

## SEPARATION AND MUTUAL RELEASE AGREEMENT

**THIS SEPARATION AND MUTUAL RELEASE AGREEMENT** (this “Agreement”) is made as of the \_\_ day of December, 2013, by and among, **B.R. GUEST PARENT HOLDINGS, LLC**, a Delaware limited liability company (“BRG Parent”), **SO F U.S. RESTAURANT CO-INVEST HOLDINGS, L.L.C.**, a Delaware limited liability company (“Starwood”), and **STEPHEN P. HANSON** (“Executive”), **SPH FAMILY HOLDINGS, LLC**, a Delaware limited liability company (“Hanson Member”), **SPH FAMILY HOLDINGS SUB, LLC**, a Delaware limited liability company (“BRG Member”, and together with Executive and Hanson Member, the “Hanson Parties”, and together with BRG Parent and Starwood, the “Parties”).

**WHEREAS**, Executive has been employed by BRG Parent under terms set forth in that certain Employment Agreement dated as of February 23, 2007 (the “Executive Employment Agreement”), attached hereto as Schedule I, by and between Executive and B.R. Guest Holdings, LLC, a Delaware limited liability company (formerly known as elevenseven Holdings, L.L.C.) (“BRG Holdings Sub”);

On December 30, 2008, BRG Holdings Sub assigned its rights and obligations under the Executive Employment Agreement to BRG Parent pursuant to that certain Novation Agreement, dated as of December 30, 2008, by and among Executive, BRG Parent and BRG Holdings Sub;

SPH Restaurant Enterprises, Inc. (f/k/a B R Guest, Inc.), a New York corporation, as predecessor-in-interest to BRG Member, Executive, as predecessor-in-interest to Hanson Member, and Starwood entered into that certain Limited Liability Company Agreement of BRG Parent, dated as of December 30, 2008 attached hereto as Schedule II (as such agreement shall have been amended and supplemented from time to time prior to the date of this Agreement, the “LLC Agreement”);

Executive has decided to resign from BRG Parent. BRG Parent has requested of the Executive that he remain as a Consultant to the Company for a period following his resignation and the Executive has agreed to do so.

In addition, BRG Member and Hanson Member have agreed to sell to Starwood their

Interests (as such term is defined in the LLC Agreement) and Starwood has agreed to purchase their Interests pursuant to the terms herein.

The Parties desire to enter into this Agreement in order to set forth the definitive rights and obligations to the Parties in connection with Executive's resignation (such resignation the "Separation") and sale by BRG Member and Hanson Member of their Interests in BRG Parent.

**NOW THEREFORE**, in consideration of the mutual covenants, commitments and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

1. **Termination of Employment.** Executive's employment with the Company shall end effective upon the execution of this Agreement by all of the Parties (the "Separation Date").

2. **Resignation of Offices.** Effective as of the Separation Date, Executive hereby resigns from all positions he holds as an employee, director, manager, Representative (as defined in the LLC Agreement) or officer of BRG Parent, and from any and all other offices which he holds as an officer, director, manager, Representative (as defined in the LLC Agreement) or employee with any Investment Vehicle (as defined in the LLC Agreement, and used hereafter), or their respective successor entities or with any subsidiaries, investments or affiliates of the foregoing (BRG Parent, each Investment Vehicle and their respective successor entities, subsidiaries, investments and controlled affiliates (excluding Starwood and its affiliates) (collectively, the "Company").

3. **Engagement of Consultant.** The Company shall engage Executive as a Consultant to the Company on the terms set forth herein.

The term of the Consulting relationship shall commence on the Separation Date and shall terminate on December 31, 2013 (the "Consulting Period"). During the term of the Consulting Period:

(a) The Company may make reasonable requests of Executive to assist the Company. The Company intends to have Executive assist the Company in the design

development phase of the reconfiguration and renovation by the landlord of the Blue Fin restaurant, the extension of the Company's lease of the Wildwood restaurant, and in the transition of management from the Executive (it being agreed that from December 20, 2013 Executive will consult via telephone and email).

The Company represents and warrants that its request for Executive's services shall not exceed his obligations when he was president of the Company.

(b) The Executive agrees that, consistent with all of his business and personal commitments which exist on or arise after the Separation Date, to provide, in the Executive's reasonable discretion, to the Company the services the Company requests of him.

(c) The Company shall pay to the Executive the amount of one dollar (\$1.00) for his services as consultant.

(d) The Company shall promptly reimburse to the Executive his reasonable out of pocket costs incurred during the Consulting Period, in each case only to the extent set forth on Part I of Schedule III attached hereto.

(e) Executive shall be an independent contractor for all purposes hereunder, and shall not hold itself out as an agent of the Company in any context and shall have no right or authority, express or implied, to commit or otherwise obligate the Company in any manner whatsoever.

4. **Relationship After the Separation.**

(a) Indemnification Rights. As a former officer of the Company, Executive (solely in such capacity as a former officer and consultant to the Company) shall remain entitled to any indemnification rights under any contract with or governing document of the Company in effect as of the Separation Date or under any applicable law, for events arising prior to the end of the Consulting Period, in each case subject to the terms and any qualifications applicable thereto. Executive will promptly notify the Company of any actual or threatened claim that may implicate such indemnification rights. Executive explicitly acknowledges that any such right to indemnification does not extend to any action, suit or proceeding (including counterclaims)

permitted by this Agreement brought against the Executive by any of the Company and Starwood Released Parties (as such term is defined below).

(b) LIC Lease. Notwithstanding anything to the contrary contained in that certain Sublease by and between 42-31 Ninth Street, LLC (as “Sublessor”) and L.I.C. Restaurant Group Operations, LLC (as “Sublessee”), dated as of March 1, 1998 (the “Sublease”), for the premises located at 42-31/33 9<sup>th</sup> Street, Long Island City, NY, the Sublease shall terminate on the earlier of ninety (90) days after Sublessee gives Sublessor notice of its decision to terminate the Sublease or December 31, 2015, and for all purposes of such Sublease such date shall be the termination date.

