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

**POST-EFFECTIVE AMENDMENT NO. 2 TO**  
**Form S-11**  
**FOR REGISTRATION UNDER**  
**THE SECURITIES ACT OF 1933**  
**OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES**

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**Moody National REIT II, Inc.**

*(Exact name of registrant as specified in its governing instruments)*

**6363 Woodway Drive, Suite 110**  
**Houston, Texas 77057**  
**(713) 977-7500**

*(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)*

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**Moody National REIT II, Inc.**  
**6363 Woodway Drive, Suite 110**  
**Houston, Texas 77057**  
**(713) 977-7500**

*(Name, address, including zip code and telephone number,  
including area code, of agent for service)*

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**Copies to:**

**Mary E. Smith**  
**Moody National REIT Sponsor, LLC**  
**6363 Woodway Drive,**  
**Suite 110**  
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**(713) 977-7500**

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**Atlanta, Georgia 30309**  
**(404) 881-7000**

**Approximate date of commencement of proposed sale to the public:** as soon as practicable after the registration statement becomes effective.

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If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: ☒

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If delivery of this prospectus is expected to be made pursuant to Rule 434, check the following box. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☒

(Do not check if a smaller reporting company)

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**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

This Post-Effective Amendment No. 2 consists of the following:

1. The Registrant's prospectus, dated January 20, 2015.
2. Supplement No. 9, dated January 15, 2016 and included herewith, which will be delivered as an unattached document along with the prospectus dated January 20, 2015.
3. Part II, included herewith.
4. Signatures, included herewith.

MOODY NATIONAL REIT II, INC.



**\$1,100,000,000 Maximum Offering**  
**\$2,000,000 Minimum Offering**

Moody National REIT II, Inc. (referred to herein as “we,” “us,” “our” or the “company”) is a Maryland corporation formed in July 2014 to acquire a portfolio of hospitality properties focusing primarily on the select-service segment of the hospitality sector with premier brands including, but not limited to, Marriott, Hilton, and Hyatt. We intend to acquire hotel properties in major metropolitan markets in the East Coast, West Coast and Sunbelt regions of the United States. We may also invest in real estate securities and debt-related investments related to the hospitality sector. We are externally managed by Moody National Advisor II, LLC, which we refer to as our “advisor.” Our advisor is a subsidiary of our sponsor, Moody National REIT Sponsor, LLC, which is a part of Moody National Companies, a group of integrated real estate investment, management and development companies. We intend to qualify as a real estate investment trust, or REIT, for federal income tax purposes commencing with our taxable year ending December 31 in which we satisfy the minimum offering requirements described below.

We are offering up to \$1,100,000,000 in shares of our common stock in this offering. We are offering \$1,000,000,000 in shares of our common stock to the public at a price of \$25.00 per share, which we refer to as the “primary offering.” We are also offering \$100,000,000 in shares of our common stock to our stockholders pursuant to our distribution reinvestment plan at a price of \$23.75 per share. We reserve the right to reallocate the shares of common stock we are offering between the primary offering and our distribution reinvestment plan.

Our board of directors may, from time to time, in its sole and absolute discretion, change the price at which we offer shares to the public in the primary offering or pursuant to our distribution reinvestment plan to reflect changes in our estimated value per share, changes in applicable law and other factors that our board of directors deems relevant. If we determine to change the price at which we offer shares, we do not anticipate that we will do so more frequently than quarterly.

**This investment involves a high degree of risk. You should purchase shares of our common stock only if you can afford a complete loss of your investment. See “Risk Factors” beginning on page 17. These risks include, among others:**

- This is an initial public offering. We have no prior operating history and there is no assurance that we will be able to successfully achieve our investment objectives.
- No public trading market exists for shares of our common stock and we are not required to effectuate a liquidity event by a certain date. As a result, it will be difficult for you to sell your shares of our common stock. If you are able to sell your shares, you will likely have to sell them at a substantial discount.
- We plan to invest primarily in premier-brand, select-service hotel properties that are located in major metropolitan markets in select U.S. geographic regions. A more focused investment portfolio is inherently more risky than a more diversified portfolio. As a result, our results of operations may be adversely affected by a downturn in the hospitality sector or adverse economic developments in the geographic regions in which we invest.
- There are restrictions and limitations on your ability to have all or a portion of your shares of our common stock repurchased under our share repurchase program, and if you are able to have your shares repurchased pursuant to our share repurchase program, it may be for a price less than the price you paid for the shares and the then current value of the shares.
- The offering price of our shares of common stock for this offering was not determined on an independent basis and bears no relationship to the book or net value of assets we own or may own or to our expected operating income; therefore, the offering price may not accurately reflect the value of our assets when you invest.
- The price of our shares may be adjusted periodically to reflect changes in the estimated value of our assets and therefore future adjustments may result in an offering price lower than the price you paid for your shares.
- The amount of distributions we may make is uncertain. Our distributions may exceed our earnings, particularly during the period before we have acquired a substantial portfolio of real estate assets. Our distributions may be paid from other sources such as borrowings, offering proceeds or deferral of fees and expense reimbursements by our advisor, in its sole discretion. Payment of distributions from sources other than our cash flow from operations would reduce the funds available to us for investments in properties, which could reduce your overall return. Because this is a blind pool offering, it is likely that distributions paid during the early stages of our offering and before we have acquired a substantial portfolio of real estate assets will be funded primarily from offering proceeds. We have not established a limit on the amount of proceeds from this offering that we may use to fund distributions. Therefore, portions of the distributions that we make may represent a return of capital to you, which will lower your tax basis in our shares.

- This is considered to be a “blind pool” offering because you will not have the opportunity to evaluate our future investments prior to purchasing shares of our common stock.
- This is a “best efforts” offering and our ability to raise money and achieve our investment objectives depends on the ability of the dealer manager to successfully market our offering.
- We rely on our advisor, property manager and sub-property managers and their affiliates for our day-to-day operations and the selection of our investments. Adverse changes in the financial health of our advisor, property manager and sub-property managers could cause our operations to suffer.
- We pay substantial fees and expenses to our advisor and its affiliates, including the dealer manager for this offering. These fees were not negotiated at arm’s length and therefore may be higher than fees payable to unaffiliated parties. Upon termination of our advisory agreement for any reason, including for cause, our advisor will be paid all accrued and unpaid fees and expense reimbursements earned prior to the date of termination and we may be required to pay significant fees regardless of our advisor’s performance, which will reduce cash available for distribution to you.
- Our advisor and other affiliates face conflicts of interest as a result of compensation arrangements, time constraints and competition for investments, including (1) conflicts related to compensation payable by us to our advisor and other affiliates that may not be on terms that would result from arm’s-length negotiations between unaffiliated parties, (2) the allocation of time between advising us and other real estate investment programs and (3) the recommendation of investments on our behalf when other affiliated programs are seeking similar investments.
- If we fail to qualify as a REIT, it would adversely affect our operations and our ability to make distributions to our stockholders, because we will be subject to U.S. federal income tax at regular corporate rates with no ability to deduct distributions made to our stockholders.

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or determined if this prospectus is truthful or complete. The Attorney General of the State of New York has not passed on or endorsed the merits of this offering. Any representation to the contrary is unlawful. Projections or forecasts cannot be used in this offering. Any representation to the contrary and no prediction, written or oral, as to the amount or certainty of any present or future cash benefit or tax consequence which may flow from an investment in our common stock is permitted. The shares of common stock offered hereby are subject to certain restrictions on transfer and ownership. See “Description of Capital Stock.”**

	Price to Public <sup>(1)</sup>	Sales Commission <sup>(1)(2)</sup>	Dealer Manager Fee <sup>(1)(2)</sup>	Proceeds Before Expenses <sup>(1)(3)</sup>
Primary Offering Per Share . . . . .	\$ 25.00	\$ 1.75	\$ 0.75	\$ 22.50
Total Minimum . . . . .	\$ 2,000,000	\$ 140,000	\$ 60,000	\$ 1,800,000
Total Maximum . . . . .	\$ 1,000,000,000	\$ 70,000,000	\$ 30,000,000	\$ 900,000,000
Distribution Reinvestment Plan Per Share . . . . .	\$ 23.75	—	—	\$ 23.75
Total Maximum . . . . .	\$ 100,000,000	—	—	\$ 100,000,000

(1) Assumes we sell \$1,000,000,000 in the primary offering and \$100,000,000 pursuant to our distribution reinvestment plan.

