or the Underwriter Group in connection with investigating or defending the Liabilities. Borrower’s liability under this paragraph will be limited to Liability that arises out of, or is based upon, an untrue statement or omission made in reliance upon, and in conformity with, information furnished to Agent by or on behalf of Borrower in connection with the preparation of the Disclosure Document or in connection with the underwriting or closing of the Loan, including financial statements of Borrower, operating statements and rent rolls with respect to the Property. This indemnification provision will be in addition to any liability which Borrower may otherwise have. Borrower acknowledges and agrees that any Person that is included in the Lender Group, the Issuer and/or the Underwriter Group that is not a direct party to this Agreement shall be deemed to be a third-party beneficiary to this Agreement with respect to this Section 9.2(b). Within five (5) Business Days after Agent’s written request, Borrower and Guarantors shall execute and deliver to Agent a separate indemnification and reimbursement agreement in favor of the Lender Group, the Issuer and the Underwriter Group in form and

substance consistent with the indemnification and reimbursement obligations of Borrower under this Section 9.2(b).

(c) In connection with any Exchange Act Filing or other reports containing comparable information that is required to be made "available" to holders of the Securities under Regulation AB or applicable Legal Requirements, Borrower agrees to (i) indemnify Agent, Lenders, the Lender Group, the Issuer and the Underwriter Group for Liabilities to which Agent, Lenders, the Lender Group, the Issuer and/or the Underwriter Group may become subject insofar as the Liabilities arise out of, or are based upon, an alleged untrue statement or alleged omission or an untrue statement or omission made in reliance upon, and in conformity with, information furnished to Agent by or on behalf of Borrower in connection with the preparation of the Disclosure Document or in connection with the underwriting or closing of the Loan, including financial statements of Borrower, operating statements and rent rolls with respect to the Property, and (ii) reimburse Agent, Lenders, the Lender Group, the Issuer and/or the Underwriter Group for any legal or other expenses reasonably incurred by Agent, Lenders, the Lender Group, the Issuer and/or the Underwriter Group in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an indemnified party under this Section 9.2 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 9.2, notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party pursuant to the immediately preceding sentence of this Section 9.2(d), such indemnifying party shall not pay for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party at the cost of the indemnifying party. The indemnifying party shall not be liable for the expenses of more than one separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to any other indemnified party. Without the prior written consent of Agent (which consent shall not be unreasonably withheld or delayed), no indemnifying party shall settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any indemnified party is an actual or potential party to such claim, action, suit or

proceeding) unless the indemnifying party shall have given Agent reasonable prior written notice thereof and shall have obtained an unconditional release of each indemnified party hereunder from all liability arising out of such claim, action, suit or proceedings, and such settlement requires no statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of the Indemnified Party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.2(b) or (c) is for any reason held to be unenforceable as to an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.2(b) or (c), the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the Issuer's and Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. Agent and Borrower hereby agrees that it would not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

(f) The liabilities and obligations of Borrower and Agent under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

Section 9.3 Severance. Subject to Section 9.4 hereof:

9.3.1 Severance Documentation. Agent, without in any way limiting Agent's other rights hereunder, in its sole and absolute discretion, shall have the right, at any time (whether prior to or after any sale, participation or Securitization of all or any portion of the Loan), to require Borrower (at no material cost to Borrower) to execute and deliver "component" notes and/or modify the Loan in order to create one or more senior and subordinate notes (i.e., an A/B or A/B/C structure) and/or one or more additional components of the Note(s) (including the implementation of one or more New Mezzanine Loans (in accordance with Section 9.3.2 below)), reduce the number of components of the Note(s), revise the interest rate for each component, reallocate the principal balances of the Note(s) and/or the components, increase or decrease the monthly debt service payments for each component or eliminate the component structure and/or the multiple note structure of the Loan (including the elimination of the related allocations of principal and interest payments), provided however, in each such instance, (A) the Outstanding Principal Balance of all components immediately after the effective date of such modification equals the Outstanding Principal Balance immediately prior to such modification, (B) the weighted average of the interest rates for all components immediately after the effective date of such modification equals the interest rate of the original Note immediately prior to such modification and (C) the components immediately after the effective date of such modification shall be structured such that the regularly scheduled aggregate debt service shall not increase, and such that permitted prepayments (other than casualty or condemnation proceeds

prepayments) shall not, provided no Event of Default is continuing, result in any “rate creep”. Agent shall have the right to modify the Note(s) and any components in accordance with this Section 9.1.1 and, provided that such modification shall comply with the terms of this Section 9.1.1, it shall become immediately effective.

9.3.2 New Mezzanine Loan Option. Agent, without in any way limiting Agent’s other rights hereunder, in its sole and absolute discretion, shall have the right, at any time (whether prior to or after any Secondary Market Transaction), to create one or more mezzanine loans (each, a “***New Mezzanine Loan***”), to establish different interest rates and to reallocate the Outstanding Principal Balance and monthly interest payments for the Loan to the Loan and such New Mezzanine Loan(s) and to require the payment of the Loan and any New Mezzanine Loan(s) in such order of priority as may be designated by Agent; *provided*, that (A) the Outstanding Principal Balance of the Loan and such New Mezzanine Loan(s) immediately after the effective date of the creation of such New Mezzanine Loan(s) equals the Outstanding Principal Balance immediately prior to such modification, (B) the weighted average of the interest rates for the Loan and such New Mezzanine Loan(s) immediately after the effective date of the creation of such New Mezzanine Loan(s) equals the interest rate of the original Note immediately prior to such modification, (C) the Loan and such New Mezzanine Loan(s) shall be structured such that the regularly scheduled aggregate debt service shall not increase, and such that permitted prepayments (other than casualty or condemnation proceeds prepayments) shall not, provided no Event of Default is continuing, result in any “rate creep” and (D) the New Mezzanine Loan(s) shall not have the effect of increasing Borrower’s or Guarantor’s obligations (except to a de minimus extent) or decreasing Borrower’s or Guarantor’s rights (except to a de minimus extent) under this Agreement, the other Loan Documents. Borrower shall cause the formation of one or more special purpose, bankruptcy remote entities as required by Agent in order to serve as the borrower under any New Mezzanine Loan (each, a “***New Mezzanine Loan Borrower***”) and the applicable organizational documents of Borrower shall be amended and modified as necessary or required in the formation of any New Mezzanine Loan Borrower.

9.3.3 Cooperation; Execution; Delivery. Borrower shall reasonably cooperate with all reasonable requests of Agent in connection with this Section 9.3. If requested by Agent, Borrower shall promptly execute and deliver such documents as shall be required by Agent (and any Rating Agency, if the Loan has been included in a Securitization) in connection with any modification or New Mezzanine Loan pursuant to this Section 9.1.3, all in form and substance satisfactory to Agent and satisfactory to any applicable Rating Agency, including, the severance of security documents if requested and/or, in connection with the creation of any New Mezzanine Loan: (i) execution and delivery of a promissory note and loan documents necessary to evidence such New Mezzanine Loan, (ii) execution and delivery of such amendments to the Loan Documents as are necessary in connection with the creation of such New Mezzanine Loan, (iii) delivery of opinions of legal counsel with respect to due execution, authority and enforceability of any modification documents or documents evidencing or securing any New Mezzanine Loan, as applicable and (iv) with respect to any New Mezzanine Loan, delivery of an additional Insolvency Opinion for the Loan and a substantive non-consolidation opinion; each as reasonably acceptable to Agent and/or prospective investors and/or the Rating Agencies. In the event Borrower fails to execute and deliver such documents to Agent within five (5) Business Days following such request by Agent, Borrower hereby absolutely and irrevocably appoints Agent as its true and lawful attorney, coupled with an interest, in its name and stead to make and

execute all documents necessary or desirable to effect such transactions, Borrower hereby ratifying all that such attorney shall do by virtue thereof. It shall be an Event of Default under this Agreement, the Note, the Mortgage and the other Loan Documents if Borrower fails to comply with any of the terms, covenants or conditions of this Section 9.3 after expiration of ten (10) Business Days after notice thereof.

Section 9.4 Costs and Expenses. Notwithstanding anything to the contrary contained in this Article 9, Borrower shall not be required to pay for costs or expenses in excess of \$30,000 actually incurred by Borrower in the performance of Borrower's obligations under Sections 9.1(a) or (b) or Section 9.3 above (and shall not be responsible for any costs or expenses incurred by Agent or Lenders in connection with Section 9.1(a) or (b) or Section 9.3 above).

ARTICLE 10

MISCELLANEOUS

Section 10.1 Exculpation. Subject to the qualifications below, neither Agent nor any Lender shall enforce the liability and obligation of Borrower to perform and observe the Obligations contained in the Note, this Agreement, the Mortgage or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Agent may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Agent to enforce and realize upon its interest under the Note, this Agreement, the Mortgage, the other Loan Documents or in the Property, the Gross Revenues or any other collateral given to Agent pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Gross Revenues and in any other collateral given to Agent (on behalf of Lenders), and Agent (on behalf of Lenders), by accepting the Note, this Agreement, the Mortgage and the other Loan Documents shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents. The provisions of this Section 10.1 shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Agent to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) affect the validity or enforceability of any of the Loan Documents or any guaranty made in connection with the Loan or any of the rights and remedies of Agent and Lenders thereunder; (d) impair the right of Agent to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment of Leases; (f) impair the enforcement of the Environmental Indemnity; (g) constitute a prohibition against Agent to seek a deficiency judgment against Borrower (but not against any Guarantor except in respect of its obligations under the Guaranty, the Completion Guaranty and/or the Environmental Indemnity) in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding in order for Agent to exercise its remedies against the Property; or (h) constitute a waiver of the right of Agent to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Agent and/or Lenders (including reasonable attorneys' fees and costs reasonably incurred) arising out of or in

connection with the following (all such liability and obligation of Borrower for any or all of the following being referred to herein as “*Borrower’s Recourse Liabilities*”):

(i) fraud, willful misconduct, intentional misrepresentation or intentional failure to disclose a material fact by or on behalf of Borrower, any Guarantor, any Affiliate of Borrower or any Guarantor, or any of their respective agents or representatives in connection with the Loan, including by reason of any claim under the Racketeer Influenced and Corrupt Organizations Act (RICO);

(ii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or any other Loan Document concerning environmental laws, hazardous substances and/or asbestos and any indemnification of Agent with respect thereto in either document;

(iii) wrongful removal or destruction of any portion of the Property or damage to the Property caused by willful misconduct or gross negligence;

(iv) any intentional physical waste of the Property;

(v) the forfeiture by Borrower of the Property, or any portion thereof, because of the conduct or purported conduct of criminal activity by Borrower or any Guarantor or any of their respective agents or representatives in connection therewith;

(vi) the conversion or misapplication by or on behalf of Borrower of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards or other amounts received in connection with the Condemnation of all or a portion of the Property, or (C) any Gross Revenues (including Rents, Insurance Proceeds, security deposits, advance deposits or any other deposits) or (D) any other funds due under the Loan Documents, including, in connection with any of the foregoing, by reason of failure to comply with Section 6.1 hereof or breach of the Clearing Account Agreement or the Cash Management Agreement;

(vii) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property;

(viii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Agent in accordance with the provisions of the Loan Documents;

(ix) the failure to pay (x) transfer taxes or (y) Taxes unless (A) funds to pay such Taxes were, at the time in question, available in the Tax Account and Lender failed to pay (or make such Tax Funds available to pay) such Taxes or (B) Rents received during the tax period in question are insufficient to pay all of Borrower’s current and/or past due liabilities (including such Taxes) with respect to the Property;

(x) failure to obtain and maintain the fully paid for Policies in accordance with Section 5.1.1 hereof unless (A) funds to pay such Insurance Premiums were, at the time in question, available in the Insurance Account and Lender failed to pay

(or make such Insurance Funds available to pay) such Insurance Premiums or (B) Rents received during the period in question are insufficient to pay all of Borrower's current and/or past due liabilities (including such Insurance Premiums) with respect to the Property;

(xi) if (A) any Franchise Agreement (or the right to operate the Property thereunder) shall expire or be cancelled, surrendered or terminated by Borrower or any Affiliate of Borrower and is not promptly replaced by a new Franchise Agreement in accordance with this Agreement, (B) Borrower amends or modifies the Franchise Agreement without the prior written consent of Agent or (C) any defaults occur under the Franchise Agreement;

(xii) by reason of any actions, suits, claims, proceedings or litigations made by or any conduct of Lot 27 Owner (as such entity is defined in the ZLDA), or any current or future owner of the Lot 27 (as such premises is described in the ZLDA) with respect to the use (or attempted use) or transfer (or attempted transfer) of any of the Floor Area Development Rights (as such term is defined in the ZLDA) allocated to the Property pursuant to the ZLDA (as such Floor Area Development Rights are set forth in Exhibit D attached to the Clarification Agreement); provided, however, the rights of Agent and Lenders under this clause (xii) shall termination on the date Borrower delivers to Agent an executed estoppel certificate, in a form reasonably approved by Agent, from Lot 27 Owner (or its successors in interest), certifying that the Original Floor Area Schedule (as such term is defined in the ZLDA) set forth on Exhibit D to the Clarification Agreement was the "Exhibit E" referenced in the ZLDA, and said Original Floor Area Schedule was intended to be attached as "Exhibit E" to the ZLDA (Borrower's liability with respect to this clause (xii) shall be referred to herein as the "**ZLDA Recourse Liability**");

(xiii) a breach of the covenants set forth in Section 4.4 hereof (other than a breach of the covenants set forth in clauses (f) or (j) of Schedule V) that does not result in the substantive consolidation of the assets and liabilities of Borrower with any other Person as a result of such breach;

(xiv) a breach of the obligations of Guarantors under the Completion Guaranty; and/or

(xv) any out-of-pocket cost or expense incurred by Agent or any Lender in connection with the enforcement of its rights and remedies hereunder or under any other Loan Document, but only to the extent Agent or such Lender prevails in any such enforcement action.