(c) COBRA. Effective as of the Separation Date, as required by the continuation coverage provisions of Section 4980B of the Code, Executive will be offered the opportunity to elect continuation coverage under the group medical plan(s) of the Company. The existence and duration of Executive’s rights and/or the COBRA rights of any of Executive’s eligible dependents will otherwise be determined in accordance with Section 4980B of the Code. To the extent permitted by law, during the Consulting Period (but not thereafter), the Company shall continue to pay Executive’s insurance premiums under the Company’s medical plans.

(d) Cooperation. From the end of the Consulting Period through and including June 30, 2014, Executive will, in his reasonable discretion, remain reasonably available to the Company, subject to his personal and business commitments, for purposes of occasional consultation and assistance (telephonically unless agreed to otherwise by Executive) on material issues relating to the Company’s business, including, without limitation, in the transition of management from Executive, liquor license updates (i.e., substitution of named entities or persons) and in Starwood’s efforts (if any) to sell the Company and/or its assets. Although it is not anticipated that Executive will incur any expenses related to his provision of such consultation and assistance, he will be reimbursed by the Company for any such expenses incurred in the manner set forth in Section 3(d) above.

5. **Restrictive Covenants of the Executive.**

(a) Post Separation Restrictive Covenants of the Executive. The Parties agree

that upon the Separation Date the restrictive covenants and other obligations under Section 6 of the Executive Employment Agreement and as set forth in the LLC Agreement shall be null and void and of no force or effect. Executive shall not be bound by any restrictive covenants except as specifically set forth in this Agreement.

(b) The Executive hereby covenants to the Company that, to the maximum extent permitted by law:

(i) Noncompetition. During the period commencing on the Separation Date and continuing through June 30, 2014 (the "Restrictive Covenant Period"), as it relates to restaurants and/or restaurant businesses located within New York City, New York and/or Atlantic City, New Jersey (the "Territory"), the Executive shall not, individually or through any entity controlled by Executive or in which Executive has an interest: (A) own (equity or debt), control, or be employed by, any restaurant or restaurant business; (B) manage or operate (or provide material assistance to others with respect to managing or operating) or provide services (including consulting services) to any restaurant or restaurant business; (C) execute a lease for, build out, acquire through lease or purchase the premises on which to conduct a restaurant or restaurant business (or commence a build out under such lease or on such premises); (D) issue any press release or speak to the press (including, without limitation, giving any interviews or discussing with the media (tv, radio, internet, newspapers, magazines or other medium) or cooperating with any article regarding any such restaurant or the opening thereof) other than to say no comment, make a public announcement and/or undertake any advertising with respect to any restaurant or restaurant business or the opening thereof; (E) hire, extend a written offer for employment, or engage any headhunter or search firm to hire any individual, for purposes of having such individual work in any restaurant or restaurant business within the Territory; *provided, however*, that, subject to Section 5(b)(ii) below, it shall not be a violation or breach of this Agreement for Executive, during the Restricted Covenant Period, to cause or permit to be hired any individual for purposes of having such individual work in a restaurant or restaurant business outside of the Territory, even if such individual transfers to a restaurant or restaurant business within the Territory, provided that such transfer occurs after the expiration of the Restricted Covenant Period.; and/or (F) enter into any contract, agreement, commitment, joint venture or partnership (or similar arrangement) and/or letter of intent with respect to any

restaurants and/or restaurant businesses located within the Territory and/or any of the actions, items and/or activities described in the preceding clauses (A) - (E) of this paragraph.

Notwithstanding the foregoing, the Executive's ownership of securities of two percent (2%) or less of any class of securities of a public company shall not, by itself, be considered to be competition with the Company.

(ii) Non-hire. With the exception of Rudy Gadson and Erin Pepper, during the Restrictive Covenant Period the Executive shall not, directly or indirectly, for himself, his affiliates or others, employ, extend a written offer for employment, or otherwise contract for the services of any individual who is an employee of the Company on the Separation Date.

(iii) After the Separation Date, except as set forth in this Agreement, the Executive shall not be subject to any restrictions as relates to competing with the Company, or hiring any past or present employee of the Company; and any restrictions as to such acts or other covenants by the Executive set forth in the Employment Agreement, the LLC Agreement, or any other agreement among the Parties or to which the Executive is subject are hereby terminated and shall be null and void. Further, except as set forth in this Agreement, the Company and Starwood acknowledge that the Executive, the Hanson Parties, their affiliates, heirs and successors are free to negotiate, contract and/or join with any other person or persons in business, including in businesses which compete with the Company, and including with persons who have expressed to Executive an interest in doing so prior to the Separation Date. Except as set forth in this Agreement, Executive shall have complete freedom to act without any obligation to the Company or Starwood, neither of which shall claim that Executive has taken for himself a corporate opportunity of the Company or otherwise violated his obligations to the Company or Starwood.

(iv) Except as otherwise permitted in the last sentence of Section 5(c) below, Executive agrees that he will not, directly, willfully or negligently disclose to any unauthorized person or use for his own account or any other person or entity any of the information listed on Schedule IX attached hereto (hereinafter referred to as "Confidential Information"), without the written consent of the entity that owns such Confidential Information unless, and only to the extent that, (A) the aforementioned matters become generally known to

and available for use by the public other than as a result of the Executive's acts or omissions to act, or (B) Executive is required to do so by order of a court of competent jurisdiction (by subpoena or similar process), in which event Executive will promptly (and in advance of disclosure) reasonably cooperate with the relevant party in connection with any action by such entity to restrict, limit or suppress such disclosure.