(2) Discounts are available for certain categories of purchasers. See also “Plan of Distribution — Dealer Manager and Participating Broker-Dealer Compensation and Terms.” We may later elect to modify our commission structure, including adopting multiple share classes or trailing commissions, depending on changes in industry regulations and best practices. Any such modification, and subsequent offers and sales, will be subject to any applicable regulatory approvals.

(3) Proceeds are calculated before reimbursing our advisor for organization and offering expenses.

Moody Securities, LLC, an affiliate of our advisor and the dealer manager for this offering, is not required to sell any specific number of shares or dollar amount of our common stock but will use its best efforts to sell the shares offered hereby. The minimum initial investment for investors is \$2,500. After you have satisfied the applicable minimum purchase requirement, additional purchases must be in increments of \$500. We expect to sell the shares of our common stock offered in the primary offering through January 20, 2017 (two years from the commencement of this offering) unless extended. We will not sell any shares of our common stock unless we raise a minimum of \$2,000,000 of subscription proceeds (including shares purchased by our sponsor, its affiliates and our directors and officers) by January 20, 2016. Pending satisfaction of the minimum offering amount, all subscription payments will be placed in an escrow account held by the escrow agent, UMB Bank, N.A., in trust for the subscribers’ benefit, pending release to us. If we do not raise at least \$2,000,000 by January 20, 2016, we will return all funds in the escrow account (including interest), and we will stop selling shares of our common stock. We may terminate this offering at any time.

We are an “emerging growth company” as defined under federal securities laws.

This prospectus is dated January 20, 2015

## SUITABILITY STANDARDS

The shares of common stock we are offering are suitable only as a long-term investment for persons of adequate financial means. We do not expect to have a public market for shares of our common stock which means that it may be difficult for you to sell your shares. On a limited basis, you may be able to have shares repurchased through our share repurchase program, and in the future we may also consider various forms of additional liquidity. You should not buy shares of our common stock if you need to sell them immediately or if you will need to sell them quickly in the future.

In consideration of these factors, we have established suitability standards for initial stockholders and subsequent transferees. These suitability standards require that a purchaser of shares of our common stock have either:

- a net worth (excluding the value of an investor's home, furnishings and automobiles) of at least \$250,000; or
- a gross annual income of at least \$70,000 and a net worth (excluding the value of an investor's home, furnishings and automobiles) of at least \$70,000.

The following states have established additional suitability standards:

**Alabama**—In addition to the suitability standards above, this offering will only be sold to Alabama residents that have a liquid net worth of at least 10 times the amount invested in us and our affiliates.

**Iowa**—In addition to the suitability standards above, an Iowa investor's maximum investment in us and affiliated programs cannot exceed 10% of his or her liquid net worth. "Liquid net worth" is defined as that portion of net worth (total assets, exclusive of home, auto and home furnishings minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.

**Kansas**—In addition to the suitability standards above, the Kansas Securities Commissioner recommends that each purchaser limit the purchaser's aggregate investment in this offering and other similar investments to not more than 10% of the purchaser's liquid net worth. "Liquid net worth" shall be defined as that portion of the purchaser's total net worth that is comprised of cash, cash equivalents, and readily marketable securities, as determined in conformity with GAAP.

**Kentucky**—In addition to the suitability standards above, a Kentucky investor's aggregate investment in this offering may not exceed 10% of the investor's liquid net worth.

**Maine**—The Maine Office of Securities recommends that an investor's aggregate investment in this offering and similar direct participation investments not exceed 10% of the investor's liquid net worth. For this purpose, "liquid net worth" is defined as that portion of net worth that consists of cash, cash equivalents and readily marketable securities.

**Nebraska**—In addition to the suitability standards above, Nebraska investors must limit their investment in this offering and in the securities of other direct participation programs (including REITs, oil and gas programs, equipment leasing programs, business development companies and commodity pools) to 10% of such investor's net worth (excluding the value of an investor's home, home furnishings, and automobiles).

**New Jersey**—In addition to the suitability standards above, New Jersey investors must have either (a) a minimum liquid net worth of at least \$100,000 and a minimum annual gross income of not less than \$85,000, or (b) a minimum liquid net worth of \$350,000. For these purposes, "liquid net worth" is defined as that portion of net worth (total assets exclusive of home, home furnishings, and automobiles, minus total liabilities) that consists of cash, cash equivalents and readily marketable securities. In addition, a New Jersey investor's investment in us, our affiliates, and other non-publicly traded direct investment programs (including real estate investment trusts, business development companies, oil and gas programs, equipment leasing programs and commodity pools, but excluding unregistered, federally and state exempt private offerings) may not exceed ten percent (10%) of his or her liquid net worth.

**New Mexico**—In addition to the suitability standards above, a New Mexico investor's investment in us, shares of our affiliates and in other real estate investment trusts may not exceed 10% of his or her liquid net worth. "Liquid net worth" is defined as that portion of net worth (total assets, exclusive of primary residence, home furnishings and automobiles minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.

**North Dakota**—In addition to the suitability standards above, North Dakota investors must have a net worth of at least ten times their investment in us.

**Ohio**—In addition to the suitability standards above, it shall be unsuitable for an Ohio investor's aggregate investment in us, shares of our affiliates and other non-traded real estate investment programs to exceed 10% of his, her, or its liquid net worth. "Liquid net worth" shall be defined as that portion of net worth (total assets exclusive of home, home furnishings, and automobiles minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.

**Oregon**—In addition to the suitability standards above, an Oregon investor's maximum investment in us cannot exceed 10% of the investor's liquid net worth.

**Tennessee**—In addition to the suitability standards above, a Tennessee resident's investment in us must not exceed 10% of his or her liquid net worth (exclusive of home, home furnishings and automobile).

**Vermont**—Accredited investors in Vermont, as defined in 17 C.F.R. 230.51, may invest freely in this offering. In addition to the suitability standards above, non-accredited Vermont investors may not purchase an amount in this offering that exceeds 10% of the investor's liquid net worth. For these purposes, "liquid net worth" is defined as an investor's total assets (not including home, home furnishings, or automobiles) minus total liabilities.

In the case of sales to fiduciary accounts (such as an individual retirement account, or IRA, Keogh plan or pension or profit sharing plan), these suitability standards must be met by the fiduciary account, by the person who directly or indirectly supplied the funds for the purchase of the shares of our common stock or by the beneficiary of the account.

These suitability standards are intended to help ensure that, given the long-term nature of an investment in shares of our common stock, our investment objectives and the relative illiquidity of shares of our common stock, shares of our common stock are an appropriate investment for persons who become stockholders. Notwithstanding these investor suitability standards, potential investors should note that investing in shares of our common stock involves a high degree of risk and should consider all the information contained in this prospectus, including the "Risk Factors" section contained herein, in determining whether an investment in our common stock is appropriate.

Our sponsor and each participating broker-dealer must make every reasonable effort to determine that the purchase of shares of our common stock is a suitable and appropriate investment for each stockholder based on information provided by the stockholder in the subscription agreement. In making this determination, the sponsor and each person selling shares on our behalf shall ascertain that the prospective stockholder meets the minimum income and net worth standards, can reasonably benefit from an investment in us based on the prospective stockholder's overall investment objectives and portfolio structure, is able to bear the economic risk of the investment based on the prospective stockholder's overall financial situation, and has apparent understanding of the fundamental risks of the investment, the risk that the stockholder may lose the entire investment, the relative illiquidity of our shares of common stock, the restrictions on transfer and ownership of our shares of common stock and the tax consequences of an investment in us. The sponsor and each person selling shares on our behalf will make this determination in reliance and on the basis of information it has obtained from a prospective stockholder regarding the prospective stockholder's financial situation and investment objectives. Relevant information for this purpose includes age, investment objectives, investment experience, income, net worth, financial situation, and other investments of prospective stockholders, as well as any other pertinent factors. Each person selling shares on our behalf shall maintain records of the information used to determine that an investment in shares of our common stock is suitable and appropriate for a stockholder for at least six years.