Notwithstanding anything to the contrary in this Agreement or any of the other Loan Documents, (A) neither Agent nor any Lender shall be deemed to have waived any right which Agent may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Obligations or to require that all collateral shall continue to secure all of the Obligations owing to Agent and Lenders in accordance with the Loan Documents and (B) the Debt shall be fully recourse to Borrower in the event that any of the following occur (each, a "**Springing Recourse Event**"):

(i) a breach of the covenants set forth in Section 4.4 hereof (other than a breach of the covenants set forth in clauses (f) or (j) of Schedule V) that is cited as a factor (and not merely mentioned in the court's decision) in the substantive consolidation of the assets and liabilities of Borrower with any other Person (other than (x) a substantive consolidation that occurs following a written pleading by Agent or a Lender requesting a substantive consolidation in connection with an insolvency proceeding or (y) a substantive consolidation of Borrower with Pledgor where the grant of the pledge to Lender pursuant to the Pledge and Security Agreement was cited as a factor in such substantive consolidation);

(ii) other than Permitted Encumbrances, Borrower fails to obtain Agent's prior consent to any subordinate financing secured by the Property or other voluntary Lien encumbering the Property;

(iii) Borrower fails to obtain Agent's prior consent to any Transfer of the Property or any interest therein or any Transfer of any direct or indirect interest in Borrower, in either case as required by the Mortgage or this Agreement other than a Permitted Transfer;

(iv) Borrower or any Guarantor files a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(v) the filing of an involuntary petition against Borrower or any Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law by any other Person or any Borrower Related Party in which Borrower colludes with or otherwise assists such Person or Borrower Related Party, and/or Borrower solicits or causes to be solicited petitioning creditors for any involuntary petition against any Borrower by any Person;

(vi) Borrower files an answer consenting to, or otherwise acquiescing in, or joining in, any involuntary petition filed against it by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(vii) any Borrower Related Party, officer, director or representative which Controls such Borrower Related Party consents to, or acquiesces in, or joins in, an application for the appointment of a custodian, receiver, trustee or examiner for such Borrower Related Party or any portion of the Property;

(viii) Borrower, any Guarantor or any Person that Controls Borrower or any Guarantor makes an assignment for the benefit of creditors or admits, in writing (other than in any correspondence with Agent or Lenders with respect to the Loans) or in any legal proceeding, its insolvency or inability to pay its debts generally as they become due;

(ix) if Borrower "opts-out" of Article 8 of the UCC; or

(x) if any Borrower Related Party, in connection with any enforcement action or exercise or assertion of any right or remedy by or on behalf of Agent or any

Lender under or in connection with the Guaranty, the Note, the Mortgage, any other Loan Document, seeks a defense, judicial intervention or injunctive or other equitable relief of any kind, or asserts in a pleading filed in connection with a judicial proceeding any defense against Agent or any Lender or any right in connection with any security for the Loan, except for defenses and counterclaims raised in good faith.

Section 10.2 Survival; Successors and Assigns. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lenders of the Loan and the execution and delivery to Lenders of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Agent and Lenders.

Section 10.3 Agent's Discretion; Rating Agency Review Waiver.

(a) Whenever pursuant to this Agreement Agent exercises any right given to it to approve or disapprove any matter, or any arrangement or term is to be satisfactory to Agent, the decision of Agent to approve or disapprove such matter or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Agent and shall be final and conclusive. Prior to a Securitization, whenever pursuant to this Agreement the Rating Agencies are given any right to approve or disapprove any matter, or any arrangement or term is to be satisfactory to the Rating Agencies, the decision of Agent to approve or disapprove such matter or to decide whether arrangements or terms are satisfactory or not satisfactory, based upon Agent's determination of Rating Agency criteria, shall be substituted therefor.

(b) Whenever, pursuant to this Agreement or any other Loan Documents, a Rating Agency Confirmation is required from each applicable Rating Agency, in the event that any applicable Rating Agency "declines review", "waives review" or otherwise indicates in writing or otherwise to Agent's or Servicer's satisfaction that no Rating Agency Confirmation will or needs to be issued with respect to the matter in question (each, a "**Review Waiver**"), then the Rating Agency Confirmation requirement shall be deemed to be satisfied with respect to such matter. It is expressly agreed and understood, however, that receipt of a Review Waiver (i) from any one Rating Agency shall not be binding or apply with respect to any other Rating Agency and (ii) with respect to one matter shall not apply or be deemed to apply to any subsequent matter for which Rating Agency Confirmation is required.

(c) Prior to a Securitization or in the event that there is a Review Waiver, if Agent does not have a separate and independent approval right with respect to the matter in question, then the term Rating Agency Confirmation shall be deemed instead to require the prior written consent of Agent. Agent hereby acknowledges and confirms that prior to a Securitization, Borrower shall not be required to obtain a Rating Agency Confirmation in

connection with any matter that requires Agent's approval under this Agreement or any other Loan Documents.

Section 10.4 Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY AGENT AND LENDERS AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAW OF THE STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST AGENT, ANY LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT AGENT'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER AGREES THAT SERVICE OF PROCESS UPON BORROWER AT THE ADDRESS FOR BORROWER SET FORTH HEREIN AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE

MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO AGENT OF ANY CHANGE IN THE ADDRESS FOR BORROWER SET FORTH HEREIN, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE AN AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE AN AUTHORIZED AGENT IF BORROWER CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 10.5 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party or parties against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on, Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. Neither any failure nor any delay on the part of Agent in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder or under any other Loan Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement or any other Loan Document, Agent shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount. Agent shall have the right to waive or reduce any time periods that Agent is entitled to under the Loan Documents in its sole and absolute discretion.

Section 10.6 Notices. All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "**Notice**") required, permitted or desired to be given hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, e-mailed (with confirmation of delivery thereof) or delivered by hand or by reputable overnight courier, addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 10.6. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of sending by email if sent during business hours on a Business Day (otherwise on the next Business Day), (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day), and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

If to Agent: Deutsche Bank AG, New York Branch
60 Wall Street
New York, New York 10005
Attention: Dino Paparelli
Email: dino.paparelli@db.com

with a copy to: Deutsche Bank AG, New York Branch
60 Wall Street
New York, New York 10005
Attention: Jordan Solomon
Email: jordan.solomon@db.com

with a copy to: Kaye Scholer LLP
250 W. 55th Street
New York, New York 10019-9710
Attention: Aaron Lehrfield, Esq.
Email: aaron.lehrfield@apks.com

If to Lenders: Deutsche Bank AG, New York Branch
60 Wall Street
New York, New York 10005
Attention: Dino Paparelli
Email: dino.paparelli@db.com

with a copy to: Deutsche Bank AG, New York Branch
60 Wall Street
New York, New York 10005
Attention: Jordan Solomon
Email: jordan.solomon@db.com

and to: Deutsche Bank AG, New York Branch
60 Wall Street
New York, New York 10005
Attention: General Counsel

with a copy to: Kaye Scholer LLP
250 W. 55th Street
New York, New York 10019-9710
Attention: Aaron Lehrfield, Esq.
Email: aaron.lehrfield@apks.com

with a copy to: Hanover Street Capital, LLC
48 Wall Street, 14th Floor
New York, NY 10005
Attention: Amy Sinensky
Email: amy.sinensky@hanoverstcap.com

If to Borrower: Katsky Korins LLP
605 Third Avenue
New York, New York 10158
Attention: Matthew Danow, Esq.
Email: mdanow@katskykorins.com

and with a copy to: Muchnick, Golieb & Golieb, P.C.
200 Park Avenue South, Suite 1700
New York, New York 10003
Attention: Howard W. Muchnick, Esq.
Email: hwmuchnick@mggpclaw.com

Any party may change the address to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change to the other parties in accordance with the provisions of this Section 10.6. Notices shall be deemed to have been given on the date as set forth above, even if there is an inability to actually deliver any such Notice because of a changed address of which no Notice was given, or there is a rejection or refusal to accept any Notice offered for delivery. Notice for any party may be given by its respective counsel. Additionally, Notice from Agent may also be given by Servicer and Agent hereby acknowledges and agrees that Borrower shall be entitled to rely on any Notice given by Servicer as if it had been sent by Agent.

Section 10.7 Waiver of Trial by Jury. BORROWER, AGENT AND EACH LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AGENT AND EACH LENDER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

Section 10.8 Headings, Schedules and Exhibits. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. Agent shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the Obligations. To the extent Borrower makes a payment or payments to Agent, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Obligations intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Agent.

Section 10.11 Waiver of Notice. Borrower shall be entitled to any notices of any nature whatsoever from Agent except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Agent to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Agent with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Agent to Borrower.

Section 10.12 Remedies of Borrower. In the event that a claim or adjudication is made that Agent or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Agreement or the other Loan Documents, Agent or such agent, as the case may be, has an obligation to act reasonably or promptly, neither Agent nor its agents shall be liable for any monetary damages and Borrower's sole remedy shall be limited to commencing an action seeking specific performance, injunctive relief or declaratory judgment. Any action or proceeding to determine whether Agent has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 Offsets, Counterclaims and Defenses. Any assignee of Agent's or any Lender's interest in and to this Agreement or the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.14 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Agent (on behalf of Lenders) intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among Borrower and any Lender or to grant Agent and/or any Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) The Loan Documents are solely for the benefit of Agent (for itself and on behalf of Lenders), Borrower (and the Lender Group, the Issuer and the Underwriter Group with

respect to Section 9.2(b)) and nothing contained in any Loan Document shall be deemed to confer upon anyone other than the Agent, Lenders, Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

Section 10.15 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to the Affiliate of any Lender that acts as the issuer with respect to a Securitization or any of their other Affiliates (x) shall be prohibited prior to the final Securitization of the Loan and (y) after the final Securitization of the Loan, shall be subject to the prior written approval of Agent. Agent shall have the right to issue any of the foregoing without Borrower's approval and Borrower authorizes Agent to issue press releases, advertisements and other promotional materials in connection with Agent's own promotional and marketing activities, including in connection with a Secondary Market Transaction, and such materials may describe the Loan in general terms or in detail and Agent's participation therein in the Loan.

Section 10.16 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's members or partners, as applicable, and others with interests in Borrower, and of the Property, and shall not assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Agent (on behalf of Lenders) under the Loan Documents to a sale of the Property for the collection of the Obligations without any prior or different resort for collection, or of the right of Agent (on behalf of Lenders) to the payment of the Obligations out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.17 Certain Waivers. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Agent, any Lender or their agents or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Agent to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents. Without limiting any of the other provisions contained herein, Borrower hereby unconditionally and irrevocably waives, to the maximum extent not prohibited by applicable law, any rights it may have to claim or recover against Agent or any Lender in any legal action or proceeding any special, exemplary, punitive or consequential damages.

Section 10.18 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan, without relying in any manner on any statements, representations or recommendations of Agent, any Lender or any parent, subsidiary or affiliate of Agent or any Lender. Agent shall not

be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or affiliate of Agent of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Agent's exercise of any such rights or remedies. Borrower acknowledges that Agent engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.19 Brokers and Financial Advisors. Borrower hereby represents that, except for Maverick Capital ("**Broker**"), it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower will pay Broker a commission pursuant to a separate agreement. Borrower shall indemnify, defend and hold Agent and each Lender harmless from and against any and all claims, liabilities, losses, costs and expenses of any kind (including Agent's and each Lender's attorneys' fees and expenses) in any way relating to or arising out of a claim by any Person (including Broker) that such Person acted on behalf of Borrower or Agent or any Lender in connection with the transactions contemplated herein. The provisions of this Section 10.19 shall survive the expiration and termination of this Agreement and the payment of the Obligations.

Section 10.20 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto and their respective affiliates in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, including any confidentiality agreements or any similar agreements between or among any such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.21 Servicer.

(a) At the option of Agent, the Loan may be serviced by a servicer or special servicer (the "**Servicer**") selected by Agent and Agent may delegate all or any portion of its responsibilities under this Agreement, the other Loan Documents to the Servicer pursuant to a servicing agreement (the "**Servicing Agreement**") between Agent and Servicer. Servicer may, at any time, delegate all or any portion of its responsibilities for the servicing and administration of the Loan to a sub-servicer or sub-servicers. Borrower shall be responsible for any costs and expenses of Servicer to the extent such costs and expenses would otherwise be payable by Borrower if incurred by Agent or Lender hereunder, provided, however, that Borrower shall not be responsible for any set-up fees or any other initial costs incurred after a Securitization of the Loan. Agent and Borrower agrees that Hanover Street Capital, LLC shall be the initial Servicer hereunder. Borrower agrees that the Servicer shall be paid an annual fee of \$25,000, payable in advance and monthly on each Monthly Payment Date (the "**Servicing Fee**"), in accordance with Section 6.8.1 above. Notwithstanding any collection of the Servicing Fee by Agent on behalf of Servicer, the Servicing Fee will be deemed to have been paid directly to Servicer. Notwithstanding the foregoing, Borrower shall not be responsible for payment of the monthly master servicing fee due to the Servicer after a Securitization of the Loan.

(b) Other than as set forth in Section 10.21(a) above, Borrower shall pay all of the fees and expenses of the Servicer and any reasonable third-party fees and expenses in connection with the Loan, including any prepayments, releases of the Property, approvals under the Loan Documents requested by Borrower, other requests by Borrower under the Loan, assumption of Borrower's obligations or modification of the Loan, as well as any fees and expenses in connection with the special servicing or work-out of the Loan or enforcement of the Loan Documents, including, special servicing fees, operating or trust advisor fees (if the Loan is a specially serviced loan or in connection with a workout), work-out fees, liquidation fees, reasonable attorney's fees and expenses and other fees and expenses in connection with the modification or restructuring of the Loan.

Section 10.22 Joint and Several Liability. If more than one Person has executed this Agreement as "**Borrower**" the representations, covenants, warranties and obligations of all such Persons hereunder shall be joint and several.