(c) Return of Company Property. To Executive's knowledge, he has returned to the Company or destroyed all Confidential Information, files, records, correspondence, memoranda, notes or other documents (including, without limitation, those in computer-readable form) or property relating or belonging to the Company and its subsidiaries and affiliates, whether prepared by the Executive or otherwise coming into his possession in the course of the performance of his services to the Company. In the future, should Executive discover Confidential Information or property relating or belonging to the Company and its subsidiaries and affiliates in his possession, he will promptly return to the Company all such Confidential Information (and all copies thereof) and property relating or belonging to the Company and its subsidiaries and affiliates without further use thereof by Executive or any of his affiliates. Notwithstanding any other provision herein, the Executive may use alone or with others: (i) his rolodex and similar address books; and (ii) the knowledge that the Executive has of recipes, employee manuals, operation manuals, and other manuals belonging to the Company; *provided, however,* that Executive represents and warrants to the Company that, to his knowledge he has not taken with him in written form any such recipes or manuals, and if in the future Executive discovers any recipes, employee manuals, operation manuals, or other manuals belonging to the Company in his possession, he will promptly return to the Company all such items (and all copies thereof) without further use of such written form of such recipes and manuals by Executive or any of his affiliates.

(d) Compensation for the Executive's Post Separation Restrictive Covenants. The Company shall pay to Executive as compensation for the Executive's restrictive covenants set forth above in this Section 5 and set forth below in Section 5(e) and Section 5(f), the aggregate amount of five hundred thousand dollars (\$500,000) (the "Restrictive Covenant Payment") payable on the earlier of (x) June 30, 2014 and (y) the date of closing of the sale of the Company or all or substantially all of its assets (the "Payment Date"), so long as no Hanson

Party is in breach of this Agreement which has not been cured within five (5) days after receipt of notice thereof from the Company or Starwood. Notwithstanding the immediately preceding sentence, the Restrictive Covenant Payment shall not be payable to the Executive if the Company determines, in its sole and absolute discretion, that any one or more of the following has occurred prior to the Payment Date: (i) Executive, directly or indirectly, for himself, his affiliates or others, solicited for employment any individual who is an employee of the Company on the Separation Date, (ii) Executive, directly or indirectly, solicited for employment any individual, for purposes of having such individual work in any restaurant or restaurant business within the Territory, and/or (iii) Executive, directly or indirectly, interfered with or otherwise disrupted the relationship between the Company and any individual who is an employee of the Company on the Separation Date. The Hanson Parties hereby waive any right to dispute any determination made by the Company pursuant to the immediately preceding sentence and further agree that the exercise by the Company of any rights pursuant such sentence shall not preclude the Company from exercising any other rights and remedies available to it under this Agreement, at law or in equity. Any payment required pursuant to this paragraph shall be made by wire transfer of available funds in accordance with Executive's wire instructions.

(e) Prior to January 1, 2019, Executive shall not, directly or indirectly, in whole or in part, own (equity or debt), manage, build out, operate, control, lease or be employed by, or provide services (including consultation services) to (i) any Strip House restaurant and/or (ii) any Blue Fin restaurant or any restaurant or restaurant business located where the Blue Fin restaurant is located as of the date of this Agreement. Subject to the foregoing sentence and the other terms of this Agreement, Executive shall not be restricted from doing other business with Joseph Nakash or the other direct and indirect owners of Strip House Restaurants, LLC and Strip House 44th Street, LLC.

(f) Noninterference. During the Restrictive Covenant Period, Executive shall not, directly or indirectly, (i) interfere with or otherwise disrupt any Corporate Opportunity (as hereinafter defined) and/or any economic relationship between the Company or any person or entity who is a landlord or a partner (or its equivalent) of the Company or any restaurant operated by the Company as of the date of this Agreement and/or (ii) have any conversation or negotiation with Host Marriott Corp. or any of its affiliates or representatives with respect to any

restaurant or restaurant business and/or enter into any contract, agreement, lease, commitment, joint venture or partnership (or similar arrangement) and/or letter of intent with Host Marriott Corp. or any of its affiliates or representatives with respect to any restaurants and/or restaurant businesses.

(g) Executive acknowledges that the time, scope, geographic area and other provisions of this Section 5 have been specifically negotiated by sophisticated commercial parties and agree that they consider the restrictions and covenants contained in this Section 5 to be reasonable and necessary for the protection of the interests of the Company, but if any such restriction or covenant shall be held by any court of competent jurisdiction to be void but would be valid if deleted in part or reduced in application, such restriction or covenant shall apply with such deletion or modification as may be necessary to make it valid and enforceable. The restrictions and covenants contained in each paragraph of this Section 5 shall be construed as separate and individual restrictions and covenants and shall each be capable of being severed without prejudice to the other restrictions and covenants or to the remaining provisions of this Agreement.

(h) For the avoidance of doubt, the term “Company” as used in paragraphs (a), (b), (c), (f) and (g) of this Section 5 includes each person or entity on an individual basis that is included in the definition of the Company.

6. **Sale of Interests.** Upon the Separation Date:

(a) Each of Hanson Member and BRG Member (A) shall execute all documents necessary to assign, transfer and convey its Interests to Starwood including the assignment agreement attached hereto as Schedule VII (the “Assignment Agreement”), (B) withdraw from BRG Parent as a member of BRG Parent, and shall thereafter cease to be a member of BRG Parent, (C) cease to have any rights or interest (legal, beneficial or economic) in the Company, the assets of the Company, and/or under the LLC Agreement and (D) cease to be a party to the LLC Agreement. Thereafter, each of the Hanson Member and the BRG Member shall not have or exercise any right or power (including, without limitation, any right or power to appoint any Representative (as defined in the LLC Agreement) whatsoever as a member of BRG Parent and/or under the LLC Agreement. Without limitation of the forgoing, immediately

following the assignment of the Interests pursuant to the Assignment Agreement, all of the BRG Representatives (as defined in the LLC Agreement) shall automatically be removed without any further action required of Starwood or any other person or entity. Nothing provided herein shall terminate the Hanson Parties' rights as former members of BRG Parent.