The minimum purchase amount is \$2,500. After you have satisfied the applicable minimum purchase requirement, additional purchases must be in increments of \$500. To satisfy the minimum purchase requirements for retirement plans, unless otherwise prohibited by state law, a husband and wife may jointly contribute funds from their separate IRAs, provided that each such contribution is made in increments of \$500. You should note that an investment in shares of our common stock will not, in itself, create a retirement plan and that to create a retirement plan you must comply with all applicable provisions of the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code.

Purchases of shares of our common stock pursuant to our distribution reinvestment plan may be in amounts less than set forth above and are not required to be made in increments of \$500.

## HOW TO SUBSCRIBE

Investors who meet the suitability standards described herein may purchase shares of our common stock. See “Suitability Standards” and “Plan of Distribution.” Investors seeking to purchase shares of our common stock should proceed as follows:

- Read this entire prospectus and any appendices and supplements accompanying this prospectus.
- Complete the execution copy of the subscription agreement. A specimen copy of the subscription agreement, including instructions for completing it, is included in this prospectus as Appendix B.
- Deliver a check for the full purchase price of the shares of our common stock being subscribed for along with the completed subscription agreement to the soliciting broker-dealer. Initially, prior to meeting the minimum offering requirements, your check should be made payable to “UMB Bank, N.A., as escrow agent for Moody National REIT II, Inc.” After satisfaction of the minimum offering requirements, your check should be made payable to “Moody National REIT II, Inc.”

By executing the subscription agreement and paying the total purchase price for the shares of our common stock subscribed for, each investor accepts its terms and attests that the investor meets the minimum income and net worth standards as described herein. In addition, each investor agrees to promptly notify us if there are any material changes to such investor’s financial condition.

Subscriptions will be effective only upon our acceptance, and we reserve the right to reject any subscription in whole or in part. Subscriptions will be accepted or rejected within 30 days of receipt by us, and if rejected, all funds will be returned to subscribers without deduction for any expenses within 10 business days from the date the subscription is rejected. We are not permitted to accept a subscription for shares of our common stock until at least five business days after the date you receive the final prospectus.

An approved trustee must process and forward to us subscriptions made through IRAs, Keogh plans and 401(k) plans. In the case of investments through IRAs, Keogh plans and 401(k) plans, we will send the confirmation and notice of our acceptance to the trustee.

## **IMPORTANT INFORMATION ABOUT THIS PROSPECTUS**

Please carefully read the information in this prospectus and any accompanying prospectus supplements, which we refer to collectively as the “prospectus.” You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with different information. This prospectus may only be used where it is legal to sell these securities. You should not assume that the information contained in this prospectus is accurate as of any date later than the date hereof or such other dates as are stated herein or as of the respective dates of any documents or other information incorporated herein by reference.

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, using a continuous offering process. Periodically, as we make material investments or have other material developments, we will provide a prospectus supplement that may add, update or change information contained in this prospectus. Any statement that we make in this prospectus will be modified or superseded by any inconsistent statement made by us in a subsequent prospectus supplement. The registration statement we filed with the SEC includes exhibits that provide more detailed descriptions of the matters discussed in this prospectus. You should read this prospectus and the related exhibits filed with the SEC and any prospectus supplement, together with additional information described herein under “Additional Information.”

The registration statement containing this prospectus, including exhibits to the registration statement, provides additional information about us and the securities offered under this prospectus. The registration statement can be read at the SEC website ([www.sec.gov](http://www.sec.gov)) or at the SEC public reference room. See “Additional Information.”

## **INDUSTRY AND MARKET DATA**

Certain market and industry data used in this prospectus has been obtained from independent industry sources and publications and third-party sources, as well as from research reports prepared for other purposes. Any forecasts prepared by such sources are based on data (including third-party data), models and the experience of various professionals, and are based on various assumptions, all of which are subject to change without notice. Forecasts and other forward-looking information obtained from these sources are subject to the same qualifications and additional uncertainties as other forward-looking statements included in this prospectus.

The information provided by these industry sources should not be construed to sponsor, endorse, offer or promote an investment, nor does it constitute any representation or warranty, express or implied, regarding the advisability of an investment in shares of our common stock or the legality of an investment in shares of our common stock under appropriate laws.

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## QUESTIONS AND ANSWERS ABOUT THIS OFFERING

Set forth below are some of the more frequently asked questions and answers relating to our structure, our management and an offering of this type.

### **Q: What is a “REIT”?**

A: In general, a REIT is a company that:

- offers the benefits of a diversified real estate portfolio under professional management;
- is required to distribute dividends to shareholders of at least 90% of its taxable income for each year;
- avoids the federal “double taxation” treatment of income that generally results from investments in a corporation because a REIT is not generally subject to federal corporate income taxes on the portion of its net income that is distributed to the REIT’s stockholders; and
- combines the capital of many investors to acquire or provide financing for real estate assets.

### **Q: How will you structure the ownership and operation of your assets?**

A: We own substantially all of our assets and conduct our operations through Moody National Operating Partnership II, LP, a Delaware limited partnership organized in July 2014, which we refer to as our “operating partnership.” We are the sole general partner of our operating partnership and our subsidiary, Moody OP Holdings II, LLC, which we refer to as our “limited partner,” and Moody National LPOP II, LLC, which we refer to as the “special limited partnership interest holder,” are the initial limited partners of our operating partnership. We refer to partnership interests and special partnership interests in our operating partnership, respectively, as “limited partnership interests” and “special limited partnership interests.” Because we conduct substantially all of our operations through an operating partnership, we are organized in what is referred to as an UPREIT structure.

### **Q: What is an “UPREIT”?**

A: UPREIT stands for Umbrella Partnership Real Estate Investment Trust. We use the UPREIT structure because a contribution of property directly to us is generally a taxable transaction to the contributing property owner. In this structure, a contributor of a property who desires to defer taxable gain on the transfer of his or her property may transfer the property to our operating partnership in exchange for limited partnership interests and defer taxation of gain until the contributor later sells his or her limited partnership interests or exchanges his or her limited partnership interests for shares of the common stock of the REIT. We believe that using an UPREIT structure gives us an advantage in acquiring desired properties from persons who may not otherwise sell their properties because of unfavorable tax results.

### **Q: Why should I consider an investment in real estate investments?**

A: If you meet the minimum suitability standards described in this prospectus, allocating some portion of an investment portfolio concentrated in traditional asset classes (stocks and bonds) to real estate investments may provide you with (1) portfolio diversification, (2) a reduction of overall portfolio risk, (3) a hedge against inflation, (4) a stable level of income relative to more traditional asset classes like stocks and bonds and (5) attractive risk-adjusted returns. Persons who require immediate liquidity or guaranteed income, or who seek a short-term investment, are not appropriate investors for us, as our shares will not meet those needs.

### **Q: Do you currently own any assets?**

A: No. This offering is a “blind pool” offering in that we have not yet identified any specific real estate assets to acquire using the proceeds of this offering. As a result, you will not have the opportunity to evaluate our investments before we acquire them. If we are delayed or unable to find suitable investments, we may not be able to achieve our investment objectives. We discuss the risks related to the fact that this is a blind pool offering under “Risk Factors—General Investment Risks.”

### **Q: Will you provide stockholders with information concerning the estimated value of their shares of common stock?**

A: Unless the rules and regulations governing valuations change, from and after 150 days following the second anniversary of breaking escrow in this offering, our advisor or another firm we choose for that purpose will establish an estimated value per share of our common stock that we will disclose in a report under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and in each annual report thereafter.