Section 10.23 Creation of Security Interest. Notwithstanding any other provision set forth in this Agreement, the Note, the Mortgage, any of the other Loan Documents, Agent may at any time create a security interest in all or any portion of its rights under this Agreement, the Note, the Mortgage and any other Loan Document (including the advances owing to it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

Section 10.24 Taxes.

(a) Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made free and clear of and without deduction for any Special Taxes. If Borrower shall be required by any applicable law to deduct any Special Taxes from or in respect of any sum payable hereunder to Agent (on behalf of Lender), the following shall apply: (i) Borrower shall make such deductions (ii) Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law and (iii) solely with respect to Indemnified Taxes, the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 10.24), Agent receives an amount equal to the sum it would have received had no such deductions been made. Payments pursuant to this Section 10.24 shall be made within ten (10) days after the date Agent makes written demand therefor.

(b) In addition, Borrower agrees to pay any present or future stamp or documentary taxes or other excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents, or the Loan (except any such taxes that are Other Connection Taxes imposed with respect to an assignment made pursuant to Section 2.9.2(b) hereof) (all such taxes hereinafter referred to as "**Other Taxes**").

(c) Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or assessed on or attributable to amounts payable under this Section 10.24(c)) payable or paid by

such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment delivered to the Borrower by a Lender shall be conclusive absent manifest error.

(d) As soon as practicable after payment of any Special Taxes by Borrowers to a Governmental Authority pursuant to this Section 10.24, Borrowers shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment, or other evidence reasonably satisfactory to the Agent.

(e) Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Special Taxes attributable to such Lender's failure to comply with the provisions of Section 10.28 (c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Special Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off an apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due the Agent under this paragraph (e).

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 10.24(f)(ii)(A),(B) or (D) below), shall not be required if in Agent's or any Lender's reasonable judgment, such completion, execution or submission would subject Agent or such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of Agent or such Lender.

(i) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Agent on or prior to the date on which such Lender becomes a

Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit C-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “*U.S. Tax Compliance Certificate*”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 or Exhibit C-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the

form of Exhibit C-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any taxes as to which it has been indemnified pursuant to this Section 10.24 (including by the payment of additional amounts pursuant to this Section 10.24), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the taxes giving rise to such refund), net of all out-of-pocket expenses (including taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (b) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (b), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the

indemnified party in a less favorable net after-tax position than the indemnified party would have been in if the tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 10.24 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 10.25 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Section 10.26 Set-Off. In addition to any rights and remedies of Agent and Lenders provided by this Agreement and by law, Agent shall have the right in its sole discretion, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by any Lender or any Affiliate thereof to or for the credit or the account of Borrower; provided however, Agent and Lenders may only exercise such right during the continuance of an Event of Default. Agent agrees promptly to notify Borrower after any such set-off and application made by Agent; provided that the failure to give such notice shall not affect the validity of such set-off and application.

Section 10.27 Modification, Waiver in Writing; Approvals.

(a) No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or any other Loan Document shall be effective unless the same shall be in a writing signed by Agent and, in the case of modifications and amendments, Borrower, and then such waiver or consent shall be effective only in the specific instance, and for the purpose for which given. Neither any failure nor any delay on the part of Agent or any Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder or under any other Loan Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement or any other Loan Document, neither Agent nor any Lender shall be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount. Agent shall have the right to

waive or reduce any time periods that Lenders and/or Agent is entitled to under the Loan Documents in its sole and absolute discretion.

(b) Borrower hereby acknowledges and agrees that notwithstanding the fact that the Loan may be serviced by Servicer, prior to a Securitization of the entire Loan, all requests for approval and consents hereunder and in every instance in which Lenders' consent or approval is required, all copies of documents, reports, requests and other delivery obligations of Borrower and Guarantors required hereunder shall be delivered by Borrower or Guarantors, as applicable, to Agent.

Section 10.28 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

(a) Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the respective parties thereto, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(i) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(ii) the effects of any Bail-in Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(C) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

(b) As used in this Section 10.28 the following terms have the following meanings ascribed thereto: (i) "Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution; (ii) "Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule; (iii) "EEA Financial Institution" means (x) any credit institution or investment firm established in any EEA Member

Country which is subject to the supervision of an EEA Resolution Authority; (y) any entity established in an EEA Member Country which is a parent of an institution described in clause (x) of this definition, or (x) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (x) or (y) of this definition and is subject to consolidated supervision with its parent; (iv) “EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway; (v) “EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution; (vi) “EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time; and (vii) “Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 10.29 Assignments and Participations.

(a) At the assignor Lender’s sole cost and *provided* that the economic and other terms of the Loan shall remain the same for Borrower, Operating Lessee and Guarantors, any Lender may at any time assign and delegate to one or more assignees (each an “*Assignee*”) all or any part of such Lender’s rights and obligations under this Agreement (including all or a portion of its Ratable Share of the Loan at the time owing to it) and the other Obligations held by such Lender hereunder.

(b) Within ten (10) Business Days after its receipt of notice of such Assignee, Borrower shall, if requested by the Assignee, execute and deliver to Agent, replacement Notes, (in substantially the same form and substance as the original notes) evidencing such Assignee’s portion of the Loan, *provided* that the applicable original notes are returned to Borrower.

(c) If any assignee, participant or other transferee of the Loan or any portion thereof or interest therein requests in writing, at such assignee’s, participants or other transferee’s sole cost, Borrower shall deliver to such Person updated opinions of Borrower’s and Guarantor’s New York counsel with respect to the enforceability, due authorization and due execution of any new Loan Documents entered into in connection with the related assignment, participation or transfer, which opinions shall be in substantially the same form as the opinions delivered as of the Closing Date, and dated as of such date as the updated opinions are delivered, as modified as required to properly render such updated opinions on such date and updated, and shall be addressed, for purposes of reliance thereon, to such assignee, participant or transferee, as applicable.

(d) Upon assignment, all references to the assignor Lender in this Agreement, any Loan Document shall be deemed to refer to such Assignee or successor in interest and such Assignee or successor in interest shall thereafter stand in the place of such assignor Lender in all respects. Notwithstanding anything to the contrary in the preceding sentence, Borrower agrees that each participant shall be entitled to the benefits of Section 2.9 to the same extent as if it were a Lender and had acquired its interest by assignment; *provided* that such participant shall not be

entitled to receive any greater payment under Section 2.9, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation. Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States of America a copy of each assignment delivered to it and a register for the recordation of the names and addresses of Lenders and each of Lenders' assignees and the principal amount (and stated interest) on the Loan owing to Lenders and each of Lenders' assignees pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Lenders and Agent shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and Lenders, at any reasonable time and from time to time upon reasonable prior notice. If a Lender sells a participation, such Lender shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each participant and the principal amount (and stated interest) of each participant's interest in the Loan or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that such Lender shall not have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in the Loan or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that the Loan or other obligation is in registered form under Section 5f.103-1(c) of the U.S. Department of Treasury regulations. The entries in the Participant Register shall be conclusive absent manifest error, and Lenders shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) Borrower acknowledges and agrees that Agent and each Lender may provide to any actual or proposed Assignee originals or copies of this Agreement, any other Loan Documents and any other documents, instruments, certificates, opinions, insurance policies, financial statements and other information, letters of credit, reports, requisitions and other materials and information at any time submitted by or on behalf of Borrower, Guarantors or other Persons and/or received by Agent or any Lender in connection with the Loan.

(f) Notwithstanding anything to the contrary in this Agreement and provided no Event of Default is continuing, until the date on which the Earnout Advance has been advanced by Lenders hereunder, Agent and the Lenders shall not assign any portion of the Loan to an Assignee unless such Assignee of such portion of the Loan is an Eligible Assignee. Borrower agrees that the limitations contained in this Section 10.29(f) shall cease upon the date on which (i) the entire Earnout Advance has been advanced by Lenders hereunder or (ii) an Event of Default occurs and is continuing.

Section 10.30 Future Funding Obligations. Without limiting the rights of Borrower under Section 2.10.1, notwithstanding anything to the contrary contained herein, the parties acknowledge that the obligations of the Lenders hereunder to fund the Earnout Advance (the "**Future Funding Obligations**") will be solely the obligation of each individual Lender (each as to its Ratable Share of the Future Funding Obligations in question). As used in this Section

10.30 all references to the individual Lenders shall be deemed to include their respective successors and assigns.

ARTICLE 11

AGENT

Section 11.1 Appointment.

(a) Each Lender hereby irrevocably designates and appoints Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes Agent, as the agent for such Lender, to take such action on its behalf and in Agent's designated capacity under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement and the other Loan Documents, Agent shall not have any duties or responsibilities, except those expressly set forth herein or therein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

(b) Subject to Section 10.28, no individual Lender or group of Lenders shall have any right to modify or waive, or consent to the departure of any party from any provision of any Loan Document, or secure or enforce the Obligations. All such rights, on behalf of Agent or any Lender or Lenders, shall be held and exercised solely by and at the option of Agent for the pro rata benefit of Lenders. Except as expressly otherwise provided in this Agreement or the other Loan Documents, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which Agent is expressly entitled to exercise or take under this Agreement or the other Loan Documents, including (i) the determination if and to what extent matters or items subject to Agent's satisfaction are acceptable or otherwise within its discretion, (ii) the making of Agent Advances, and (iii) the exercise of remedies under this Agreement or any other Loan Document, and any action so taken or not taken shall be deemed consented to by Lenders.

(c) In case of the pendency of any bankruptcy, receivership, Insolvency, liquidation, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower, any Guarantor or any Affiliate of Borrower or any Guarantor, no individual Lender or group of Lenders shall have the right, and Agent (irrespective of whether the principal of the Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on Borrower) shall be exclusively entitled and empowered on behalf of itself and Lenders, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to

have the claims of Lenders and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Agent and their respective agents and counsel) and all other amounts due Lenders and Agent hereunder allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, conservator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent hereunder.

Nothing contained herein shall be deemed to authorize Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of Lenders except as approved by the Lenders or to authorize Agent to vote in respect of the claims of Lenders except as approved by the Lenders in any such proceeding.

Section 11.2 Delegation of Duties. Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

Section 11.3 Exculpatory Provisions. Neither Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person or Persons under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person or Persons' own gross negligence or willful misconduct) or (ii) responsible in any manner to any Lender for any recitals, statements, representations or warranties made by Borrower or Guarantors or any officer thereof contained in any Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of Borrower or any Guarantor to perform its obligations thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of Borrower or Guarantors.

Section 11.4 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed

by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Loan Parties), independent accountants and other experts selected by Agent. Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless such Note shall have been transferred in accordance with this Agreement and all actions required in connection with such transfer shall have been taken. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of one hundred percent (100%) of Lenders (or any other instructing group of Lenders specified by this Agreement or by a separate agreement between Agent and any Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of one hundred percent (100%) of Lenders (or any other instructing group of Lenders specified by this Agreement or by a separate agreement between Agent and any Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all Lenders and all future holders of all or any interest in the Loan.

Section 11.5 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default under the Loan Documents unless Agent shall have received notice from a Lender or Borrower, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that Agent shall receive such a notice, Agent shall promptly give notice thereof to Lenders. Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by one hundred percent (100%) of Lenders (or any other instructing group of Lenders specified by this Agreement or by a separate agreement between Agent and any Lenders); provided that unless and until Agent shall have received such directions, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of Lenders.

Section 11.6 Non-Reliance on Agent and Other Lenders. Each Lender expressly acknowledges that neither Agent nor any of its respective officers, directors, employees, agents, attorneys-in-fact or Affiliates have made any representations or warranties to it and that no act by Agent hereafter taken, including any review of the affairs of Borrower or any Guarantor or any Affiliate of Borrower or any Guarantor, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates and made its own decision to make its Ratable Share of the Loan and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to

the Lenders by Agent hereunder, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of Borrower or any Guarantor or any Affiliate of Borrower or any Guarantor that may come into the possession of Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

Section 11.7 Indemnification. Lenders agree to indemnify Agent in its capacity as such (to the extent not reimbursed by Borrower and without limiting the obligation of Borrower to do so), ratably according to their respective Ratable Share on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Loan shall have been paid in full, ratably in accordance with such Ratable Share immediately prior to such date), for, and to save Agent harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including, without limitation, at any time following the payment of the Loan) be imposed on, incurred by or asserted against Agent in any way relating to or arising out of, the Loan, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Debt and the termination of this Agreement.

Section 11.8 Agent in Its Individual Capacity. Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with Borrower or any Guarantor or any Affiliate of Borrower or any Guarantor as though Agent were not an agent hereunder. With respect to the Ratable Share of the Loan made or held by it at any time, Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an agent, and the terms "Lender" and "Lenders" shall include Agent in its individual capacity.

Section 11.9 Appraisals. Agent may, at its option, commission one or more new and/or updated appraisals from time to time after the Closing Date; provided, however, that Borrower shall only be required to reimburse Agent for such new and/or updated appraisal (A) not more than one time annually unless (1) an Event of Default is continuing or (2) there is, in Agent's reasonable judgment, a material adverse change in the Property or the market conditions related to the Property, (B) in connection with Section 2.7 hereof and (C) at any time such appraisal is required by applicable law or regulatory requirements.

Section 11.10 Ratable Share. (i) The liabilities of Lenders shall be several and not joint, (ii) no Lender shall be responsible for the obligations of any other Lender, and (iii) each Lender shall be liable to Borrower only for its respective Ratable Share of the Loan. Notwithstanding anything to the contrary herein, all indemnities by Borrower and obligations for costs, expenses, damages or advances set forth herein shall run to and benefit each Lender in accordance with its Ratable Share.