(b) Starwood shall pay to the Hanson Member and the BRG Member for their Interests, the aggregate amount of one million five hundred thousand dollars (\$1,500,000), payable upon execution of this Agreement and the Assignment Agreement by all parties hereto and thereto. Such aggregate amount shall be allocated between Hanson Member and BRG Member as they shall determine. Such payments shall be made by wire transfer of available funds in accordance with Executive's wire instructions.

(c) Until Starwood shall amend the LLC Agreement (which it may do in its sole and absolute discretion), all references in the LLC Agreement to BRG Member and Hanson Member shall be deleted and replaced by the word Starwood.

(d) The Hanson Parties, jointly and severally, represent and warrant to Starwood and the Company that (i) each of the Hanson Member and the BRG Member is the sole legal and beneficial owner of its Interest, (ii) each of the Hanson Member and the BRG Member has not heretofore assigned or transferred, or purported to assign or transfer its Interest or any portion thereof to any person or entity, (iii) each of the Hanson Member's and the BRG Member's Interest is free and clear of liens, encumbrances and claims of others, (iv) other than Hanson Member's Interest, BRG Member's Interest and Executive's interest in the Sublease through his ownership interest of Sublessor, none of Executive, Hanson Member, BRG Member or any of their subsidiaries or affiliates, directly or indirectly, has any interest in, lien or encumbrance on, or right to, any tangible or intangible personal property that is material to the Company or any restaurant or is necessary for the conduct of the Company's or any restaurant's business as currently conducted and/or has been conducted during the 12 month period prior to the date of this Agreement and (v) other than the Sublease, neither Executive nor any of his affiliates is, directly or indirectly, a party to any contract or agreement with the Company or any person or entity comprising the Company under such definition.

(e) The Parties and SPH Restaurant Enterprises, Inc. (f/k/a B R Guest, Inc.),

by execution hereof, hereby acknowledge and agree that notwithstanding anything to the contrary contained in the LLC Agreement or any amendment thereto (including the Transfer Agreement and First Amendment to the Limited Liability Company Agreement of BR Guest Parent Holdings, LLC attached hereto as part of Schedule II) (i) there was a scrivener's error in those agreements in that all references in those agreements, including in the signature blocks thereto, to SPH Enterprises, Inc. should have been to SPH Restaurant Enterprises, Inc. and all references to SPH Enterprises, Inc. (f/k/a B.R. Guest, Inc.) should have been to SPH Restaurant Enterprises, Inc. (f/k/a B R Guest, Inc.) and (ii) that all such agreements are hereby amended so that all references in those agreements, including in the signature blocks thereto, to SPH Enterprises, Inc. is hereby replaced with SPH Restaurant Enterprises, Inc. and all references to SPH Enterprises, Inc. (f/k/a B.R. Guest, Inc.) is hereby replaced with SPH Restaurant Enterprises, Inc. (f/k/a B R Guest, Inc.).

(f) This Section 6 shall survive the execution and delivery of this Agreement and the Assignment Agreement.

7. **General Releases and Waiver.**

(a) General Release by the Hanson Parties. The Hanson Parties, for and on behalf of themselves and each of their respective heirs, executors, administrators, personal representatives, successors and assigns (all the foregoing entities and individuals being individually and collectively, the "Executive Releasers"), to the maximum extent permitted by law, hereby acknowledge full and complete satisfaction of and ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY FULLY AND FOREVER RELEASES, ACQUITS AND DISCHARGES (i) the Company and Starwood (all the foregoing entities and individuals together with their successors and assigns being individually and collectively, the "Listed Company and Starwood Released Parties"), and (ii) as it relates to the Non-Listed Company and Starwood Released Parties' (as defined below) relationship to, or direct or indirect involvement with, the Company (and any member, manager, partner or shareholder thereof) and Starwood, each of the Listed Company and Starwood Released Parties' respective past and present parents, affiliates, subsidiaries and their respective direct and indirect stockholders, directors, members, managers, partners, officers, employees, attorneys, agents and

representatives, and each of their respective heirs, executors, administrators, personal representatives, successors and assigns (all the foregoing entities and individuals listed in this clause (ii) being individually and collectively, the “Non-Listed Company and Starwood Released Parties” and together with the Listed Company and Starwood Released Parties, collectively, the “Company and Starwood Released Parties”), from any and all claims, demands, suits, causes of action, liabilities, obligations, judgments, orders, debts, liens, contracts, agreements, covenants and causes of action of every kind and nature, whether known or unknown, suspected or unsuspected, concealed or hidden (unless such concealment or hiding constitutes fraud), vested or contingent, in law or equity, existing by statute, common law, contract or otherwise (“Claims”), which have existed, may exist or do exist, through and including the Separation Date, including, without limitation, any of the foregoing arising out of or in any way related to or based upon:

(i) Executive’s application for and employment with the Company and/or his being an officer, director, manager, Representative (as defined in the LLC Agreement) or employee of the Company;

(ii) Any and all claims in tort or contract, and any and all claims alleging breach of an express or implied, or oral or written, contract, policy manual or employee handbook;

(iii) Any alleged misrepresentation, defamation, interference with contract, intentional or negligent infliction of emotional distress, racism or other discrimination, negligence or wrongful discharge; or

(iv) Any federal, state or local law, statute, ordinance or regulation, including but not limited to all labor and employment discrimination laws; provided, however, that notwithstanding the foregoing, the Company and Starwood Released Parties expressly acknowledge and agree that the waiver and release of Claims set forth in this Section 6(a) does not include any Claims Executive or any other Hanson Party may have under the Age Discrimination in Employment Act of 1987, as amended by the Older Workers Benefit Protection Act and otherwise (the “ADEA”), to which the Company acknowledges it will remain subject notwithstanding the Hanson Parties’ execution of this Agreement.