**Q: What are the risks associated with this offering?**

A: An investment in our shares involves a high degree of risk. These risks include, among others: (1) we have no prior operating history; (2) the lack of a public trading market for shares of our common stock, which will make it difficult for you to sell your shares of our common stock; (3) the significant restrictions and limitations on your ability to have all or any portion of your shares of our common stock repurchased under our share repurchase program; (4) the amount of our distributions is uncertain, we may pay distributions from sources such as borrowings, offering proceeds or advances and the deferral of fees and expense reimbursements by our advisor and because this is a blind pool offering, it is likely that distributions paid during the early stages of our offering and before we have acquired a substantial portfolio of real estate assets will be funded primarily from offering proceeds; (5) other than any investments identified in this prospectus, you will not have the opportunity to evaluate our investments prior to purchasing shares of our common stock; (6) our advisor and other affiliates face conflicts of interest as a result of compensation arrangements, time constraints and competition for investments; and (7) we pay substantial fees and expenses to our advisor and its affiliates, including the dealer manager for this offering, which were not negotiated at arm's length and therefore may be higher than fees payable to unaffiliated parties. For a detailed discussion of the risks associated with this offering, see "Risk Factors."

**Q: Who will choose which investments to make?**

A: Our advisor, Moody National Advisor II, LLC, selects investments for us based on specific investment objectives and criteria and subject to the direction, oversight and approval of our board of directors.

**Q: Who will operate and manage the properties acquired?**

A: Moody National Hospitality Management, LLC, a Texas limited partnership that is an affiliate of our sponsor, serves as our property manager. We lease each hotel property to a subsidiary of our operating partnership, which we intend to be treated as a taxable REIT subsidiary, or TRS. We, indirectly through our TRS lessee, pay our property manager a monthly hotel management fee equal to 4.0% of the monthly gross receipts from the properties managed by our property manager. Our property manager may pay some or all of the compensation it receives from our TRS lessee to a third-party property manager for management or leasing services. In the event that our TRS lessee contracts directly with a third-party property manager, it will pay our property manager a market-based oversight fee. In addition, we, indirectly through our TRS lessee, will also pay an annual incentive fee to our property manager. Such annual incentive fee is equal to 15% of the amount by which the operating profit from the properties managed by the property manager for such fiscal year (or partial fiscal year) exceeds 8.5% of the total investment of such properties.

**Q: What kind of offering is this?**

A: Through our dealer manager, we are offering a minimum of \$2,000,000 in shares of our common stock and a maximum of \$1,000,000,000 in shares of our common stock in our primary offering on a "best efforts" basis at \$25.00 per share. We are also offering \$100,000,000 in shares of our common stock pursuant to our distribution reinvestment plan at \$23.75 per share to those stockholders who elect to participate in such plan as described in this prospectus. We reserve the right to reallocate the shares of common stock we are offering between the primary offering and the distribution reinvestment plan.

**Q: How does a "best efforts" offering work?**

A: When shares of common stock are offered to the public on a "best efforts" basis, the broker-dealers participating in the offering are only required to use their best efforts to sell the shares of our common stock and therefore do not have a firm commitment or obligation to purchase any of the shares of our common stock. As a result, no specified dollar amount is guaranteed to be raised.

**Q: What happens if you do not raise a minimum of \$2,000,000 in this offering?**

A: We will not sell any shares of our common stock unless we sell a minimum of \$2,000,000 in shares by January 20, 2016. Purchases of shares by our sponsor and its affiliates and our directors and officers will count toward meeting this minimum offering requirement. Pending satisfaction of this minimum offering requirement, all subscription funds will be placed in an escrow account held by UMB Bank, N.A., our escrow agent, and held in trust for the subscribers' benefit pending release to us. If we do not sell \$2,000,000 in shares to the public by January 20, 2016, we will terminate this offering and promptly return all subscribers' funds held in escrow, plus any interest accrued on the escrowed funds. If we raise the minimum offering amount by January 20, 2016, all subscription funds held in escrow, plus any interest earned on the funds, will be released to us.

**Q: How long will this offering last?**

A: We expect to sell the shares of our common stock offered in the primary offering over a two year period. If we have not sold all of the shares to be offered in the primary offering within two years from the date of this prospectus, we may continue the primary offering until July 20, 2018 (three years from the date of the commencement of this offering). Under rules promulgated by the SEC, in some circumstances in which we are pursuing the registration of shares of our common stock in a follow-on

public offering, we could continue the primary offering until as late as July 20, 2018. If we decide to continue the primary offering beyond two years from the date of this prospectus, we will provide that information in a prospectus supplement. In many states, we will need to renew the registration statement or file a new registration statement to continue this offering beyond one year from the date of this prospectus. We may terminate this offering at any time.

**Q: Will I receive a stock certificate?**

A: No. You will not receive a stock certificate unless expressly authorized by our board of directors. We anticipate that all shares of our common stock will be issued in book-entry form only. The use of book-entry registration protects against loss, theft or destruction of stock certificates and reduces offering costs.

**Q: Will you compete with other vehicles sponsored by your sponsor due to similar investment objectives?**

A: Our investment strategy and our target investments will likely overlap with those of Moody National REIT I, Inc., or Moody National REIT I, a public, non-listed REIT, which despite employing a broader investment strategy has generally invested in hospitality assets and which has more resources than we do. In addition, our sponsor is a part of Moody National Companies, a group of integrated real estate investment, management and development companies that have sponsored 46 privately offered real estate programs, all of which have investment objectives generally similar to this offering and may conduct offerings concurrently with this offering. In addition, certain affiliates of our sponsor own or manage hospitality properties in geographical areas in which we expect to own hospitality properties. Therefore, we will most likely compete with other investment vehicles sponsored by our sponsor and its affiliates for opportunities to acquire or sell hospitality properties, since many investment opportunities that will be suitable for us may also be suitable for these other vehicles. As a result of this competition, we have adopted conflict resolution procedures that cover, amongst other things, the allocation of investment opportunities among our sponsor and its affiliates. See “Conflicts of Interest — Conflict Resolution Procedures — Allocation of Investment Opportunities.”

**Q: Who can buy shares of common stock in this offering?**

A: In general, you may buy shares of our common stock pursuant to this prospectus provided that you have either (1) a net worth of at least \$70,000 and an annual gross income of at least \$70,000 or (2) a net worth of at least \$250,000. For this purpose, net worth does not include your home, home furnishings and personal automobiles. Generally, you must initially invest at least \$2,500. After you have satisfied the applicable minimum purchase requirement, additional purchases must be in increments of \$500, except for purchases made pursuant to our distribution reinvestment plan, which are not subject to any minimum purchase requirement. These minimum net worth and investment levels may be higher in certain states, so you should carefully read the more detailed description under “Suitability Standards.”

Our affiliates may also purchase shares of our common stock. The sales commissions and dealer manager fees that are payable by other investors in this offering may be reduced or waived for our affiliates.

**Q: Are there any special restrictions on the ownership of shares?**

A: Yes. Our Articles of Incorporation, as may be amended and restated, from time to time, which we refer to as our “charter,” prohibits the ownership of more than 9.8% in value of the aggregate of our outstanding shares of capital stock (which includes common stock, preferred stock and convertible stock we may issue) and more than 9.8% in value or number of shares, whichever is more restrictive, of the aggregate of our then outstanding common stock, unless exempted (prospectively or retroactively) by our board of directors. This prohibition may discourage large investors from purchasing our shares and may limit your ability to transfer your shares. To comply with tax rules applicable to REITs, we will require our record holders to provide us with detailed information regarding the beneficial ownership of our shares on an annual basis. These restrictions are designed to, among other purposes, enable us to comply with the ownership restrictions imposed on REITs by the Internal Revenue Code. See “Description of Capital Stock—Restriction on Ownership of Shares of Capital Stock.”

**Q: How do I subscribe for shares of common stock?**

A: Investors who meet the suitability standards described in this prospectus may purchase shares of our common stock. Investors seeking to purchase shares of our common stock should proceed as follows:

- read this entire prospectus and any appendices and supplements accompanying this prospectus;
- complete the execution copy of the subscription agreement. A specimen copy of the subscription agreement, including instructions for completing it, is included in this prospectus as Appendix B; and
- deliver a check for the full purchase price of the shares of our common stock being subscribed for along with the completed subscription agreement to the soliciting broker-dealer. Initially, prior to meeting the minimum offering requirements, your check should be made payable to “UMB Bank, N.A., as escrow agent for Moody National REIT II, Inc.” After satisfaction of the minimum offering requirements, your check should be made payable to “Moody National REIT II, Inc.”