Section 11.11 Letters of Credit. Each Lender agrees that, prior to the Securitization of the entire Loan, (i) any Letter of Credit delivered to Lenders in accordance with the terms of this Agreement shall name DB as the sole beneficiary thereunder for the benefit of the Lenders, and (ii) each authorizes DB to, and DB hereby agrees to, act as its agent with regard to the servicing and administration of all such Letters of Credit, and in the event DB draws upon any such Letter of Credit, each Lender authorizes DB to, and DB hereby agrees to, deposit the proceeds into the Cash Management Account (or into one or more of the Accounts) in the manner set forth herein. Upon the Securitization of the entire Loan, each Lender authorizes DB to, and DB hereby agrees to, assign to the Trustee all of DB's and Lenders' right, title and interest in and to each Letter of Credit issued in accordance with the terms of this Agreement that is then in DB's and Lenders' possession, whereupon without any further action by any of the Lenders, DB shall be released from any and all liability relating in any way to such Letter(s) of Credit.

Section 11.12 Co-Lenders. Borrower acknowledges that Lender, any other Lenders hereunder and Agent may from time to time enter into one or more agreements (any such agreement as the same may be modified, amended, restated supplemented or replaced from time to time, a "**Co-Lender Agreement**") governing the relationship between such parties with respect to the Loan. Borrower acknowledges that Agent's discretion under this Agreement and the other Loan Documents may be subject to the limitations in any such Co-Lender Agreements, including the requirement that Agent obtain approval of a specified percentage of Lenders or all of the Lenders prior to granting certain consents or approvals or taking certain actions under this Agreement and under the other Loan Documents. Any such Co-Lender Agreements are intended solely for the benefit of Agent and the Lenders, and the Borrower acknowledges that neither Borrower, any Guarantor nor any Affiliate of Borrower or any Guarantor is an intended third-party beneficiary of any Co-Lender Agreement and shall not be entitled to rely on any of the terms or provisions contained therein. Neither Agent nor any Lender shall have any obligation to provide a copy of any Co-Lender Agreement to Borrower, any Guarantor or any such Affiliate of Borrower or any Guarantor or to otherwise disclose to Borrower or any other such party the contents of any Co-Lender Agreement. If Lender sells, assigns, participates or otherwise transfers any part of its interest in the Loan, the Note and the other Loan Documents to one or more other Lenders, the obligation to fund any Additional Advances hereunder shall be obligations of the Lenders of the Loan (in accordance with, and subject to, Section 11.10) and not the Lender.

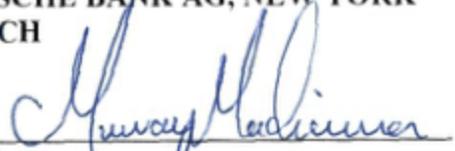
Section 11.13 Modifications to Article 11. Borrower, Agent and Lenders acknowledge and agree that the provisions of this Article 11 solely govern the relationship among the Lenders and Agent and do not alter or otherwise modify the provisions of this Agreement applicable to Borrower or, except for any rights or privileges granted to Borrowers under this Article, otherwise apply to Borrower. The provisions of this Article 11 may be modified without Borrower's consent so long as such modifications do not alter any of Borrower's rights (including those granted under this Article) or obligations under this Agreement or any of the other Loan Documents or otherwise alter the economic terms of the Loan or the Loan Documents in any manner.

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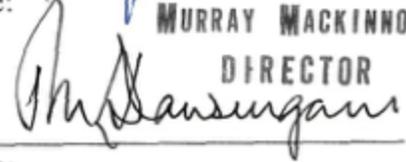
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

AGENT:

**DEUTSCHE BANK AG, NEW YORK
BRANCH**

By: 

Name: MURRAY MACKINNON
Title: DIRECTOR

By: 

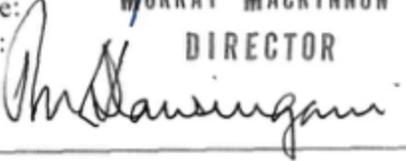
Name: MRINAL DANSINGANI
Title: DIRECTOR

LENDERS:

**DEUTSCHE BANK AG, NEW YORK
BRANCH**

By: 

Name: MURRAY MACKINNON
Title: DIRECTOR

By: 

Name: MRINAL DANSINGANI
Title: DIRECTOR

[signatures continue on following page]

BORROWER:

LIFE HOTEL ONE LLC,
a Delaware limited liability company

By: **LIFE HOTEL PARTNERS LLC,**
a New York limited liability company,
its Manager



By: _____

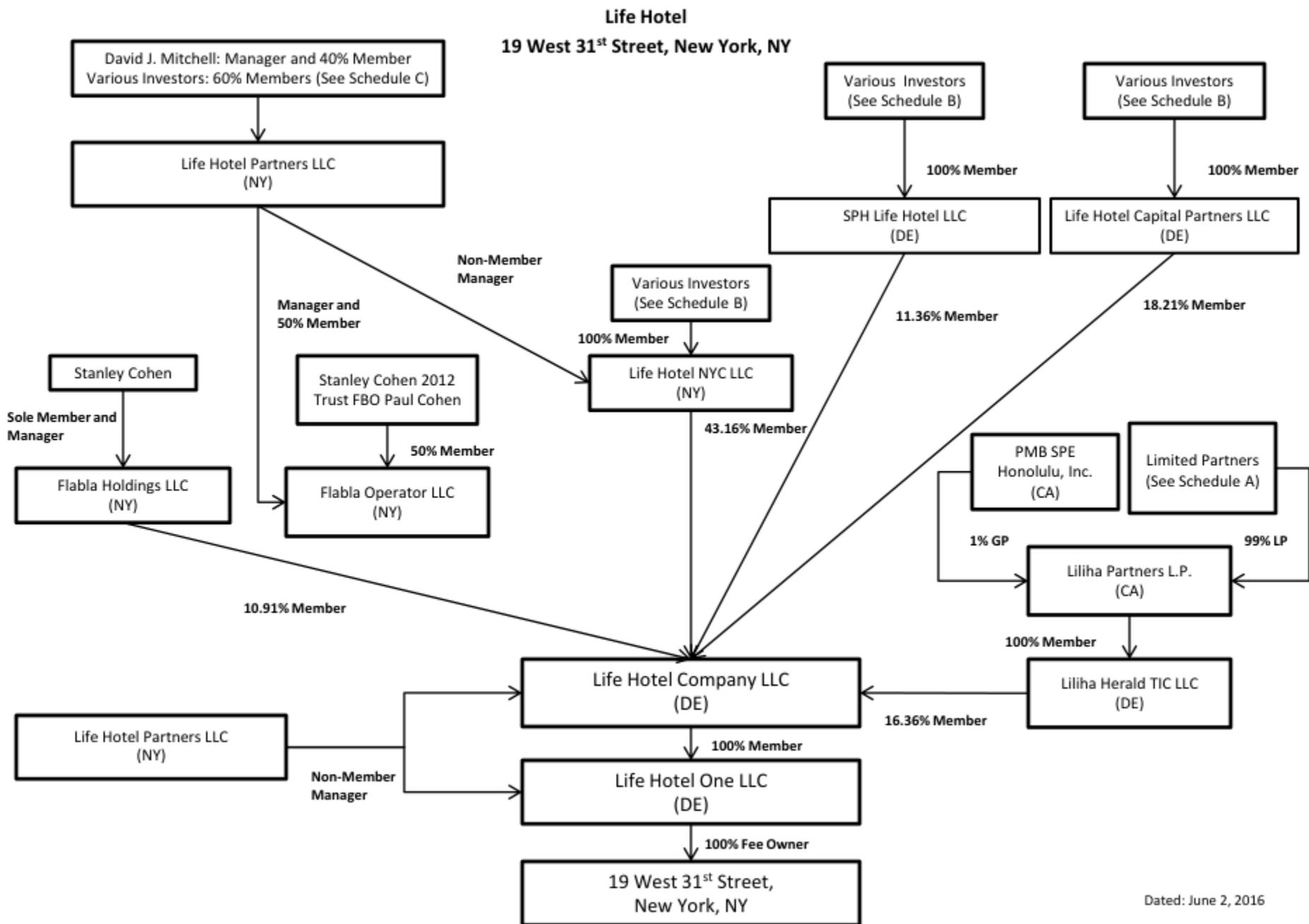
Name: David J. Mitchell

Title: Manager

SCHEDULE I
ORGANIZATIONAL CHART

(see attached)

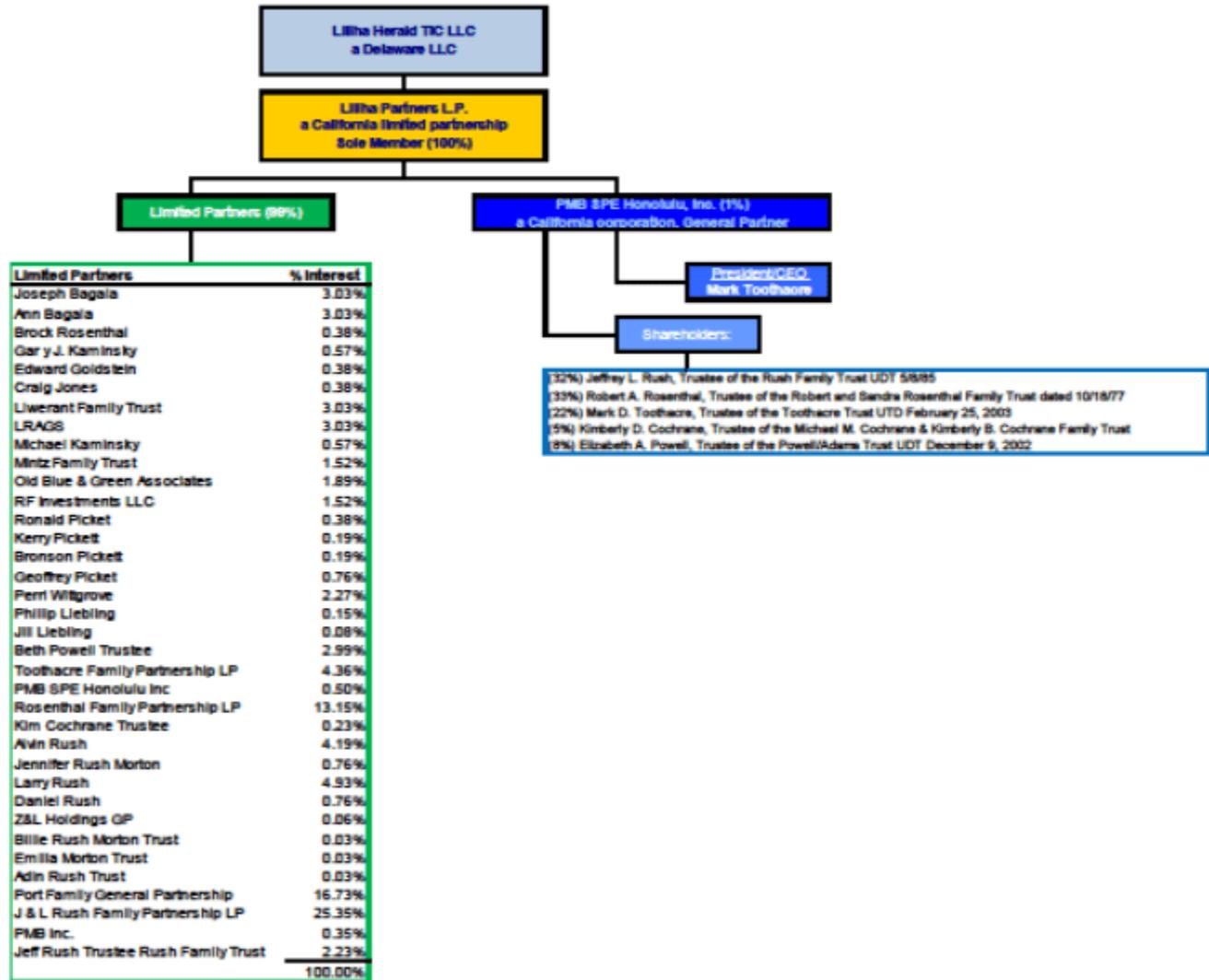
ROLL-UP OWNERSHIP STRUCTURE



Dated: June 2, 2016

Schedule A

Liliha Herald Square LLC - Org Chart - 4/7/15



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SCHEDULE B

Total Equity Contributions:

\$22,066,000

	Exercising Preemptive Rights:	Initial Contribution:	Total Contribution:	Equity Interest	Total Project Interest
Life Hotel NYC LLC					
BET MHALON K LLC	\$900,000	\$900,000	\$1,400,000	14.75%	6.30%
David Mitchell	\$1,500,000	\$470,000	\$1,070,000	20.75%	8.95%
Oliver Mitchell	\$291,667	\$350,000	\$641,667	6.76%	2.92%
Alexander Mitchell	\$0	\$2,000,000	\$2,000,000	21.07%	9.09%
Louis Portinan	\$250,000	\$410,000	\$660,000	6.95%	3.00%
Doug Arnaudin	\$8,495	\$20,000	\$28,495	0.30%	0.12%
Richard Ekstract	\$0	\$380,000	\$380,000	3.16%	1.36%
Adam Jakubowicz	\$494,000	\$500,000	\$994,000	10.47%	4.52%
Jim Demare	\$416,000	\$500,000	\$916,000	9.62%	4.16%
Steven A. Rudnitsky Revocable Trust UAD 6/18/1998	\$33,980	\$50,000	\$83,980	0.88%	0.38%
Michael Sabo	\$0	\$500,000	\$500,000	5.27%	2.27%
TOTAL LIFE HOTEL NYC LLC:	\$3,494,142	\$6,000,000	\$9,494,142	100.00%	43.16%
Liha Herald TIC LLC					
Liha Herald TIC LLC	\$0	\$3,600,000	\$3,600,000	100.00%	16.30%
TOTAL LIHA HERALD TIC LLC:	\$0	\$3,600,000	\$3,600,000	100.00%	16.30%
Flabla Holdings LLC					
Flabla Holdings LLC	\$0	\$2,400,000	\$2,400,000	100.00%	10.91%
TOTAL FLABLA HOLDINGS LLC:	\$0	\$2,400,000	\$2,400,000	100.00%	10.91%
Life Hotel Capital Partners LLC					
	Funded by Closing:		Total Contribution:	Equity Interest	Total Project Interest
Michael Werner	\$250,000		\$250,000	6.24%	1.14%
Michael Goznick	\$100,000		\$100,000	2.52%	0.45%
Randolph Aronquist	\$100,000		\$100,000	2.50%	0.45%
Asva Jakubowicz	\$500,000		\$500,000	5.27%	2.27%
Jeff Pot	\$333,000		\$333,000	8.31%	1.51%
Jeff Rush	\$333,333		\$333,333	8.32%	1.52%
Steven Segal	\$1,150,000		\$1,150,000	28.71%	5.23%
Life 31st St. Holding LLC	\$1,229,525		\$1,229,525	13.06%	5.63%
TOTAL LIFE HOTEL CAPITAL PARTNERS LLC:	\$4,005,858		\$4,005,858	74.96%	18.21%
SPH Life Hotel LLC					
	Funded by Closing:		Total Contribution:	Equity Interest	Total Project Interest
Stephen Hanson	\$1,500,000		\$1,500,000	60.00%	6.82%
Howard Machniks	\$1,000,000		\$1,000,000	40.00%	4.55%
TOTAL SPH LIFE HOTEL LLC:	\$2,500,000		\$2,500,000	100.00%	11.36%