(b) General Release by the Company and Starwood. Each of (i) the Company and Starwood (including all controlled affiliates and subsidiaries of Starwood), and by executing this Agreement (solely for purposes of this Section 7(b)), Barry Sternlicht, for and on behalf of himself or itself and each of his or its respective heirs, executors, administrators, personal representatives, successors and assigns (all the foregoing entities and individuals listed in this clause (i) being individually and collectively, the “Listed Company and Starwood Releasers”) and (ii) as it relates to the Non-Listed Company and Starwood Releasers’ (as defined below) relationship to the Company and Starwood, each of the Listed Company and Starwood Releasers’ respective past and present parents, affiliates, subsidiaries and their respective direct and indirect stockholders, directors, members, managers, partners, officers, employees, attorneys, agents and representatives (all the foregoing entities and individuals listed in this clause (ii) being individually and collectively, the Non-Listed Company and Starwood Releasers” and together with the Listed Company and Starwood Releasers, the “Company and Starwood Releasers”) to the maximum extent permitted by law, hereby acknowledges full and complete satisfaction of and ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY FULLY AND FOREVER RELEASES, ACQUITS AND DISCHARGES the Hanson Parties, and each of their representatives, and each of their respective heirs, executors, administrators, personal representatives, successors and assigns (all of the foregoing entities and individuals being individually and collectively, the “Executive Released Parties”), from any and all Claims which have existed, may exist or do exist, through and including the Separation Date, including without limitation, any of the foregoing arising out of or in any way related to or based upon:

(i) Executive’s application for and employment with the Company his being an officer or employee of the Company;

(ii) Any and all claims in tort or contract, including under, but not limited to, the Employment Agreement and any and all claims alleging breach of an express or implied, or oral or written, contract;

(iii) Any alleged misrepresentation, defamation, interference with contract, intentional or negligent infliction of emotional distress, negligence or wrongful discharge; or

(iv) Any federal, state or local law, statute, ordinance or regulation, including but not limited to all labor and employment discrimination laws.

(c) Acknowledgment of Waiver; Disclaimer of Benefits. Each of the Parties acknowledges and agrees that, except as otherwise specifically provided in this Agreement, it is waiving all rights to sue or obtain equitable, remedial or punitive relief of any kind whatsoever from any and all Parties with respect to all matters for which releases are provided in this Agreement, and: (i) in the case of the Hanson Parties, from the Company and Starwood Released Parties, including, without limitation, reinstatement, back pay, front pay, attorneys' fees and any form of injunctive relief; and (ii) in the case of the Company and Starwood, from the Executive Released Parties, including attorney's fees and any form of injunctive relief. Notwithstanding the foregoing, Executive further acknowledges that he is not waiving and is not being required to waive any right that cannot be waived by law, including the right to file a charge or participate in an administrative investigation or proceeding of any government agency prohibiting waiver of such right; provided, however, that the Hanson Parties hereby disclaim and waive any right to share or participate in any monetary award resulting from the prosecution of such charge or investigation.

(d) Effect of Release and Waiver. The Parties understand and intend that this Section 7 constitutes a general release of all claims and that no reference herein to a specific form of claim, statute or type of relief is intended to limit the scope of such general release and waiver.

(e) Waiver of Unknown Claims. Each of the Hanson Parties, the Company and Starwood, expressly waives all rights afforded by any statute which limits the effect of a release with respect to unknown claims. Each of the Parties understand the significance of their release of unknown claims and their waiver of statutory protection against a release of unknown claims.

(f) Obligations Pursuant to this Agreement. For the avoidance of doubt, notwithstanding anything else in this Agreement to the contrary, the release and/or waiver of rights pursuant to this Section 7 (including under paragraphs (d) and (e) of this Section 7) shall not be applicable to (i) the Parties' rights, obligations, representations, warranties and covenants

under this Agreement or any breaches thereof, (ii) any Claims relating to or involving fraud, theft or embezzlement (collectively, “Specified Excluded Claims”) and/or (iii) with respect to any Claims (such Claims, “Excluded Bad Act Claims”) made by or to third parties (including governmental authorities) with respect to any violations of criminal law and/or any laws relating to bribery and/or political donations or political contributions. If any Excluded Bad Act Claim is made or commenced against a Company and Starwood Releasor or an Executive Releasor (such person the “Applicable Releasor” and the Executive Released Parties and the Company and Starwood Released Parties, respectively, in such case, the “Applicable Released Party”), the Applicable Releasor shall promptly notify in writing the Applicable Released Party of such Excluded Bad Act Claim, *provided*, that the failure to so notify shall not relieve the Applicable Released Party of any of its obligations in respect of such Excluded Bad Act Claim except to the extent that the Applicable Released Party is prejudiced thereby. The Applicable Releasor shall have the right, acting in its sole discretion, to settle any Excluded Bad Act Claim, *provided*, that in the event the Applicable Releasor settles such Excluded Bad Act Claim without the consent of the Applicable Released Party, the Applicable Released Party shall be released from all liability with respect to such Excluded Bad Act Claim. The Applicable Released Party shall have the right to assume and control its own defense but not the defense of the Applicable Releasor as it relates to an Excluded Bad Act Claim.