By executing the subscription agreement and paying the total purchase price for the shares of our common stock subscribed for, each investor represents that the investor meets the minimum income and net worth standards as stated in the subscription agreement. In addition, each investor agrees to promptly notify us if there are any material changes to such investor's financial condition.

Subscriptions will be effective only upon our acceptance and we reserve the right to reject any subscription in whole or part. Subscriptions will be accepted or rejected within 30 days of receipt by us and, if rejected, all funds shall be returned to subscribers without deduction for any expenses within 10 business days from the date the subscription is rejected. We are not permitted to accept a subscription for shares of our common stock until at least five business days after the date you receive the final prospectus.

An approved trustee must process and forward to us subscriptions made through individual IRAs, Keough plans and 401(k) plans. In the case of investments through IRAs, Keough plans and 401(k) plans, we will send the confirmation and notice of our acceptance to the trustee.

**Q: How does the payment of fees and expenses affect my invested capital?**

A: We will pay sales commissions and dealer manager fees in connection with this offering. In addition, we will reimburse our advisor for organizational and offering expenses and we will pay our advisor acquisition fees for substantial services provided in the acquisition of investments. In addition, we will pay our property manager a monthly hotel management fee. Further, to the extent certain performance thresholds are exceeded, we will also pay an annual incentive fee to our property manager. The payment of fees and expenses will reduce the funds available to us for investment in real estate assets. The payment of fees and expenses will also reduce the book value of your shares of common stock. However, you will not be required to pay any additional amounts in connection with the fees and expenses described in this prospectus.

**Q: May I reinvest my distributions?**

A: Yes. You may participate in our distribution reinvestment plan and elect to have the cash distributions you receive reinvested in shares of our common stock at an initial price of \$23.75 per share. Our board of directors may, from time to time, in its sole and absolute discretion, change the price at which we offer shares to the public pursuant to our distribution reinvestment plan to reflect changes in our estimated value per share, changes in applicable law and other factors that our board of directors deems relevant. Our distribution reinvestment plan may also be amended, suspended or terminated by our board of directors in its discretion upon at least 30 days' prior written notice. Please see "Description of Capital Stock—Distribution Reinvestment Plan" for more information regarding our distribution reinvestment plan.

**Q: If I buy shares of common stock in this offering, how may I later sell them?**

A: At the time you purchase the shares of our common stock, the shares will not be listed for trading on any national securities exchange. As a result, if you wish to sell your shares, you may not be able to do so promptly, or at all, or you may only be able to sell them at a substantial discount from the price you paid. In general, however, you may sell your shares to any buyer that meets the applicable suitability standards unless such sale would cause the buyer to own more than 9.8% of the aggregate of the value of our then outstanding shares of capital stock (which includes common stock, any preferred stock and convertible stock we may issue) or more than 9.8% of the value or number of shares, whichever is more restrictive, of the aggregate of our then outstanding common stock. See "Suitability Standards" and "Description of Capital Stock—Restriction on Ownership of Shares of Capital Stock." We have adopted a share repurchase program which may provide limited liquidity for some of our stockholders. For more information on our share repurchase program, see "Description of Capital Stock—Share Repurchase Program."

**Q: What is your exit strategy?**

A: We presently intend, but are not required, to complete a transaction providing liquidity for our stockholders within three to six years from the completion of our initial public offering; however, the timing of any such event will be significantly dependent upon economic and market conditions after completion of our offering. Our charter does not require our board of directors to pursue a liquidity event. However, we expect that our board of directors will determine to pursue a liquidity event when it believes that then-current market conditions are favorable for a liquidity event, and that such a transaction is in the best interests of our stockholders. A liquidity event could include (1) the sale of all or substantially all of our assets either on a portfolio basis or individually followed by a liquidation, (2) a merger or another transaction approved by our board of directors in which our stockholders will receive cash or shares of a publicly traded company or (3) a listing of our shares on a national securities exchange. There can be no assurance as to when such a suitable transaction will be available.

**Q: Will the distributions I receive be taxable?**

A: For any year that we qualify as a REIT, distributions that you receive, including the market value of our common stock received pursuant to our distribution reinvestment plan, will generally be taxed as ordinary income to the extent they are paid out of our current or accumulated earnings and profits. However, if we recognize a long-term capital gain upon the sale of one of our assets, a portion of our distributions may be designated and treated as a long-term capital gain. In addition, we expect that some portion of your distributions may not be subject to tax due to the fact that depreciation expenses reduce earnings and profits but do not reduce cash available for distribution. Amounts distributed to you in excess of our earnings and profits will reduce the tax basis of your shares of common stock and will not be taxable to the extent thereof, and distributions in excess of tax basis will be taxable as an amount realized from the sale of your shares of common stock. This, in effect, would defer a portion of your tax until your investment is sold or we are liquidated, at which time you may be taxed at capital gains rates. However, because each investor's tax considerations are different, we suggest that you consult with your tax advisor.

**Q: When will I get my detailed tax information?**

A: We intend to mail your Form 1099 tax information, if required, by January 31 of each year.

**Q: Where can I find updated information regarding the company?**

A: You may find updated information on our website, [www.moodynationalreit.com](http://www.moodynationalreit.com). In addition, we are subject to the informational reporting requirements of the Exchange Act. Under the Exchange Act, we file our quarterly and annual reports and other information with the SEC. See "Additional Information" for a description of how you may read and copy the registration statement, the related exhibits and the reports and other information we file with the SEC. In addition, you will receive periodic updates directly from us, including three quarterly financial reports and an annual report.

**Q: Who can answer my questions?**

A: If you have additional questions about this offering or if you would like additional copies of this prospectus, you should contact your registered representative or:

**Moody National REIT II, Inc.**  
**6363 Woodway Drive**  
**Suite 110**  
**Houston, Texas 77057**  
**(713) 977-7500**  
**Attn: Investor Relations**

## PROSPECTUS SUMMARY

*This summary highlights selected information contained elsewhere in this prospectus. Because it is a summary, it may not contain all of the information that is important to you. To understand this offering fully, you should read the entire prospectus carefully, including the “Risk Factors” section, before making an investment decision. The use of the words “we,” “us” or “our” refers to Moody National REIT II, Inc. and its subsidiaries, including Moody National Operating Partnership II, LP, except where the context otherwise requires.*

### **Moody National REIT II, Inc.**

We were formed as a Maryland corporation on July 25, 2014 to invest in a portfolio of hospitality properties focusing primarily on the select-service segment of the hospitality sector with premier brands including, but not limited to, Marriott, Hilton, and Hyatt. We intend to acquire hotel properties located in the East Coast, the West Coast and the Sunbelt regions of the United States. To a lesser extent, we may also invest in other hospitality properties located within other markets and regions as well as real estate securities and debt-related investments related to the hospitality sector.

We commenced our initial public offering of up to \$1,100,000,000 in shares of our common stock on January 20, 2015. We intend to qualify as a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, beginning with our taxable year ending December 31 in which we satisfy the minimum offering requirement.

We are externally managed by Moody National Advisor II, LLC, an affiliate of ours which we refer to as our “advisor.” Our advisor’s team of real estate professionals has substantial discretion with respect to the selection of specific investments consistent with our investment objectives and strategy, subject to the approval of our board of directors. Our advisor was formed in July 2014. Our advisor’s management team has substantial experience in the real estate industry and has successfully completed approximately 46 fully subscribed private placements in real estate programs of multiple property types with over 1,308 investors across the United States. Our advisor’s management team also advises another publicly offered investment program, Moody National REIT I, Inc., or Moody National REIT I, which has raised approximately \$87.7 million from over 1,600 investors in its continuous public offering through December 4, 2014. Moody National REIT I’s current investment portfolio is comprised of seven hotel properties, a joint venture interest in a hotel property and a joint venture interest in a mortgage note that is secured by a hotel property.

Our sponsor, Moody National REIT Sponsor, LLC, a Delaware limited liability company, is owned and managed by Brett C. Moody, who also serves as our Chief Executive Officer and President and the Chief Executive Officer and President of our advisor. We refer to Moody National REIT Sponsor, LLC as our “sponsor” or “Moody National.”