Schedule C – Life Hotel Partners LLC Members

Member's Name	Percentage Interest
David J. Mitchell	40.0000%
Stephen Hanson	40.0000%
Doug Arnaudin	0.1279%
Sam Spitz	2.4604%
Jeff Port	7.5000%
Louis Perlman	3.4000%
Steven A. Rudnitsky	0.5117%
Revocable Trust UAD 6/18/1998	
Stanley Cohen 2012 Trust FBO Paul Cohen	6.0000%

19 West 31 Street - SCHEDULE OF INVESTORS As of 4/28/2017

<u>Limited Partner Entity</u>	<u>Entity/Direct/Controlling</u>	Percentage Interest:	Total Contribution:
Life Hotel NYC LLC	BET MHALON K LLC	6.36%	\$1,400,000
Life Hotel NYC LLC	David Mitchell	8.95%	\$1,970,000
Life Hotel NYC LLC	Oliver Mitchell	2.92%	\$641,667
Life Hotel NYC LLC	Alexander Mitchell	9.09%	\$2,000,000
Life Hotel NYC LLC	Louis Perlman	3.00%	\$660,000
Life Hotel NYC LLC	Doug Arnaudin	0.13%	\$28,495
Life Hotel NYC LLC	Richard Ekstract	1.36%	\$300,000
Life Hotel NYC LLC	Adam Jakubowicz	4.52%	\$994,000
Life Hotel NYC LLC	Jim Demare	4.16%	\$916,000
Life Hotel NYC LLC	Steven A. Rudnitsky Revocable Trust UAD 6/18/1998	0.38%	\$83,980
Life Hotel NYC LLC	Michael Sabo	2.27%	\$500,000
Flabla Holdings LLC	Stanley Cohen	1.00%	\$2,400,000
Flabla Holdings LLC	2016 Stanley Cohen Trust	9.91%	\$0
Liliha Partners LP	Various Investors	16.36%	\$3,600,000
Life Hotel Capital Partners LLC	Michael Werner	1.14%	\$250,000
Life Hotel Capital Partners LLC	Michael Skolnick	2.90%	\$638,000
Life Hotel Capital Partners LLC	Randy Amengual	0.45%	\$100,000
Life Hotel Capital Partners LLC	Aviva Jakubowicz	2.27%	\$500,000
Life Hotel Capital Partners LLC	Zachary Port Irrevocable Trust	1.51%	\$333,000
Life Hotel Capital Partners LLC	Rush Family Trust UDT 5/8/85	1.52%	\$333,333
Life Hotel Capital Partners LLC	Steven Segal	5.23%	\$1,150,000
Life Hotel Capital Partners LLC	David Ekstein	0.23%	\$50,000
Life Hotel Capital Partners LLC	Hospitality Consulting & Financing	0.91%	\$200,000
Life Hotel Capital Partners LLC	Wolverine 0527, LLC	0.68%	\$150,000
Life Hotel Capital Partners LLC	Daniel Ben-David Irrevocable Trust	0.11%	\$25,000
Life Hotel Capital Partners LLC	Kimberly Spacek	0.11%	\$25,000
Life Hotel Capital Partners LLC	David Dickerson	1.14%	\$250,000
Life Hotel Capital Partners LLC	Life 31st St Holding LLC	0.01%	\$1,525
SPH Life Hotel LLC	Various Investors	11.36%	\$2,500,000
Total Percentage Interest:		100.00%	\$22,000,000

19 West 31 Street - SCHEDULE OF INVESTORS As of 6/3/2016

<u>Limited Partner Entity</u>	<u>Entity/Direct/Controlling</u>	Percentage Interest:	Total Contribution:
Life Hotel NYC LLC	BET MHALON K LLC	6.36%	\$1,400,000
Life Hotel NYC LLC	David Mitchell	8.95%	\$1,970,000
Life Hotel NYC LLC	Oliver Mitchell	2.92%	\$641,667
Life Hotel NYC LLC	Alexander Mitchell	9.09%	\$2,000,000
Life Hotel NYC LLC	Louis Perlman	3.00%	\$660,000
Life Hotel NYC LLC	Doug Arnaudin	0.13%	\$28,495
Life Hotel NYC LLC	Richard Ekstract	1.36%	\$300,000
Life Hotel NYC LLC	Adam Jakubowicz	4.52%	\$994,000
Life Hotel NYC LLC	Jim Demare	4.16%	\$916,000
Life Hotel NYC LLC	Steven A. Rudnitsky Revocable Trust UAD 6/18/1998	0.38%	\$83,980
Life Hotel NYC LLC	Michael Sabo	2.27%	\$500,000
Flabla Holdings LLC	Stanley Cohen	10.91%	\$2,400,000
Liliha Partners LP	Various Investors	16.36%	\$3,600,000
Life Hotel Capital Partners LLC	Michael Werner	1.14%	\$250,000
Life Hotel Capital Partners LLC	Michael Skolnick	0.45%	\$100,000
Life Hotel Capital Partners LLC	Randy Amengual	0.45%	\$100,000
Life Hotel Capital Partners LLC	Aviva Jakubowicz	2.27%	\$500,000
Life Hotel Capital Partners LLC	Zachary Port Irrevocable Trust	1.51%	\$333,000
Life Hotel Capital Partners LLC	Rush Family Trust UDT 5/8/85	1.52%	\$333,333
Life Hotel Capital Partners LLC	Steven Segal	5.23%	\$1,150,000
Life Hotel Capital Partners LLC	David Ekstein	0.00%	\$0
Life Hotel Capital Partners LLC	Hospitality Consulting & Financing	0.00%	\$0
Life Hotel Capital Partners LLC	Wolverine 0527, LLC	0.00%	\$0
Life Hotel Capital Partners LLC	Daniel Ben-David Irrevocable Trust	0.00%	\$0
Life Hotel Capital Partners LLC	Kimberly Spacek	0.00%	\$0
Life Hotel Capital Partners LLC	David Dickerson	0.00%	\$0
Life Hotel Capital Partners LLC	Life 31st St Holding LLC	5.63%	\$1,239,525
SPH Life Hotel LLC	Various Investors	11.36%	\$2,500,000
Total Percentage Interest:		100.00%	\$22,000,000

SCHEDULE II

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES

None.

SCHEDULE III
RATABLE SHARE

<u>Lender</u>	<u>Ratable Share</u>
DEUTSCHE BANK AG, NEW YORK BRANCH	100%

SCHEDULE IV

INTELLECTUAL PROPERTY/WEBSITES

That certain service mark, "Life Hotel," registered on November 3, 2015 in the U.S. Patent and Trademark Office with the Registration Number 4847874 and the stylized word service mark, "Life Hotel," filed in the U.S. Patent and Trademark Office February 17, 2016 with serial number 86911175, registration pending owned by Life Hotel Management LLC, an Affiliate of Borrower, which service mark and stylized word service mark have been licensed to Borrower pursuant to that certain Trademark License Agreement dated as of June 3, 2016 between Life Hotel Management LLC and Borrower.

SCHEDULE V

DEFINITION OF SPECIAL PURPOSE BANKRUPTCY REMOTE ENTITY

Borrower hereby represents and warrants to, and covenants with, Agent that since the date of its formation and at all times on and after the date hereof and until such time as the Obligations shall be paid and performed in full:

(a) Borrower (i) has been, is, and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, entering into this Agreement with the Agent and the Lenders, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, and (ii) has not owned, does not own, and will not own any asset or property other than (A) the Property, and (B) incidental personal property necessary for the ownership or operation of the Property.

(b) Borrower has not engaged and will not engage in any business other than the ownership, management and operation of the Property and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower has not and will not enter into any contract or agreement with any Affiliate of Borrower, except upon terms and conditions that are intrinsically fair, commercially reasonable, and no less favorable to it than would be available on an arms-length basis with third parties other than any such party.

(d) Borrower has not incurred and will not incur any Indebtedness other than Permitted Indebtedness.

(e) Borrower has not made and will not make any loans or advances to any third party (including any Affiliate or constituent party), and has not and shall not acquire obligations or securities of its Affiliates.

(f) Borrower has been, is, and intends to remain solvent and Borrower has paid and intends to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets; provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

(g) Borrower has done or caused to be done, and will do, all things necessary to observe organizational formalities and preserve its existence, and Borrower has not, will not (i) terminate or fail to comply with the provisions of its organizational documents, or (ii) unless (A) Agent has consented and (B) following a Securitization of the Loan, the applicable Rating Agencies have issued a Rating Agency Confirmation, amend, modify or otherwise change its operating agreement or other organizational documents.

(h) Except to the extent that Borrower is (i) required to file consolidated tax returns by law; or (ii) treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, (1) Borrower has maintained and will maintain all of its books,

records, financial statements and bank accounts separate from those of its Affiliates and any other Person; (2) Borrower's assets will not be listed as assets on the financial statement of any other Person; it being understood that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (ii) such assets shall be listed on Borrower's own separate balance sheet; and (3) Borrower will file its own tax returns (to the extent Borrower is required to file any tax returns) and will not file a consolidated federal income tax return with any other Person. Borrower has maintained and shall maintain its books, records, resolutions and agreements in accordance with this Agreement.

(i) Borrower has been, will be, and at all times has held and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Borrower or any constituent party of Borrower (recognizing that Borrower may be treated as a "disregarded entity" for tax purposes and is not required to file tax returns for tax purposes under applicable law)), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or department or part of the other and shall, to the extent reasonably necessary for the operation of its business, maintain and utilize separate stationery, invoices and checks bearing its own name.

(j) Borrower has maintained and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

(k) Neither Borrower nor any constituent party of Borrower has sought or will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of Borrower.

(l) Borrower has not and will not commingle the funds and other assets of Borrower with those of any Affiliate or constituent party or any other Person, and has held and will hold all of its assets in its own name.

(m) Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party or any other Person.

(n) Borrower has not and will not assume or guarantee or become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.

(o) The organizational documents of Borrower shall provide that the business and affairs of Borrower shall be (A) managed by or under the direction of a board of one or more directors designated by Borrower's sole member (the "**Sole Member**"), (B) a committee of

managers designated by Sole Member (a “**Committee**”), (C) by Sole Member, or a manager designated by Sole Member (the “**Manager**”), and at all times there shall be at least one (1) duly appointed Independent Director or Independent Manager. In addition, the organizational documents of Borrower shall provide that no Independent Director or Independent Manager (as applicable) of Borrower may be removed or replaced without Cause and unless Borrower provides Agent with not less than three (3) Business Days’ prior written notice of (a) any proposed removal of an Independent Director or Independent Manager (as applicable), together with a statement as to the reasons for such removal, and (b) the identity of the proposed replacement Independent Director or Independent Manager, as applicable, together with a certification that such replacement satisfies the requirements set forth in the organizational documents for an Independent Director or Independent Manager (as applicable).

(p) The organizational documents of Borrower shall also provide an express acknowledgment that Agent and each Lender is an intended third-party beneficiary of the “special purpose” provisions of such organizational documents.

(q) The organizational documents of Borrower shall provide that the board of directors, the Committee, Sole Member or the Manager (as applicable) of Borrower shall not take any action which, under the terms of any certificate of formation, limited liability company operating agreement or any voting trust agreement, requires a unanimous vote of the board of directors (or the Committee as applicable) of Borrower unless at the time of such action there shall be (A) at least one (1) member of the board of directors (or the Committee as applicable) who is an Independent Director or Independent Manager, as applicable (and such Independent Director or Independent Manager, as applicable, have participated in such vote) or (B) if there is no board of directors or Committee, then such Independent Manager shall have participated in such vote. The organizational documents of Borrower shall provide that Borrower will not and Borrower agrees that it will not, without the unanimous written consent of its board of directors, its Committee, its Sole Member or its Manager (as applicable), including, or together with, the Independent Director or Independent Manager (as applicable) (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, (ii) seek or consent to the appointment of a receiver, liquidator or any similar official of Borrower or a substantial part of its business, (iii) take any action that might cause such entity to become insolvent, (iv) make an assignment for the benefit of creditors, (v) admit in writing its inability to pay debts generally as they become due, (vi) declare or effectuate a moratorium on the payment of any obligations, or (vii) take any action in furtherance of the foregoing. Borrower shall not take any of the foregoing actions without the unanimous written consent of its board of directors, its Committee, its Sole Member or its Manager, as applicable, including (or together with) the Independent Director or Independent Manager, as applicable. In addition, the organizational documents of Borrower shall provide that, when voting with respect to any matters set forth in the immediately preceding sentence of this clause (q), the Independent Director or Independent Manager (as applicable) shall consider only the interests of Borrower, including its creditors. Without limiting the generality of the foregoing, such documents shall expressly provide that, to the greatest extent permitted by law, except for duties to Borrower (including duties to the members of Borrower solely to the extent of their respective economic interest in Borrower and to Borrower’s creditors as set forth in the immediately preceding sentence), such Independent Director or Independent Manager (as applicable) shall not owe any fiduciary duties to, and shall not consider, in acting or

otherwise voting on any matter for which their approval is required, the interests of (i) the members of Borrower, (ii) other Affiliates of Borrower, or (iii) any group of Affiliates of which Borrower is a part; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

(r) The organizational documents of Borrower shall provide that, as long as any portion of the Obligations remain outstanding, upon the occurrence of any event that causes Sole Member to cease to be a member of Borrower (other than (i) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (ii) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), each of the persons acting as an Independent Director or Independent Manager (as applicable) of Borrower shall, without any action of any Person and simultaneously with Sole Member ceasing to be a member of Borrower, automatically be admitted as members of Borrower (in each case, individually, a “*Special Member*” and collectively, the “*Special Members*”) and shall preserve and continue the existence of Borrower without dissolution. The organizational documents of Borrower shall further provide that for so long as any portion of the Obligations are outstanding, no Special Member may resign or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to Borrower as a Special Member, and (ii) such successor Special Member has also accepted its appointment as an Independent Director or Independent Manager (as applicable).