8. **Representations and Covenants.**

(a) By the Executive: Employment Compensation. Executive acknowledges that, as of the Separation Date, he has received all outstanding unpaid earned compensation for services performed by him for the Company, including (without limitation) all salary and accrued unused vacation pay earned through the date hereof. The Company shall reimburse the Executive for any approved business expenses incurred by him prior to the Separation Date, in conformance with Company reimbursement policies and procedures, in each case only to the extent set forth on Part II of Schedule III attached hereto. Executive represents and warrants that (i) to the best of his knowledge after due inquiry, Schedule VIII attached hereto sets forth a true, correct and complete list of all financial commitments, promises, and/or pledges to charitable organizations, politicians and/or political organizations that Executive has made in the name of or on behalf of the Company which has not been fulfilled as of the date of this

Agreement and for which the Company or Starwood may be bound, (ii) to the best of his knowledge after due inquiry with employees of the Company on the Separation Date, Schedule VI attached hereto sets forth a true, correct and complete list of each agreement, understanding, arrangement, contract, commitment, lease, license, letter of intent, or other instrument or obligation (whether oral or written), (and any amendments thereto) to which the Company is a party or by which it is bound as of the date of this Agreement that could result in an obligation or liability of the Company in excess of US \$25,000 and was not entered into in the ordinary course of business, (iii) to the best of his knowledge after due inquiry with employees of the Company on the Separation Date, Schedule IV attached hereto sets forth a true, correct and complete list of all material, probable and/or likely corporate opportunities that have been brought to the Company or made available to the Company during the 12 month period preceding the date of this Agreement (each a "Corporate Opportunity"), and (iv) during the ninety (90) day period preceding the date of this Agreement, Executive has not directly or indirectly done anything that would have constituted a breach of Section 5(b)(ii) hereof had such Section 5(b)(ii) been binding on Executive during such ninety (90) day period. Executive hereby agrees to indemnify and hold harmless Starwood and the Company and from any and all Claims arising or resulting from a breach by Executive of the representations in the preceding sentence. For the avoidance of doubt, the term "Company" as used in this Section 8(a) includes each person or entity on an individual basis that is included in the definition of the Company.

(b) By the Parties.

(i) The Hanson Parties represent, warrant and covenant to each of the Company and Starwood Released Parties that (x) at no time prior to or contemporaneous with their execution of this Agreement have they (or any of them) filed or caused or knowingly permitted the filing or maintenance, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency or other tribunal, any Claim, known or unknown, suspected or unsuspected, which they may now have or have ever had against the Company and Starwood Released Parties which is based in whole or in part on any Claim, for which a release has been granted in this Agreement, nor will they (or either of them) do so as to any such Claim and (y) as of the date of this Agreement, they are not aware of any violations of law by the Starwood Released Parties relating to the Company which would be required to be reported to a

governmental authority. The Hanson Parties further covenant and agree that (x) they will not encourage any person or entity, including but not limited to any current or former employee, officer, director or stockholder of a Company and Starwood Released Party or Executive Released Party to institute any Claim against the Company and Starwood Released Parties or any of them for which a release has been granted in this Agreement and (y) unless required by applicable law, they will not report any violations of law by any of the Starwood Released Parties prior to the date of this Agreement relating to the Company.

(ii) Each of the Company and Starwood represents, warrants and covenants to each of the Executive Released Parties that (x) at no time prior to or contemporaneous with their execution of this Agreement have they (or any of them) filed or caused or knowingly permitted the filing or maintenance, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency or other tribunal, any Claim, known or unknown, suspected or unsuspected, which they may now have or have ever had against the Executive Released Parties which is based in whole or in part on any Claim for which a release has been granted in this Agreement, nor will they (or either of them) do so as to any such Claim and (y) as of the date of this Agreement, they are not aware of any violations of law by the Executive Released Parties relating to the Company which would be required to be reported to a governmental authority. The Company and Starwood further covenant and agree that (x) they will not encourage any person or entity, including but not limited to any current or former employee, officer, director or stockholder of a Company and Starwood Released Party, to institute any Claim against the Executive Released Parties or any of them for which a release has been granted in this Agreement and (y) unless required by applicable law, they will not report any violations of law by any of the Executive Released Parties prior to the date of this Agreement relating to the Company.

9. **Press Release.** No Party shall make any press release or any other public announcement regarding this Agreement or the contents hereof or any events leading up to this Agreement except if first approved in writing by the other Parties.

10. **[Intentionally Omitted].**

11. **[Intentionally Omitted].**

12. **Disputes.** Any disputes between the Parties will be resolved in accordance with Section 9 (Dispute Resolution; Arbitration) (other than the penultimate paragraph of such Section 9) of the Executive Employment Agreement which is hereby incorporated by reference herein on a *mutatis mutandis* basis. This Section 12 will be construed and enforced under the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. In the event of any dispute between the Parties, the prevailing Party shall be entitled to recover from the non-prevailing Party(ies) (a) reasonable attorney's fees and costs incurred in connection therewith (including, without limitation, any costs and expenses incurred in connection with any arbitration proceedings pursuant to this Section) and (b) (i) in the case of any dispute with respect to Section 5(b)(ii) or Section 5(f) hereof or a Specified Excluded Claim, an additional amount of two hundred fifty thousand dollars (\$250,000); *provided* that if the reason for the failure to make a payment under Section 5(d) hereof results from an alleged breach of Section 5(b)(ii) or Section 5(f), clause (ii) of this sentence (and not this clause (i) of this sentence) shall apply) and (ii) in the case of any dispute with respect to the payments due under Section 5(d), an additional amount of five hundred thousand dollars (\$500,000). The Parties agree that the amounts payable (if any) pursuant to clause (b) of the immediately preceding sentence is not in lieu of injunctive relief or any other equitable relief. In the event one party hereto (a "Claiming Party") makes a claim against another party hereto (a "Non-Claiming Party") for a specified sum of money and (a) after such claim is made, but prior to commencement of arbitration proceedings with respect to such claim, the Non-Claiming Party provides the Claiming Party with a written offer to settle such claim for a lesser sum of money than that set forth in the claim (the "Offered Settlement Amount"), and (b) the Claiming Party does not accept the Offered Settlement Amount but proceeds to arbitration, then, if the arbitration panel rules in favor of the Claiming Party in an amount that is equal to or less than the Offered Settlement Amount, the Non-Claiming Party shall be deemed the "prevailing party" for purposes of clause (a) of the first sentence of this Section but not clause (b) of the first sentence of this Section (it being agreed that the Claiming Party shall be deemed the "prevailing party" for purposes of clause (b) of the first sentence of this Section in such instance) . EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, PROCEEDING, CROSS-CLAIM, OR COUNTERCLAIM IN ANY COURT (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF, RELATING TO OR IN CONNECTION WITH (a) THIS

AGREEMENT OR THE VALIDITY, PERFORMANCE, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR (b) THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, AUTHORIZATION, EXECUTION, DELIVERY, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

13. **Parties' Acknowledgment of Consideration.** Each of the Parties acknowledge that he or it has received sufficient consideration for his or its entry into this Agreement.