Our office is located at 6363 Woodway Drive, Suite 110, Houston, Texas 77057, and our main telephone number is 713-977-7500.

### **Investment Strategy and Objectives:**

Our investment objectives are to:

- preserve, protect and return stockholders’ capital contributions;
- pay attractive and stable cash distributions to stockholders; and
- realize capital appreciation upon the ultimate sale of the real estate assets we acquire.

We expect that our portfolio will consist primarily of select-service hotel properties with premier brands, including, but not limited to, Marriott, Hilton, and Hyatt, that are located in major metropolitan markets in the East Coast, West Coast and Sunbelt regions of the United States. Such hotel properties, which we refer to as “select-service hotels,” target business-oriented travelers by providing clean rooms with basic amenities. In contrast to lower-cost budget motels, select-service hotels provide amenities such as an exercise room, business facilities and breakfast buffets. In contrast to full-service hotels, select-service hotels typically do not have a full-service restaurant, which is relatively costly to operate. To a lesser extent, we may also invest in other hospitality properties located within other markets and regions as well as real estate securities and debt-related investments related to the hospitality sector. Our board of directors may adjust our investment focus from time to time based upon market conditions and other factors our board of directors deem relevant.

In identifying investments, we will rely upon a market optimization investment strategy and acquisition model that analyzes economic fundamentals and demographic trends in major metropolitan markets. By utilizing a targeted, disciplined approach, we believe that we will be able to capitalize on market inefficiencies and identify undervalued investment opportunities with underlying intrinsic value that have the potential to create greater value at disposition. Our investment strategy seeks to identify technical pressures created by demographic, business and industry changes, which we believe leads to supply and demand imbalances within certain sectors of commercial real estate.

Based on our internal research, we believe that presently the hospitality sector, compared to other real estate asset classes, has the greatest supply-demand imbalance, which should lead to upward pressure on room rates. In addition, we believe that hotel properties continue to trade below historical price levels, resulting in attractive purchasing opportunities at this present time. More specifically, we believe that premier-brand, select-service hotel properties in major metropolitan markets have the potential to generate attractive returns relative to other types of hotel properties due to their ability to achieve Revenue per Available Room (RevPAR) levels at or close to those achieved by traditional, full-service hotels while achieving higher profit margins due to their more efficient operating model and more predictable net operating income. In addition, our market optimization investment strategy, accounting for growth potential and risks related to asset devaluation, takes into account current supply-demand imbalances and targets markets that offer stable population growth, high barriers to entry and multiple demand generators.

### **Summary of Risk Factors**

An investment in shares of our common stock involves significant risks, including the following:

- This is an initial public offering. We have no prior operating history and there is no assurance that we will be able to successfully achieve our investment objectives.
- No public trading market exists for shares of our common stock and we are not required to effectuate a liquidity event by a certain date. As a result, it will be difficult for you to sell your shares of our common stock. If you are able to sell your shares, you will likely have to sell them at a substantial discount.
- We plan to invest primarily in premier-brand, select-service hotel properties that are located in major metropolitan markets in select U.S. geographic regions. A more focused investment portfolio is inherently more risky than a more diversified portfolio. As a result, our results of operations may be adversely affected by a downturn in the hospitality sector or adverse economic developments in the geographic regions in which we invest.
- There are restrictions and limitations on your ability to have all or a portion of your shares of our common stock repurchased under our share repurchase program, and if you are able to have your shares repurchased pursuant to our share repurchase program, it may be for a price less than the price you paid for the shares and the then current value of the shares.
- The offering price of our shares of common stock for this offering was not determined on an independent basis and bears no relationship to the book or net value of assets we own or may own or to our expected operating income; therefore, the offering price may not accurately reflect the value of our assets when you invest.
- The price of our shares may be adjusted periodically to reflect changes in the estimated value of our assets and therefore future adjustments may result in an offering price lower than the price you paid for your shares.
- The amount of distributions we may make is uncertain. Our distributions may exceed our earnings, particularly during the period before we have acquired a substantial portfolio of real estate assets. Our distributions may be paid from other sources such as borrowings, offering proceeds or deferral of fees and expense reimbursements by our advisor, in its sole discretion. Payment of distributions from sources other than our cash flow from operations would reduce the funds available to us for investments in properties, which could reduce your overall return. Because this is a blind pool offering, it is likely that distributions paid during the early stages of our offering and before we have acquired a substantial portfolio of real estate assets will be funded primarily from offering proceeds. We have not established a limit on the amount of proceeds from this offering that we may use to fund distributions. Therefore, portions of the distributions that we make may represent a return of capital to you, which will lower your tax basis in our shares.
- This is considered to be a “blind pool” offering because you will not have the opportunity to evaluate our future investments prior to purchasing shares of our common stock.
- This is a “best efforts” offering and our ability to raise money and achieve our investment objectives depends on the ability of the dealer manager to successfully market our offering.
- We rely on our advisor, property manager and sub-property managers and their affiliates for our day-to-day operations and the selection of our investments. Adverse changes in the financial health of our advisor, property manager and sub-property managers could cause our operations to suffer.
- We pay substantial fees and expenses to our advisor and its affiliates, including the dealer manager for this offering. These fees were not negotiated at arm’s length and therefore may be higher than fees payable to unaffiliated parties. Upon termination of our advisory agreement for any reason, including for cause, our advisor will be paid all accrued and unpaid fees and expense reimbursements earned prior to the date of termination and we may be required to pay significant fees regardless of our advisor’s performance, which will reduce cash available for distribution to you.

- Our advisor and other affiliates face conflicts of interest as a result of compensation arrangements, time constraints and competition for investments, including (1) conflicts related to compensation payable by us to our advisor and other affiliates that may not be on terms that would result from arm's-length negotiations between unaffiliated parties, (2) the allocation of time between advising us and other real estate investment programs and (3) the recommendation of investments on our behalf when other affiliated programs are seeking similar investments.
- Because Moody Securities is an affiliate of ours, you will not have the benefit of an independent due diligence review and investigation of the type normally performed by an unaffiliated, independent underwriter in connection with a securities offering. The lack of an independent due diligence review and investigation increases the risk of your investment because it may not have uncovered facts that would be important to a potential investor.
- If we fail to qualify as a REIT, it would adversely affect our operations and our ability to make distributions to our stockholders, because we will be subject to U.S. federal income tax at regular corporate rates with no ability to deduct distributions made to our stockholders.

## **Our Board of Directors**

We operate under the direction of our board of directors, the members of which are accountable to us and our stockholders as fiduciaries. The board of directors is responsible for the management and control of our affairs. We have three members on our board of directors, two of whom are independent of us, our advisor and our respective affiliates. Our directors will be elected annually by our stockholders. Our board of directors has established an audit committee. For more information on the members of our board of directors, see "Management."

## **Our Advisor**

Moody National Advisor II, LLC, our advisor and a wholly owned subsidiary of our sponsor, was formed as a Delaware limited liability company in July 2014. Mr. Brett C. Moody controls and indirectly owns our advisor. We will rely on our advisor to manage our day-to-day activities and to implement our investment strategy. In addition, our advisor will use its best efforts, subject to the oversight, review and approval of our board of directors, to, among other things, research, identify, review and make investments in and dispositions of hospitality assets on our behalf consistent with our investment strategy and objectives.

Our advisor performs its duties and responsibilities as our fiduciary under an advisory agreement. Our advisory agreement has a one-year term, subject to renewals by the board of directors for an unlimited number of successive one-year periods. Our officers and our affiliated director are all officers of our advisor.