(s) The organizational documents of Borrower shall provide that, as long as any portion of the Obligations remains outstanding, except as expressly permitted pursuant to the terms of this Agreement, (i) Sole Member may not resign, and (ii) no additional member shall be admitted to Borrower.

(t) The organizational documents of Borrower shall provide that, as long as any portion of the Obligations remains outstanding: (i) Borrower shall be dissolved, and its affairs shall be wound up, only upon the first to occur of the following: (A) the termination of the legal existence of the last remaining member of Borrower or the occurrence of any other event which terminates the continued membership of the last remaining member of Borrower in Borrower unless the business of Borrower is continued in a manner permitted by its operating agreement or the Delaware Limited Liability Company Act (the “*Act*”), or (B) the entry of a decree of judicial dissolution under Section 18-802 of the Act; (ii) upon the occurrence of any event that causes the last remaining member of Borrower to cease to be a member of Borrower or that causes Sole Member to cease to be a member of Borrower (other than (A) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents or (B) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), to the fullest extent permitted by law, the personal representative of such last remaining member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in Borrower, agree in writing (I) to continue the existence of Borrower, and (II) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute

member of Borrower, effective as of the occurrence of the event that terminated the continued membership of such member in Borrower; (iii) the bankruptcy of Sole Member or a Special Member shall not cause such Sole Member or Special Member, respectively, to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution; (iv) in the event of the dissolution of Borrower, Borrower shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of Borrower in an orderly manner), and the assets of Borrower shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (v) to the fullest extent permitted by law, each of Sole Member and the Special Members shall irrevocably waive any right or power that they might have to cause Borrower or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of Borrower, to compel any sale of all or any portion of the assets of Borrower pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of Borrower.

(u) Borrower shall conduct its business so that the assumptions made with respect to Borrower in the Insolvency Opinion shall be true and correct in all respects. In connection with the foregoing, Borrower hereby covenants and agrees that it will comply with or cause the compliance with, (i) all of the facts and assumptions (with respect to Borrower) set forth in the Insolvency Opinion, (ii) all of the representations, warranties and covenants on this **Schedule V**, and (iii) all of the organizational documents of Borrower. Notwithstanding the foregoing provisions of this clause (u), in no event shall either of the following, in and of itself, be deemed a breach of the covenants set forth in this clause (u): (1) a change in the organizational structure or organizational documents of Borrower (or any direct or indirect owner thereof) which is made pursuant to a Permitted Transfer, or (2) any failure by Borrower to satisfy a condition to the advance of proceeds of the Loan or to the release of any Reserve Funds.

(v) Borrower has paid and intends to pay its own liabilities and expenses, including the salaries of its own employees (if any) from its own funds, and has maintained and shall maintain a sufficient number of employees (if any) in light of its contemplated business operations; provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

(w) Borrower has not permitted and will not permit any Affiliate or constituent party independent access to its bank accounts.

(x) Borrower has compensated and shall compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred; provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

(y) Borrower has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including shared office space.

(z) Except in connection with the Loan, Borrower has not pledged and will not pledge its assets for the benefit of any other Person.

(aa) Borrower has and will have no obligation to indemnify its officers, directors, members or Special Members, as the case may be, or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation.

(bb) Borrower has not, does not, and will not have any of its obligations guaranteed by any Affiliate (other than from the Guarantors with respect to the Loan).

As used herein:

“Cause” shall mean, with respect to an Independent Director or Independent Manager, (i) acts or omissions by such Independent Director or Independent Manager, as applicable, that constitute willful disregard of, or gross negligence with respect to, such Independent Director’s or Independent Manager’s, as applicable, duties, (ii) such Independent Director or Independent Manager, as applicable, has engaged in or has been charged with or has been indicted or convicted for any crime or crimes of fraud or other acts constituting a crime under any law applicable to such Independent Director or Independent Manager, as applicable, (iii) such Independent Director or Independent Manager, as applicable, has breached its fiduciary duties of loyalty and care as and to the extent of such duties in accordance with the terms of Borrower’s organizational documents, (iv) there is a material increase in the fees charged by such Independent Director or Independent Manager, as applicable, or a material change to such Independent Director’s or Independent Manager’s, as applicable, terms of service, (v) such Independent Director or Independent Manager, as applicable, is unable to perform his or her duties as Independent Director or Independent Manager, as applicable, due to death, disability or incapacity, or (vi) such Independent Director or Independent Manager, as applicable, no longer meets the definition of Independent Director or Independent Manager, as applicable.

“Independent Director” or **“Independent Manager”** shall mean a natural person selected by Borrower (a) with prior experience as an independent director, independent manager or independent member, (b) with at least three (3) years of employment experience, (c) who is provided by a Nationally Recognized Service Company, (d) who is duly appointed as an Independent Director or Independent Manager and is not, will not be while serving as Independent Director or Independent Manager (except pursuant to an express provision in Borrower’s operating agreement providing for the appointment of such Independent Director or Independent Manager to become a “special member” upon the last remaining member of Borrower ceasing to be a member of Borrower) and shall not have been at any time during the preceding five (5) years, any of the following:

- (i) a stockholder, director (other than as an Independent Director), officer, employee, partner, attorney or counsel of Borrower, any Affiliate of Borrower or any direct or indirect parent of Borrower;
- (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any Affiliate of Borrower;

- (iii) a Person or other entity Controlling or under Common Control with any such stockholder, partner, customer, supplier or other Person described in clause (i) or clause (ii) above; or
- (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person described in clause (i) or clause (ii) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being the Independent Director or Independent Manager of a “special purpose entity” affiliated with Borrower shall be qualified to serve as an Independent Director or Independent Manager of Borrower, provided that the fees that such individual earns from serving as Independent Director or Independent Manager of affiliates of Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

A natural person who satisfies the foregoing definition other than clause (ii) shall not be disqualified from serving as an Independent Director or Independent Manager of Borrower if such individual is an independent director, independent manager or special manager provided by a Nationally Recognized Service Company that provides professional independent directors, independent managers and special managers and also provides other corporate services in the ordinary course of its business.

“Nationally Recognized Service Company” shall mean any of Independent Member Services, CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, National Corporate Research, Ltd., United Corporate Services, Inc., Independent Member Services LLC or such other nationally recognized company that provides independent director, independent manager or independent member services and that is reasonably satisfactory to Agent, in each case that is not an Affiliate of Borrower and that provides professional independent directors and other corporate services in the ordinary course of its business.

SCHEDULE VI

REA

That certain Zoning Lot Development Agreement dated July 23, 2003 and recorded in CRFN 20040002504741 (the "**ZLDA**"), as affected by that certain Clarification Agreement dated June 23, 2015 and recorded in CRFN 2015000317310 (the "**Clarification Agreement**").

SCHEDULE VII

CREDIT CARD COMPANY PAYMENT DIRECTION LETTER

[BORROWER LETTERHEAD]

[], 201[]

Certified Mail
Return Receipt Requested

[Addressee]

RE: Payment Direction Letter for Life Hotel located at
19 West 31st Street, New York, New York (the "***Hotel***")

Ladies and Gentlemen:

Life Hotel One LLC (the "***Owner***"), the owner of the Hotel, has mortgaged the Hotel to **Deutsche Bank AG, New York Branch** in its capacity as administrative agent (together with its successors and/or assigns, "***Agent***"), for itself and on behalf of any other Lenders (as such term is defined in the Amended, Restated and Consolidated Loan Agreement) and the Owner has agreed that all receipts received with respect to the Hotel will be paid directly to a bank selected by the Agent. Therefore, from and after the date hereof, please remit all payments due to the Owner under that certain [MERCHANT APPLICATION AND AGREEMENT][DOLLARS ON THE NET SERVICE AGREEMENT] (the "***Agreement***") between the Owner and you, as follows:

[Name and Address of Clearing Bank]

These payment instructions cannot be withdrawn or modified without the prior written consent of the Agent or its designee, or except pursuant to written instruction from the Agent or its designee. Until you receive written instructions from the Agent or its designee, continue to send all payments due under the Agreement pursuant to the instruction set forth above. All payments due under the Agreement shall be remitted pursuant to the instruction set forth above no later than the day on which such amounts are due.

Very truly yours,

BORROWER SIGNATURE BLOCK

SCHEDULE VIII

FORM OF EARNOUT ADVANCE FUNDING NOTICE

[], 201[]

Deutsche Bank AG, New York Branch, as agent
60 Wall Street
New York, New York 10005

Ladies and Gentlemen:

We refer to the Amended, Restated and Consolidated Loan Agreement dated as of July 18, 2017 (as amended or otherwise modified from time to time, the "**Loan Agreement**"), by the undersigned ("**Borrower**"), Deutsche Bank AG, New York Branch, as agent ("**Agent**") and the lenders party thereto (collectively, "**Lenders**"). Capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.

Borrower hereby gives Agent and Lenders notice pursuant to Section 2.10 of the Loan Agreement that Borrower requests the funding of the Earnout Advance under the Loan Agreement and, in connection therewith, set forth below the information relating to such proposed Advance (the "**Proposed Advance**"), as required by Section 2.10 of the Loan Agreement.

- (i) The aggregate principal amount of the Proposed Advance is \$1,000,000.
- (ii) The Business Day of the Proposed Advance is [_____, 20__].
- (iii) The Proposed Advance should be disbursed to the following account(s):

Wiring Instructions

Bank: [_____]
Account Number: [_____]
ABA Number: [_____]
Account Name: [_____]

The undersigned hereby certifies to Agent that (A) the Property has achieved a Debt Yield of at least eight (8%) percent for two consecutive Calculation Dates, as determined by Agent and (B) as of the date set forth above, and as of the date of the Proposed Advance, (i) both immediately prior to the date of the Proposed Advance and also after giving effect thereto, no Event of Default has occurred and is continuing and (ii) each representation and warranty of Borrower in Section 3.1 of the Loan Agreement and in the Loan Documents is true and complete in all material respects on and as of the date of the Proposed Advance (subject to any updates that do not have a material adverse effect on Borrower, any Guarantor or the Property and subject to any representations and warranties that apply only to a specific date) with the same force and effect as though made on and as of such date.

Very truly yours,

[BORROWER SIGNATURE BLOCKS]

SCHEDULE IX

RENOVATIONS BUDGET

(see attached)