14. **General and Miscellaneous Terms** (see Schedule V, Sections A through N, which are incorporated herein by reference).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the Parties have executed this Separation, Settlement and Mutual Release Agreement effective as of the date of the first signature affixed below or as otherwise provided in this Agreement.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Stephen P. Hanson

**SPH FAMILY HOLDINGS, LLC**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SPH FAMILY HOLDINGS SUB, LLC**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOF U.S. RESTAURANT CO-INVEST HOLDINGS, L.L.C.**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

DATED: \_\_\_\_\_

By: **SPH FAMILY HOLDINGS, LLC**

By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_

By: **SPH FAMILY HOLDINGS SUB,  
LLC**

By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_

By: **SOF U.S. RESTAURANT CO-  
INVEST HOLDINGS, L.L.C.**

By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_

By: **MANAGEMENT COMMITTEE**

**STARWOOD REPRESENTATIVES:**

**BRG REPRESENTATIVES:**

\_\_\_\_\_  
Barry Sternlicht

\_\_\_\_\_  
Stephen Hanson

\_\_\_\_\_  
James Gersten

\_\_\_\_\_  
Howard Muchnick

\_\_\_\_\_  
Dan Yih

\_\_\_\_\_  
Stacy Gilbert

**SOLELY FOR PURPOSES OF SECTION 4(b) OF THIS AGREEMENT**

**42-31 NINTH STREET, LLC**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOLELY FOR PURPOSES OF SECTION 7(b) OF THIS AGREEMENT**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Barry Sternlicht

**SOLELY FOR PURPOSES OF SECTION 6(e) OF THIS AGREEMENT**

**SPH RESTAURANT ENTERPRISES,  
INC.**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE I**  
**EXECUTIVE EMPLOYMENT AGREEMENT**

**SCHEDULE II**  
**LLC AGREEMENT**

**SCHEDULE III**  
**REIMBURSABLE EXPENSES**

Part I.

Part II.

**SCHEDULE IV**

**CORPORATE OPPORTUNITIES**

## SCHEDULE V

### (GENERAL AND MISCELLANEOUS AGREEMENT TERMS)

- (A) **Confidentiality.** The Company, Starwood and the Hanson Parties agree that the terms and conditions of this Agreement and the circumstances of the Separation are to be strictly confidential, except that Executive may disclose such information to Executive's blood relatives or immediate family members, attorneys, accountants, tax consultants, other professional advisors, state, local and federal tax authorities or as may otherwise be required by law or, in the case of the Executive Released Parties, advisable in order to comply with any law or regulation. Except as otherwise expressly permitted by this Agreement, the Company may disclose the terms of this Agreement only as the Company in good faith deems necessary to its officers, managers, members, partners, insurers, attorneys, accountants, tax consultants, state, local and federal tax authorities, or as may otherwise be required by law or regulation or in connection with any investigations or proceedings by governmental entities. In addition to the foregoing, the Company and Starwood may discuss the terms of this Agreement with any employee, officer or Representative of the Company in order to correct misinformation. The Company and Starwood represent and warrant that as of the date of this Agreement they are not aware of any misinformation that would need to be corrected in accordance with the preceding sentence. The Hanson Parties agree that except as expressly authorized by the Company or to correct misinformation they will not discuss this Agreement with any employee, officer or Representative of the Company. The Hanson Parties represent and warrant that as of the date of this Agreement they are not aware of any misinformation that would need to be corrected in accordance with the preceding sentence.
- (B) **Remedies.**
- (i) The Hanson Parties hereby acknowledge and affirm that in the event of any breach by them (or any of them) of this Agreement (including other agreements expressly incorporated herein), monetary damages would be inadequate to compensate the affected Company and Starwood Released Party(ies). Accordingly, in addition to other remedies which may be available to such affected Company and Starwood Released Parties hereunder or otherwise at law or in equity, any Company and Starwood Released Party will be entitled to enforce specifically such covenants, obligations and restrictions through injunctive and/or equitable relief, in each case without the posting of any bond or other security with respect thereto. In the event of any breach by the Hanson Parties of this Agreement, in addition to other remedies which may be available to the Company or Starwood, hereunder or otherwise at law or in equity, the affected Party will be entitled to enforce specifically such covenants, obligations and restrictions through injunctive and/or equitable relief.
- (ii) The Company and Starwood hereby acknowledge and affirm that in the event of any breach by them (or any of them) of this Agreement (including other agreements expressly incorporated herein), monetary damages would be inadequate to compensate the affected Executive Released Party(ies). Accordingly, in addition to other remedies which may be available to the affected Executive Released Parties hereunder or otherwise at law or in equity, any Executive Released Party will be entitled to enforce specifically such covenants, obligations and restrictions through injunctive and/or equitable relief, in each case without the posting of any bond or other security with respect thereto. In the event

of any breach by the Company or Starwood of this Agreement, in addition to other remedies which may be available to the Hanson Parties hereunder or otherwise at law or in equity, the affected Party will be entitled to enforce specifically such covenants, obligations and restrictions through injunctive and/or equitable relief.