## **Our Sponsor**

Moody National REIT Sponsor, LLC, our sponsor, was formed as a Delaware limited liability company in January 2008. Mr. Moody, who serves as our Chief Executive Officer and President, as well as the Chief Executive Officer and President of our advisor, controls and indirectly owns our sponsor. Mr. Moody has closed more than 200 commercial real estate transactions totaling over \$2.0 billion and has experience owning, financing and managing hotel, multifamily, office, and retail assets throughout the country. Mr. Moody has assembled a team of real estate professionals who have been through multiple real estate cycles in their careers and have the expertise gained through hands-on experience in acquisitions, asset management, dispositions, development, leasing and property and portfolio management. We believe that the experience of Mr. Moody and the team of real estate professionals assembled to manage our operations and their disciplined investment approach will allow us to successfully execute our investment strategy. Our sponsor, and its management team, also manages and sponsors Moody National REIT I, a publicly offered real estate program, which, as of December 4, 2014, has raised approximately \$87.7 million of equity from more than 1,600 investors. Additionally, since 2005, the experience of these individuals includes (as of September 30, 2014):

- sponsoring 46 privately offered prior real estate programs;
- raising over \$427.9 million of equity from more than 1,308 investors through these privately offered prior real estate programs;
- acquiring over 70 hotels throughout the United States, with a value totaling approximately \$1.5 billion; and
- operating or asset managing over 40 hotels located throughout the United States.

## **Our Operating Partnership**

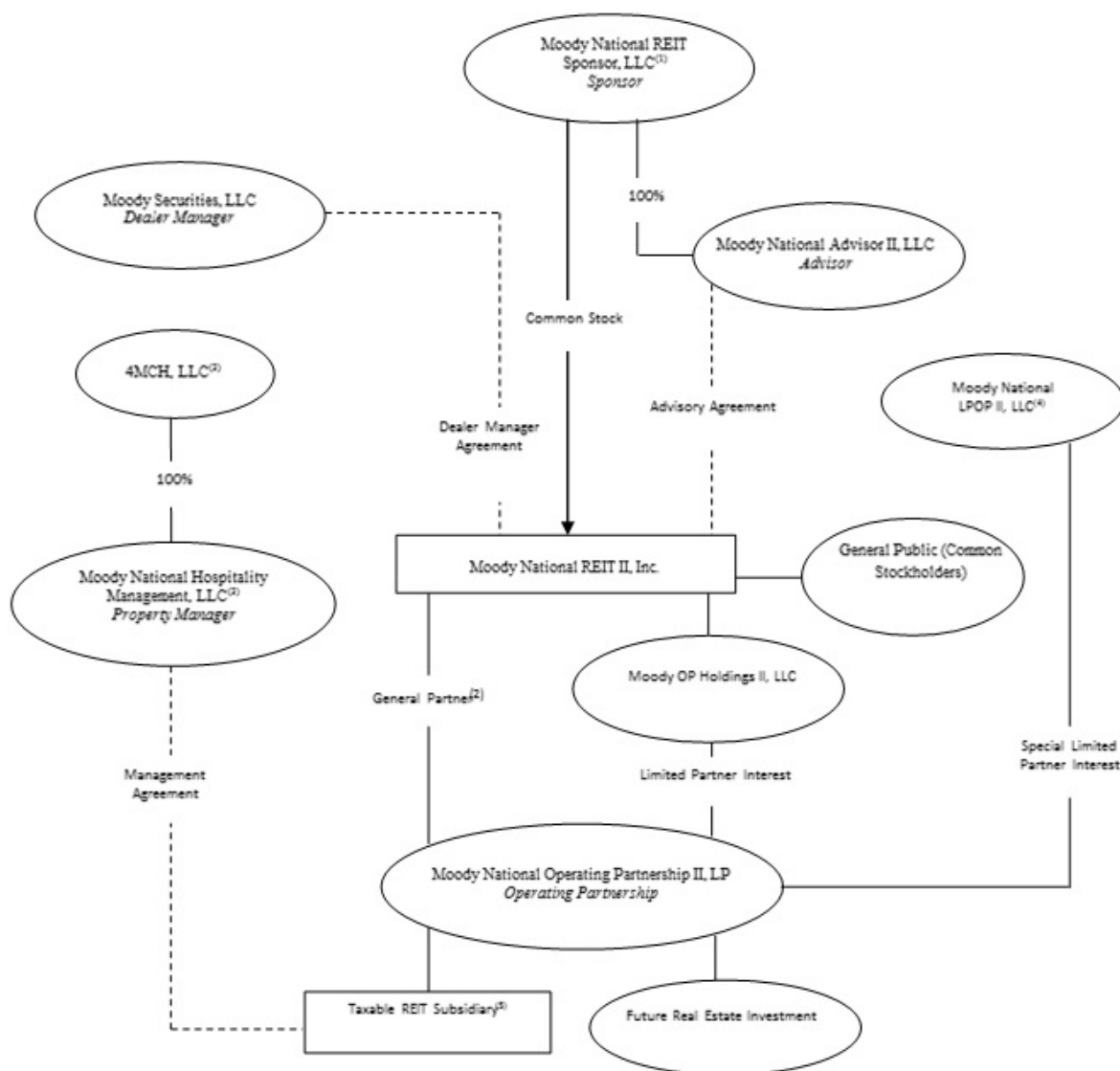
We own all of our investments through Moody National Operating Partnership II, LP, our operating partnership, or its subsidiaries. We are the sole general partner of our operating partnership, and the initial limited partners of our operating partnership are our subsidiary, Moody OP Holdings II, LLC, or Moody Holdings II, and Moody National LPOP II, LLC, or Moody LPOP II, an affiliate of our advisor. Moody Holdings II invested \$1,000 in our operating partnership in exchange for limited partnership interests, and Moody LPOP II invested \$1,000 in our operating partnership in exchange for special limited partnership interests.

## Our Affiliates

Various affiliates of ours are involved in this offering and our operations. Moody Securities, LLC, which is a member of the Financial Industry Regulatory Authority, Inc., or FINRA, is the dealer manager for this offering and will provide dealer manager services to us in this offering. Mr. Robert W. Engel, our Chief Financial Officer, is an officer of our dealer manager. Our dealer manager is indirectly owned by Mr. Moody. For more information regarding our officers and the officers of our advisor and dealer manager, see the “Management” section of this prospectus. Another affiliate, Moody National Hospitality Management, LLC, our property manager, will perform certain hotel management services for us and our operating partnership. Our property manager is controlled by Mr. Moody. In addition, our property manager may engage affiliated sub-property managers to provide management and leasing services at select, individual hospitality properties.

## Our Structure

The chart below shows the relationships among various Moody National affiliates. We are the sole general partner of our operating partnership. In the future, our operating partnership may issue limited partnership interests to third parties from time to time in connection with acquisitions of real estate properties. In order for the income from any hotel property investments to constitute “rents from real properties” for purposes of the gross income test required for REIT qualification, the income we earn cannot be derived from the operation of any of these hotels. Therefore, we will lease each hotel property to a subsidiary of our operating partnership, which we intend to be treated as a taxable REIT subsidiary, or TRS.



(1) Brett C. Moody owns 100% of Moody National REIT Sponsor, LLC.

(2) We are the sole general partner of our operating partnership. As we accept subscriptions of shares of our common stock, we will transfer substantially all of the net offering proceeds to our operating partnership in exchange for limited partnership interests and our percentage ownership in our operating partnership will increase proportionally.

- (3) Brett C. Moody is the manager of both Moody National Hospitality Management, LLC and 4MCH, LLC, the sole member of Moody National Hospitality Management, LLC.
- (4) Moody LPOP II, an affiliate of our advisor, owns 100% of the special limited partnership interests of our operating partnership. These special limited partnership interests will entitle Moody LPOP II to receive certain operating partnership distributions. See “Management Compensation.”
- (5) Each taxable REIT subsidiary (TRS) will enter into a management agreement with our property manager, or another “eligible independent contractor,” for the management of such property.

## Terms of the Offering

We are offering up to \$1,100,000,000 in shares of our common stock in this offering. We are offering \$1,000,000,000 in shares of our common stock to the public at a price of \$25.00 per share, which we refer to as the primary offering. We are also offering \$100,000,000 in shares of our common stock to our stockholders pursuant to our distribution reinvestment plan at a price of \$23.75 per share. Our board of directors may, from time to time, in its sole and absolute discretion, change the price at which we offer shares to the public in the primary offering or pursuant to our distribution reinvestment plan to reflect changes in our estimated value per share, changes in applicable law and other factors that our board of directors deems relevant. If we determine to change the price at which we offer shares, we do not anticipate that we will do so more frequently than quarterly. We reserve the right to reallocate the shares of common stock we are offering between the primary offering and our distribution reinvestment plan. This is a best efforts offering, which means that our affiliate Moody National Securities, LLC, which is the dealer manager for this offering, will use its best efforts to sell our shares of common stock, but is not required to sell any specific amount of shares.