Construction Budget							3/31/2016
Life Hotel							
New York, NY							
Area	sq ft/ no.	cost	u/m	subtotal	total	notes	
Lobby & Cellar Level Removals / Demolition							
Remove Telephone Booths	2	\$ 400.00	ea	\$ 800.00	\$ 800.00		
Remove Laundry Machines	1	\$ 2,500.00	lot	\$ 2,500.00	\$ 2,500.00		
MEP Disconnects (Lobby and Cellar)	1	\$ 15,000.00	allow	\$ 15,000.00	\$ 15,000.00		
Lobby Demolition of Partitions and finishes	1	\$ 80,000.00	lot	\$ 80,000.00	\$ 80,000.00		
Temporary Lobby Protection	1	\$ 20,000.00	allow	\$ 20,000.00	\$ 20,000.00		
Cellar Demolition of Partitions and finishes	1	\$ 35,000.00	allow	\$ 35,000.00	\$ 35,000.00		
Cellar MEP relocations	1	\$ 50,000.00	allow	\$ 50,000.00	\$ 50,000.00		
Remove Lockers	1	\$ 1,000.00	lot	\$ 1,000.00	\$ 1,000.00		
Relocate Reconfigure Offices During Construction	1	\$ 10,000.00	lot	\$ 10,000.00	\$ 10,000.00		
Relocate or Screen Fire Equipment Panel	1	\$ 15,000.00	lot	\$ 15,000.00	\$ 15,000.00		
Subtotal				\$ 229,300.00	\$ 229,300.00		
Lobby, Ground Floor, and Reception							
Site Protection	1	\$ 8,000.00	allow	\$ 18,000.00	\$ 18,000.00		
Lobby Temporary Partitions	1	\$ 5,000.00	allow	\$ 5,000.00	\$ 5,000.00		
Temporary Check-in Area	1	\$ 3,000.00	allow	\$ 3,000.00	\$ 3,000.00		
Concrete	40	\$ 400.00	CY	\$ 16,000.00	\$ 16,000.00		
Fireproofing	1	\$ 6,000.00	allow	\$ 6,000.00	\$ 6,000.00		
Misc. Metals	1,000	\$ 15.00	pounds	\$ 15,000.00	\$ 15,000.00		
Ornamental Metal	1	\$ 12,000.00	allow	\$ 12,000.00	\$ 12,000.00		
Masonry	600	\$ 25.00	SF	\$ 15,000.00	\$ 15,000.00		
Waterproofing	250	\$ 30.00	SF	\$ 7,500.00	\$ 7,500.00		
Drywall	450	\$ 85.00	LF	\$ 38,250.00	\$ 38,250.00		
Ceilings	3,200	\$ 10.00	SF	\$ 32,000.00	\$ 32,000.00		
Rough Carpentry	1	\$ 8,000.00	allow	\$ 8,000.00	\$ 8,000.00		
Interior Glazing	1	\$ 12,000.00	allow	\$ 12,000.00	\$ 12,000.00		
Millwork	1	\$ 75,000.00	allow	\$ 75,000.00	\$ 75,000.00		
Reception Desk	1	\$ 8,000.00	allow	\$ 8,000.00	\$ 8,000.00		
Doors and Frames	5	\$ 800.00	ea	\$ 4,000.00	\$ 4,000.00		
Hardware	14	\$ 1,200.00	ea	\$ 16,800.00	\$ 16,800.00		
New Auto Entry Doors	2	\$ 8,000.00	ea	\$ 16,000.00	\$ 16,000.00		
Stone and Marble	600	\$ 35.00	sf	\$ 21,000.00	\$ 21,000.00		
Painting	14,000	\$ 2.00	sf	\$ 28,000.00	\$ 28,000.00		
Wallcovering	200	\$ 45.00	yd	\$ 9,000.00	\$ 9,000.00		
Bathroom Accessories	1	\$ 5,000.00	allow	\$ 5,000.00	\$ 5,000.00		
Entry Mats	1	\$ 3,000.00	ea	\$ 3,000.00	\$ 3,000.00		
Wood Flooring	2,600	\$ 19.00	sf	\$ 49,400.00	\$ 49,400.00		
Carpet	80	\$ 38.00	yd	\$ 3,040.00	\$ 3,040.00		
Resilient Flooring / Gym Flooring	800	\$ 9.00	sf	\$ 7,200.00	\$ 7,200.00		
Handicap-lift	1	\$ 15,000.00	ea	\$ 15,000.00	\$ 15,000.00		
Signage	1	\$ 6,000.00	allow	\$ 6,000.00	\$ 6,000.00		
Electrical	4000	\$ 70.00	sf	\$ 280,000.00	\$ 280,000.00		
Fire Alarm	1	\$ 25,000.00	allow	\$ 25,000.00	\$ 25,000.00		
Tele/Data	4000	\$ 10.00	sf	\$ 40,000.00	\$ 40,000.00		
Security	4000	\$ 6.00	sf	\$ 24,000.00	\$ 24,000.00		
Exterior Lighting	16	\$ 1,200.00	ea	\$ 19,200.00	\$ 19,200.00		
Plumbing	4000	\$ 30.00	sf	\$ 120,000.00	\$ 120,000.00		
HVAC	4000	\$ 65.00	sf	\$ 260,000.00	\$ 260,000.00		
Sprinkler	4000	\$ 20.00	sf	\$ 80,000.00	\$ 80,000.00		
Exterior Landscaping	1	\$ 8,000.00	allow	\$ 8,000.00	\$ 8,000.00		
Subtotal				\$ 1,310,390.00	\$ 1,310,390.00		
Cellar Restaurant and Cellar Back of House							
Site protection	1	\$ 12,000.00	allow	\$ 18,000.00	\$ 18,000.00		
Concrete	25	\$ 400.00	CY	\$ 10,000.00	\$ 10,000.00		
Fireproofing	1	\$ 6,000.00	allow	\$ 6,000.00	\$ 6,000.00		
Misc. Metals	800	\$ 15.00	pounds	\$ 12,000.00	\$ 12,000.00		
Waterproofing	400	\$ 30.00	SF	\$ 12,000.00	\$ 12,000.00		
Masonry	400	\$ 25.00	SF	\$ 10,000.00	\$ 10,000.00		
Drywall	400	\$ 85.00	LF	\$ 34,000.00	\$ 34,000.00		
Ceilings	2,200	\$ 10.00	SF	\$ 22,000.00	\$ 22,000.00		
Rough Carpentry	1	\$ 6,000.00	allow	\$ 6,000.00	\$ 6,000.00		
Interior Glazing	1	\$ 9,000.00	allow	\$ 9,000.00	\$ 9,000.00		
Millwork	1	\$ 15,000.00	allow	\$ 15,000.00	\$ 15,000.00		
Doors and Frames	20	\$ 800.00	ea	\$ 16,000.00	\$ 16,000.00		
Hardware	20	\$ 500.00	ea	\$ 10,000.00	\$ 10,000.00		
Stone and Marble	600	\$ 35.00	sf	\$ 21,000.00	\$ 21,000.00		
Painting	12,000	\$ 2.00	sf	\$ 24,000.00	\$ 24,000.00		
Bathroom Accessories	1	\$ 3,000.00	allow	\$ 3,000.00	\$ 3,000.00		
Wood Flooring	2,600	\$ 19.00	sf	\$ 49,400.00	\$ 49,400.00		
Resilient Flooring	1,200	\$ 9.00	sf	\$ 10,800.00	\$ 10,800.00		
Handicap-lift	1	\$ 15,000.00	ea	\$ 15,000.00	\$ 15,000.00		
Signage	4	\$ 3,000.00	ea	\$ 12,000.00	\$ 12,000.00		
Electrical	3200	\$ 70.00	sf	\$ 224,000.00	\$ 224,000.00		
Fire Alarm	1	\$ 20,000.00	allow	\$ 20,000.00	\$ 20,000.00		
Tele/Data	3200	\$ 10.00	sf	\$ 32,000.00	\$ 32,000.00		
Security	3200	\$ 8.00	sf	\$ 25,600.00	\$ 25,600.00		
Plumbing	3200	\$ 30.00	sf	\$ 96,000.00	\$ 96,000.00		
HVAC	3200	\$ 65.00	sf	\$ 208,000.00	\$ 208,000.00		
Kitchen exhaust	3200	\$ 15.00	sf	\$ 48,000.00	\$ 48,000.00		
Sprinkler	3200	\$ 20.00	sf	\$ 64,000.00	\$ 64,000.00		
Kitchen Fire Suppression	1	\$ 10,000.00	allow	\$ 10,000.00	\$ 10,000.00		
Subtotal				\$ 1,042,800.00	\$ 1,042,800.00		
Building Façade							
Remove Windows on Main Façade	50	\$ 150.00	ea	\$ 7,500.00	\$ 7,500.00		
Replacement Ground Floor Windows	4	\$ 4,500.00	ea	\$ 18,000.00	\$ 18,000.00		
Awnings	14	\$ 2,500.00	ea	\$ 35,000.00	\$ 35,000.00		
Ornamental Metal	1	\$ 10,000.00	allow	\$ 10,000.00	\$ 10,000.00		
Install Flags	1	\$ 2,500.00	ea	\$ 2,500.00	\$ 2,500.00		
Install New Marquee	1	\$ 10,000.00	ea	\$ 10,000.00	\$ 10,000.00		
New Door to Bar & Opposite Side	2	\$ 3,500.00	ea	\$ 7,000.00	\$ 7,000.00		
Steel Platforms	9	\$ 9,000.00	ea	\$ 81,000.00	\$ 81,000.00		
Subtotal				\$ 161,000.00	\$ 161,000.00		
Corridors and Elevator Lobbies							
New Drywall Ceiling	8000	\$ 8.00	sf	\$ 64,000.00	\$ 64,000.00		
New Lighting (Scones)	200	\$ 350.00	ea	\$ 70,000.00	\$ 70,000.00		
New wood floors at corridors	8000	\$ 19.00	sf	\$ 152,000.00	\$ 152,000.00		
Wall Finishes (applied molding/ paint)	4000	\$ 25.00	sq yds	\$ 100,000.00	\$ 100,000.00		
New Door Hardware	135	\$ 600.00	ea	\$ 81,000.00	\$ 81,000.00		
Millwork around existing electrical panel	9	\$ 800.00	ea	\$ 7,200.00	\$ 7,200.00		
Ice machine plumbing	9	\$ 2,500.00	ea	\$ 22,500.00	\$ 22,500.00		
Stone for existing window sill	135	\$ 150.00	ea	\$ 20,250.00	\$ 20,250.00		
Back-off house shelving	1	\$ 7,000.00	allow	\$ 7,000.00	\$ 7,000.00		
ADA Signage for Rooms	130	\$ 150.00	ea	\$ 19,500.00	\$ 19,500.00		
Corridor and Elevator Signage	45	\$ 300.00	ea	\$ 13,500.00	\$ 13,500.00		
New Emergency Exit Signs	36	\$ 600.00	ea	\$ 21,600.00	\$ 21,600.00		
New Fire Alarm Devices	25	\$ 800.00	ea	\$ 20,000.00	\$ 20,000.00		
Remove Laundry Chute	1	\$ 10,000.00	lot	\$ 10,000.00	\$ 10,000.00		
Add Air Circulation and AC to Corridors	9	\$ 2,500.00	ea	\$ 22,500.00	\$ 22,500.00		
Subtotal				\$ 631,050.00	\$ 631,050.00		
Renovated Guestrooms							
Remove Thru Wall AC Units	39	\$ 200.00	ea	\$ 7,800.00	\$ 7,800.00		
Remove Draperies	39	\$ 150.00	ea	\$ 5,850.00	\$ 5,850.00		
Remove Bath Fixtures and Tile	39	\$ 750.00	ea	\$ 29,250.00	\$ 29,250.00		
Remove Lighting and Controls	39	\$ 500.00	ea	\$ 19,500.00	\$ 19,500.00		
Remove Guest Room Furniture	39	\$ 500.00	ea	\$ 19,500.00	\$ 19,500.00		
Add New Wall A/C Unit	39	\$ 1,000.00	ea	\$ 39,000.00	\$ 39,000.00		
Add Closet Doors (millwork)	39	\$ 750.00	ea	\$ 29,250.00	\$ 29,250.00		
New outlets & duplex per rm	234	\$ 150.00	ea	\$ 35,100.00	\$ 35,100.00		
New Bed Lighting Scones	78	\$ 400.00	ea	\$ 31,200.00	\$ 31,200.00		
New Pendant Lighting Fixture	39	\$ 250.00	ea	\$ 9,750.00	\$ 9,750.00		
New GFI Outlet	39	\$ 200.00	ea	\$ 7,800.00	\$ 7,800.00		
Add Room Controls for Electrical	39	\$ 300.00	ea	\$ 11,700.00	\$ 11,700.00		
Wood Flooring Repairs	5,000	\$ 10.00	sf	\$ 50,000.00	\$ 50,000.00		
Wall Repairs	39	\$ 750.00	ea	\$ 29,250.00	\$ 29,250.00		
Add Crown Mouldings, wall panel molding and Base	39	\$ 1,000.00	ea	\$ 39,000.00	\$ 39,000.00		
New Bathroom Sink Faucet	39	\$ 400.00	ea	\$ 15,600.00	\$ 15,600.00		
New Bathroom Shower Heads and Tub Spout	39	\$ 800.00	ea	\$ 31,200.00	\$ 31,200.00		
New Bathroom Accessories	39	\$ 500.00	ea	\$ 19,500.00	\$ 19,500.00		
Paint Room	39	\$ 1,500.00	ea	\$ 58,500.00	\$ 58,500.00		
New Bathroom Doors and Hardware	39	\$ 500.00	ea	\$ 19,500.00	\$ 19,500.00		
Subtotal				\$ 508,250.00	\$ 508,250.00		
Unrenovated Existing Guestrooms							
Remove Carpet	52	\$ 175.00	ea	\$ 9,100.00	\$ 9,100.00		
Remove AC Units	52	\$ 200.00	ea	\$ 10,400.00	\$ 10,400.00		
Remove Wallcovering	52	\$ 350.00	ea	\$ 18,200.00	\$ 18,200.00		
Remove Draperies	52	\$ 150.00	ea	\$ 7,800.00	\$ 7,800.00		
Remove Bath Fixtures and Tile	52	\$ 750.00	ea	\$ 39,000.00	\$ 39,000.00		
Remove Lighting and Controls	52	\$ 500.00	ea	\$ 26,000.00	\$ 26,000.00		
Remove Guest Room Furniture	52	\$ 500.00	ea	\$ 26,000.00	\$ 26,000.00		
Remove Ceiling	52	\$ 500.00	ea	\$ 26,000.00	\$ 26,000.00		
Raise Ceilings, New S/R	52	\$ 800.00	ea	\$ 41,600.00	\$ 41,600.00		
Add Crown Mouldings, panel mouldings and Base	52	\$ 1,500.00	ea	\$ 78,000.00	\$ 78,000.00		
New Wood Flooring for Rooms	15,000	\$ 15.00	sf	\$ 225,000.00	\$ 225,000.00		
Cedar Closet Interiors	52	\$ 150.00	ea	\$ 7,800.00	\$ 7,800.00		
Closet Door and Hardware	52	\$ 150.00	ea	\$ 7,800.00	\$ 7,800.00		
New AC Units	52	\$ 800.00	ea	\$ 41,600.00	\$ 41,600.00		
Paint Room	39	\$ 1,500.00	ea	\$ 58,500.00	\$ 58,500.00		
Add Auto Room Controls for Electrical	52	\$ 250.00	ea	\$ 13,000.00	\$ 13,000.00		
New outlets & duplex per rm	312	\$ 150.00	ea	\$ 46,800.00	\$ 46,800.00		
New Bed Lighting Scones	104	\$ 400.00	ea	\$ 41,600.00	\$ 41,600.00		
New Pendant Lighting Fixture	52	\$ 250.00	ea	\$ 13,000.00	\$ 13,000.00		
New GFI Outlet	52	\$ 200.00	ea	\$ 10,400.00	\$ 10,400.00		
New Bathroom tile	52	\$ 3,500.00	ea	\$ 182,000.00	\$ 182,000.00		
New Bathroom Sink Faucet	52	\$ 400.00	ea	\$ 20,800.00	\$ 20,800.00		
New Bathroom Shower Heads and							