- (iii) The rights and remedies given in this Agreement and by law to a Party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a Party under the provisions of this Agreement or given to a Party by law.
  - (iv) Notwithstanding anything in this Agreement or the Assignment Agreement to the contrary, under no circumstances whatsoever (including in connection with any breach by the Company or Starwood of this Agreement), shall any Hanson Party have the right to rescind or seek the rescission of the assignment of BRG Member's and Hanson Member's Interest to Starwood pursuant to the terms of the Assignment Agreement and this Agreement.
- (C) **Acknowledgment of Voluntary Agreement.** Each of the Parties acknowledges it has entered into this Agreement freely and without coercion, that it has been advised to consult with counsel of its choice, and that it has had adequate opportunity to so consult.
- (D) **Complete Agreement; Inconsistencies.** This Agreement and the Assignment Agreement constitutes the complete and entire agreement and understanding of the Parties with respect to the subject matter hereof. This Agreement and the Assignment Agreement otherwise supersedes in its entirety all prior understandings, commitments, obligations and/or agreements, whether written or oral, among the Hanson Parties, the Company and Starwood with respect to the subject hereof, and except as expressly incorporated herein, all such understandings, commitments, obligations, and/or agreements are hereby terminated and declared null and void.
- (E) **No Strict Construction.** The language used in this Agreement will be deemed to be the language mutually chosen by the Parties to reflect their mutual intent, and no doctrine of strict construction will be applied against any Party.
- (F) **Non-Admission.** Nothing in this Agreement will be deemed or construed to represent an admission by any of the Parties of any violation of law or other wrongdoing of any kind whatsoever.
- (G) **Third Party Beneficiaries.** The Executive Released Parties and the Company and Starwood Released Parties are intended third-party beneficiaries of this Agreement, and this Agreement may be enforced by each of them in accordance with the terms hereof in respect of the rights granted to such Released Parties hereunder. This Agreement otherwise is not intended for the benefit of any person other than the Parties, and no such other person will be deemed to be a third party beneficiary hereof.
- (H) **Tax Withholdings.** Notwithstanding any other provision herein, the Company will be entitled to withhold from any amounts otherwise payable hereunder to the Executive any amounts required to be withheld in respect of federal, state or local taxes, as determined by the Company in good faith.

- (I) **Notices.** All notices, consents, waivers and other communications required or permitted by this Agreement will be in writing and will be deemed given to a Party when: (a) delivered to the appropriate address by hand or overnight delivery; (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) three (3) days following mailing by certified or registered mail, postage prepaid and return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the Party (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a Party may hereafter designate by written notice to the other Parties):

If to the Company or Starwood:

c/o Starwood Capital Global Group, L.P..  
591 West Putnam, Ave.  
Greenwich, Connecticut 06830  
Attention: Dan Yih



With mandatory copies to:

c/o Rinaldi, Finkelstein & Franklin  
591 Putnam Avenue  
Greenwich, Connecticut 06830  
Attention: Ellis Rinaldi, Esq.



And:

Kirkland & Ellis, LLP  
601 Lexington Avenue  
New York, New York 10022  
Attention: Jonathan Schechter



If to Executive:

Stephen P. Hanson



With a mandatory copy to:

Muchnick, Golieb & Golieb, P.C.  
Attorneys at Law  
200 Park Avenue South

Suite 1700  
New York, New York 10003  
Attention: Howard M. Muchnick, Esq.



- (J) **Governing Law.** All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement will be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application hereto of the laws of any jurisdiction other than the State of New York. In furtherance of the foregoing, the internal law of the State of New York will control the interpretation and construction of this Agreement, even though under any other jurisdiction's choice of law or conflict of law analysis the substantive law of some other jurisdiction may ordinarily apply.
  
- (K) **Severability.** The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which will otherwise remain in full force and effect and should any provision of this Agreement be adjudged to any extent invalid or unenforceable by any court or tribunal of competent jurisdiction, such tribunal shall be authorized to and will modify each such invalid or unenforceable provision to the minimum extent necessary to render it enforceable.
  
- (L) **Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement. Delivery of an executed signature page to this Agreement by any Party by electronic transmission shall be as effective as delivery of a manually executed copy of the Agreement by such Party.
  
- (M) **Successors and Assigns.** The Parties' obligations hereunder will be binding upon their successors and assigns. The Parties' rights and the rights of the Company and Starwood Released Parties and the Executive Released Parties will inure to the benefit of, and be enforceable by, any of the Parties', the Company and Starwood Released Parties' and the Executive Released Parties' respective successors and assigns. The Company may assign all rights and obligations of this Agreement to any successor in interest to the assets of the Company. Notwithstanding such assignment, the Company shall remain responsible for its obligations under this Agreement.
  
- (N) **Amendments and Waivers.** No amendment to or waiver of this Agreement or any of its terms will be binding upon any Party unless consented to in writing by such Party.

\*\*\*\*\*  
\_\_\_\_\_

**SCHEDULE VI**

**CONTRACTS**

**SCHEDULE VII**  
**ASSIGNMENT AGREEMENT**

## **SCHEDULE VIII**

### **COMMITMENTS**

3 year commitment to NYC Hospitality Alliance at \$25,000 per year with only 1 year remaining.

## **SCHEDULE IX**

### **CONFIDENTIAL INFORMATION**

All or any of the following, including the content and copies of the following:

1. Customer lists, trade secrets, know-how or other confidential or proprietary knowledge or information with respect to the operations or finances of the Company or with respect to confidential, proprietary or secret processes, services, techniques, customers (including, without limitation, the identity of the customers of the Company and the specific nature of the services provided by the Company), employees and/or plans of or with respect to the Company.
2. Information about or relating to Starwood Capital Group or any of its affiliates (including, without limitation, Starwood and/or any investment fund or partnership directly or indirectly managed or controlled by, or under common control with, Starwood Capital Group) and/or the direct or indirect investors in any such investment fund or partnership