Soft Cost Analysis

3/31/2016

Life Hotel
New York, NY

Area	sq ft/ no.	cost	u/m	subtotal	total	notes
Soft Costs						
Architect					\$ 300,000.00	
Engineering					\$ 133,000.00	
Insurance					\$ 50,000.00	
Total Soft Costs					\$ 483,000.00	

SCHEDULE X

PROJECT LOAN BUDGET

(see attached)

Project Loan Budget

FF&E Analysis

Life Hotel
New York, NY

Area	sq ft/ no.	cost	u/m	subtotal	Freight	total
Lobby						
New Lounge Furniture	10	\$ 500.00	ea	\$ 5,000.00	\$ 300.00	\$ 5,300.00
Lighting	25	\$ 600.00	ea	\$ 15,000.00	\$ 900.00	\$ 15,900.00
Area Rugs	4	\$ 3,000.00	ea	\$ 12,000.00	\$ 720.00	\$ 12,720.00
Draperies	2	\$ 2,500.00	ea	\$ 5,000.00	\$ 300.00	\$ 5,300.00
New Check in Desk and Back Counter	1	\$ 15,000.00	ea	\$ 15,000.00	\$ 900.00	\$ 15,900.00
Luggage Storage	1	\$ 2,500.00	ea	\$ 2,500.00	\$ 150.00	\$ 2,650.00
Concierge Desk	1	\$ 6,000.00	ea	\$ 6,000.00	\$ 360.00	\$ 6,360.00
Mirrors	4	\$ 1,250.00	ea	\$ 5,000.00	\$ 300.00	\$ 5,300.00
Side Tables	8	\$ 700.00	ea	\$ 5,600.00	\$ 336.00	\$ 5,936.00
Lounge Chairs	12	\$ 475.00	ea	\$ 5,700.00	\$ 342.00	\$ 6,042.00
Architectural Elements	4	\$ 2,000.00	ea	\$ 8,000.00	\$ 480.00	\$ 8,480.00
Decorative Elements	8	\$ 1,200.00	ea	\$ 9,600.00	\$ 576.00	\$ 10,176.00
Rehang and Position Existing Artwork	1	\$ 5,000.00	lot	\$ 5,000.00	\$ 300.00	\$ 5,300.00
Flower Arrangements & Urns	1	\$ 4,500.00	lot	\$ 4,500.00	\$ 270.00	\$ 4,770.00
Music System	1	\$ 20,000.00	lot	\$ 20,000.00	\$ 1,200.00	\$ 21,200.00
Lighting Controls	1	\$ 5,000.00	lot	\$ 5,000.00	\$ 300.00	\$ 5,300.00
Subtotal of Lobby						\$ 136,634.00
Restaurant						
Tables	20	\$ 400.00	ea	\$ 8,000.00	\$ 480.00	\$ 8,480.00
Table bases	20	\$ 150.00	ea	\$ 3,000.00	\$ 180.00	\$ 3,180.00
Lighting fixtures	35	\$ 400.00	ea	\$ 14,000.00	\$ 840.00	\$ 14,840.00
Chairs	40	\$ 350.00	ea	\$ 14,000.00	\$ 840.00	\$ 14,840.00
Banquettes	35	\$ 120.00	LF	\$ 4,200.00	\$ 252.00	\$ 4,452.00
TV's	2	\$ 1,200.00	ea	\$ 2,400.00	\$ 144.00	\$ 2,544.00
Bar stools	10	\$ 250.00	ea	\$ 2,500.00	\$ 150.00	\$ 2,650.00
Host stand	1	\$ 900.00	ea	\$ 900.00	\$ 54.00	\$ 954.00
Millwork bar	1	\$ 15,000.00	lot	\$ 15,000.00	\$ 900.00	\$ 15,900.00
Signage	1	\$ 1,500.00	lot	\$ 1,500.00	\$ 90.00	\$ 1,590.00
Wall treatment	1	\$ 3,000.00	lot	\$ 3,000.00	\$ 180.00	\$ 3,180.00
Service station	1	\$ 2,500.00	lot	\$ 2,500.00	\$ 150.00	\$ 2,650.00
Artwork	1	\$ 4,000.00	lot	\$ 4,000.00	\$ 240.00	\$ 4,240.00
Accessories	1	\$ 2,000.00	lot	\$ 2,000.00	\$ 120.00	\$ 2,120.00
Restaurant kitchen equipment	1	\$ 45,000.00	lot	\$ 45,000.00	\$ 2,700.00	\$ 47,700.00
Bar equipment	1	\$ 14,000.00	lot	\$ 14,000.00	\$ 840.00	\$ 14,840.00
Mirrors	8	\$ 1,200.00	ea	\$ 9,600.00	\$ 576.00	\$ 10,176.00
Music System	1	\$ 8,000.00	lot	\$ 8,000.00	\$ 480.00	\$ 8,480.00
Subtotal of Restaurant						\$ 162,816.00
Elevator Lobbies and Corridors						
Artwork	9	\$ 1,500.00	lot	\$ 13,500.00	\$ 810.00	\$ 14,310.00
Add Mirrors and Table	9	\$ 2,000.00	ea	\$ 18,000.00	\$ 1,080.00	\$ 19,080.00
Music System	1	\$ 12,000.00	lot	\$ 12,000.00	\$ 720.00	\$ 12,720.00
Subtotal of Elevator Lobbies and Corridors						\$ 46,110.00
Guest Rooms						
Headboard	91	\$ 600.00	ea	\$ 54,600.00	\$ 3,276.00	\$ 57,876.00
Bedframe	91	\$ 400.00	ea	\$ 36,400.00	\$ 2,184.00	\$ 38,584.00
Mattress	91	\$ 775.00	ea	\$ 70,525.00	\$ 4,231.50	\$ 74,756.50
Area Rugs	91	\$ 400.00	ea	\$ 36,400.00	\$ 2,184.00	\$ 38,584.00
Beside Tables	182	\$ 150.00	ea	\$ 27,300.00	\$ 1,638.00	\$ 28,938.00
Lamps 3 Per Room	273	\$ 110.00	ea	\$ 30,030.00	\$ 1,801.80	\$ 31,831.80
New Desk	91	\$ 750.00	ea	\$ 68,250.00	\$ 4,095.00	\$ 72,345.00
New Dresser	91	\$ 600.00	ea	\$ 54,600.00	\$ 3,276.00	\$ 57,876.00
New Ergonomis Chair	91	\$ 275.00	ea	\$ 25,025.00	\$ 1,501.50	\$ 26,526.50
Lounge Chair	91	\$ 475.00	ea	\$ 43,225.00	\$ 2,593.50	\$ 45,818.50
Small Side Table	91	\$ 150.00	ea	\$ 13,650.00	\$ 819.00	\$ 14,469.00
Small Floor Lamp	91	\$ 125.00	ea	\$ 11,375.00	\$ 682.50	\$ 12,057.50
Luggage Rack	91	\$ 40.00	ea	\$ 3,640.00	\$ 218.40	\$ 3,858.40
Add Safes	91	\$ 150.00	ea	\$ 13,650.00	\$ 819.00	\$ 14,469.00
Subtotal of Guest Rooms						\$ 517,990.20
FF&E Subtotal				\$ 814,670.00	\$ 48,880.20	\$ 863,550.20
Installation	10%					\$ 51,799.02
Contingency	5%					\$ 43,177.51
Subtotal of FF&E						\$ 958,526.73

Soft Cost Analysis

3/31/2016

Life Hotel
New York, NY

Area	sq ft/ no.	cost	u/m	subtotal	total	notes
Soft Costs						
Accounting					\$ 12,500.00	
Audit					\$ 7,500.00	
Consulting Services					\$ 12,500.00	
Deferred Maintenance/Code Compliance					\$ 80,000.00	
Expediting Services					\$ 40,000.00	
Internet & Phone					\$ 7,500.00	
I.T. Software Integration					\$ 25,000.00	
Legal (Union, SRO, Zoning, Management)					\$ 15,000.00	
Management Fees					\$ 250.00	
Messenger Services					\$ 250.00	
Miscellaneous					\$ 5,000.00	
Office Supplies					\$ 500.00	
PR & Marketing Reserve					\$ 25,000.00	
Project Manager	10	\$ 5,500.00		\$ 55,000.00	\$ 55,000.00	
Special Inspections	25	\$ 1,000.00		\$ 25,000.00	\$ 25,000.00	
Surveyor	2	\$ 6,000.00		\$ 12,000.00	\$ 6,000.00	

FF&E Analysis
Life Hotel
New York, NY

Area	sq ft/ no.	cost	u/m	subtotal	Freight	total
Total Soft Costs					\$ 317,000.00	

SCHEDULE XI
PUNCHLIST BUDGET

<u>Hard Costs</u>	<u>Amount</u>
1 st Floor Rooms, Corridors & Related Work	\$630,000.00
Life Safety/Restaurant & 1 st Floor Rooms	\$125,000.00
New Pumps & Backup Pumps	\$90,000.00
Lienable Soft Costs	\$100,000.00
Additional IT Equip. & Install	\$55,000.00
Additional Restaurant & FF&E	\$200,000.00
Total Uses:	\$1,200,000.00

EXHIBIT A

LEGAL DESCRIPTION

ALL that certain plot piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on line northerly side of 31st Street, distant 300 feet westerly from the corner formed by the intersection of the northerly side of 31st Street with the westerly side of 5th Avenue;

RUNNING THENCE northerly parallel with 5th Avenue and part of the way through a party wall, 99 feet 9 inches (as per deed) and 98 feet 9 inches (as per survey);

THENCE westerly parallel with 31st Street, 50 feet;

THENCE southerly parallel with 5th Avenue, 98 feet 9 inches to the northerly side of 31st Street; and

THENCE easterly along the northerly side of 31st Street, 50 feet to the point or place of BEGINNING.

EXHIBIT B

SECONDARY MARKET TRANSACTION INFORMATION

(A) Any proposed program for the renovation, improvement or development of the Property, or any part thereof, including the estimated cost thereof and the method of financing to be used.

(B) The general competitive conditions to which the Property is or may be subject.

(C) Management of the Property.

(D) Occupancy rate expressed as a percentage for each of the last five years.

(E) Principal business, occupations and professions carried on in, or from the Property.

(F) Number of Tenants occupying 10% or more of the total rentable square footage of the Property and principal nature of business of such Tenant, and the principal provisions of the leases with those Tenants including, but not limited to: rental per annum, expiration date, and renewal options.

(G) The average effective annual rental per square foot or unit for each of the last three years prior to the date of filing.

(H) Schedule of the lease expirations for each of the ten years starting with the year in which the registration statement is filed (or the year in which the prospectus supplement is dated, as applicable), stating:

(1) The number of Tenants whose leases will expire.

(2) The total area in square feet covered by such leases.

(3) The annual rental represented by such leases.

(4) The percentage of gross annual rental represented by such leases.

EXHIBIT C-1

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan Agreement dated as of June 3, 2016 (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among [], and each lender from time to time party thereto.

Pursuant to the provisions of Section 10.24 of the Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: [_____, 20__]

EXHIBIT C-2

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan Agreement dated as of June 3, 2016 (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among [], and each lender from time to time party thereto.

Pursuant to the provisions of Section 10.24 of the Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF PARTICIPANT]

By: _____

Name:

Title:

Date: [_____, 20__]

EXHIBIT C-3

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan Agreement dated as of June 3, 2016 (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among [], and each lender from time to time party thereto.

Pursuant to the provisions of Section 10.24 of the Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: [_____, 20__]

EXHIBIT C-4

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan Agreement dated as of June 3, 2016 (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among [], and each lender from time to time party thereto.

Pursuant to the provisions of Section 10.24 of the Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: [_____, 20__]

EXHIBIT D

FORM OF ARCHITECT'S CERTIFICATE

[Letterhead of Borrower's Architect]

[_____, 20__]

Deutsche Bank AG, New York Branch, as agent
60 Wall Street
New York, New York 10005

Ladies and Gentlemen:

The undersigned ("**Architect**") understands that Deutsche Bank AG, New York Branch and the other lenders party to the loan agreements listed below ("**Lender**") have made a loan (the "**Loan**") to Life Hotel One LLC ("**Borrower**"), which Loan, among other things, was used to finance completion by Borrower of PIP Work and was advanced pursuant to that certain Amended, Restated and Consolidated Loan Agreement entered into by Deutsche Bank AG, New York Branch, as agent for Lender ("**Agent**"), Lender and Borrower as of July 18, 2017 (the "**Loan Agreement**"). Initially capitalized terms not defined herein shall have the meanings ascribed to them in the Loan Agreement.

Architect prepared certain Plans and Specifications in connection with the completion of the PIP Work. In addition, Architect has been engaged to act as the Architect for the construction of the PIP Work and such engagement has been confirmed by that certain [Agreement for Architectural Services] between Borrower and Architect dated [_____, 201_].

Based on its on-site observation of the Property, including, the observation of the Plans and Specification, each to the date of this Certificate, Architect states to Agent and Lender that (a) the Property and its contemplated uses, as identified to us by Borrower (that is, as a hotel) comply with all applicable building codes and all other governmental rules, laws and regulations relating to its design and engineering, to the extent applicable and in effect as of the date hereof, and the permanent certificate of occupancy for the Property, and (b) all building permits, licenses and other approvals (collectively, the "**Approvals**") required for the Final Completion of the PIP Work in accordance with the Plans and Specifications have been obtained.

Architect states to Agent and Lender that the Property complies with all applicable requirements of the applicable zoning and building laws and ordinances which are in effect as of the date hereof and there is sufficient access and egress to and, from the Property for its use for its intended purposes.

Architect hereby certifies to Agent and Lender that the PIP Work has been completed in a good and workmanlike manner in accordance with the Plans and Specifications.

[ARCHITECT SIGNATURE BLOCK]