We will begin selling shares of our common stock in this offering upon the effective date of the registration statement of which this prospectus forms a part, and we will continue to offer shares of our common stock on a continuous basis over a two year period until this offering terminates on or before January 20, 2017, unless extended. However, in many states, we will need to renew the registration statement or file a new registration statement to continue this offering beyond one year from the date of this prospectus. We reserve the right to terminate this offering at any time.

Offering proceeds will be held in an escrow account at the escrow agent until we meet the minimum offering amount of \$2,000,000 (including shares purchased by our sponsor, its affiliates and our directors and officers). Thereafter, the offering proceeds will be released to us and will be available for investment or the payment of fees and expenses. If we do not raise at least \$2,000,000 by January 20, 2016 (one year from the date of the commencement of this offering) we will terminate this offering and promptly return all subscribers’ funds held in escrow, plus any interest accrued on the escrowed funds.

## Compensation to Our Advisor and Affiliates

Our advisor and other affiliates receive compensation and fees for services related to this offering and for the investment and management of our assets, subject to review and approval of our independent directors. Set forth below is a summary of the fees and expenses we expect to pay our advisor and its affiliates, including the dealer manager, assuming we sell the maximum of \$1,000,000,000 in shares in the primary offering, we sell all shares in this offering at the highest possible sales commissions and dealer manager fees and there are no discounts in the price per share. No effect is given to any shares sold through our distribution reinvestment plan. Unless a specific form of payment is specifically provided for in our advisory agreement, our advisor may, in its sole discretion, elect to have any fees paid, in whole or in part, in cash or shares of our common stock. See “Management Compensation” for a more detailed explanation of the fees and expenses payable to our dealer manager, advisor and its affiliates, and for a more detailed description of the special limited partnership interests issued to the special limited partnership interest holder.

Compensation/ Reimbursement and Recipient	Description and Method of Computation	Estimated Amount Maximum Offering
<i>Organizational and Offering Stage</i>		
Sales Commission—Dealer Manager	7.0% of the gross offering proceeds from the sale of shares in the primary offering (all or a portion of which may be reallocated to participating broker-dealers).	\$70,000,000
Dealer Manager Fee—Dealer Manager	3.0% of the gross offering proceeds from the sale of shares in the primary offering, a portion of which may be reallocated to participating broker-dealers (excluding funds retained for the payment of wholesaling commissions, training and education costs and overhead expenses).	\$30,000,000

<b>Compensation/ Reimbursement and Recipient</b>	<b>Description and Method of Computation</b>	<b>Estimated Amount Maximum Offering</b>
Organizational and Offering Expense Reimbursement— Advisor or its affiliates	Reimbursement for organizational and offering expenses incurred on our behalf, but only to the extent that such reimbursements do not exceed actual expenses incurred by the advisor and would not cause the cumulative sales commission, the dealer manager fee and other organization and offering expenses borne by us to exceed 15.0% of gross offering proceeds from the sale of shares in the primary offering as of the date of reimbursement. We estimate that organization and offering expenses (excluding sales commissions and dealer manager fees) will represent approximately 2.0% of gross proceeds from our primary offering, or approximately \$20,000,000, if we raise the maximum offering amount.	\$20,000,000
<b><i>Operational Stage</i></b>		
Acquisition Fees—Advisor or its affiliates	1.5% of (1) the cost of all investments we acquire (including our pro rata share of any indebtedness assumed or incurred in respect of the investment and exclusive of acquisition and financing coordination fees), (2) our allocable cost of investments acquired in a joint venture (including our pro rata share of the purchase price and our pro rata share of any indebtedness assumed or incurred in respect of that investment and exclusive of acquisition fees and financing coordination fees) or (3) the amount funded by us to acquire or originate a loan or other investment, including mortgage, mezzanine or bridge loans (including any third-party expenses related to such investment and exclusive of acquisition fees and financing coordination fees). Once the proceeds from the primary offering have been fully invested, the aggregate amount of acquisition fees and financing coordination fees shall not exceed 1.9% of the contract purchase price and the amount advanced for a loan or other investment, as applicable, for all the assets acquired.	\$13,200,000 (assuming no leverage is used to purchase real estate assets). \$52,800,000 (assuming a leverage ratio of 75%).
Financing Coordination Fees— Advisor	1.0% of the amount available under any loan or line of credit originated or assumed, directly or indirectly, in connection with the acquisition of properties or other permitted investments, which will be in addition to the acquisition fee paid to our advisor, and 0.75% of the amount available or outstanding under any refinanced loan or line of credit. Financing coordination fees are only payable if our advisor provides services in connection with the origination, assumption or refinancing of debt that we use to acquire properties or other permitted investments. Our advisor may pay some or all of the fees to third parties if it subcontracts to coordinate financing. No fee will be paid in connection with loan proceeds from any line of credit until such time as we have invested all net offering proceeds.	Actual amounts depend upon the amount of debt obtained and services provided, and, therefore, cannot be determined at this time.
Reimbursement of Acquisition Expenses—Advisor	Reimbursement of actual expenses related to the evaluation, selection and acquisition of real estate investments, regardless of whether we actually acquire the related assets. In no event will the total of all acquisition fees (including financing coordination fees) and acquisition expenses payable exceed 6.0% of the contract purchase price of all real estate investments acquired.	Actual amounts are dependent upon the actual asset values, timing of acquisition and leverage and, therefore, cannot be determined at this time.
Asset Management Fees— Advisor	A monthly amount equal to one-twelfth of 1.0% of the sum of the cost of all real estate investments we acquire.	Actual amounts depend upon the aggregate cost of our investments, and, therefore, cannot be determined at this time.

<b>Compensation/ Reimbursement and Recipient</b>	<b>Description and Method of Computation</b>	<b>Estimated Amount Maximum Offering</b>
Hotel Management Fees—Moody National Hospitality Management, LLC	A monthly hotel management fee equal to 4.0% of the monthly gross receipts from the properties managed by our property manager. Our property manager may pay some or all of these fees to third parties for management services. In the event that our TRS lessee contracts directly with a non-affiliated third-party property manager, our TRS lessee will pay our property manager a market-based oversight fee. Our TRS lessee will reimburse the costs and expenses incurred by our property manager on its behalf, including legal, travel and other out-of-pocket expenses that are directly related to the management of specific properties. Our TRS lessee will not, however, reimburse our property manager for general overhead costs or personnel costs other than employees or subcontractors who are engaged in the on-site operation, management, maintenance or access control of our properties.	Actual amounts depend upon the gross revenue of the properties, and, therefore, cannot be determined at this time.
Annual Incentive Fee—Moody National Hospitality Management, LLC	We, indirectly through our TRS lessee, also pay an annual incentive fee to our property manager. Such annual incentive fee is equal to 15% of the amount by which the operating profit from the properties managed by our property manager for such fiscal year (or partial fiscal year) exceeds 8.5% of the total investment of such properties. Our property manager may pay some or all of this annual fee to third-party property managers for management services.	The actual amount will depend on gross revenues of properties and the total investment in properties, and, therefore, cannot be determined at this time.
	For purposes of this fee, “total investment” means the sum of (1) the price paid to acquire a property, including closing costs, conversion costs, and transaction costs; (2) additional invested capital; and (3) any other costs paid in connection with the acquisition of the property, whether incurred pre- or post-acquisition.	
Operating Expenses—Advisor	We reimburse our advisor for all expenses paid or incurred by our advisor in connection with the services provided to us, including our allocable share of the advisor’s overhead, such as rent, personnel costs, utilities and IT costs; provided, however, that we do not reimburse our advisor or its affiliates for employee costs in connection with services for which our advisor or its affiliates receives acquisition, disposition or asset management fees or for the personnel costs our advisor pays with respect to persons who serve as our executive officers.	Actual amounts are dependent upon expenses paid or incurred and the NASAA REIT Guidelines 2%/25% limitation, and therefore, cannot be determined at the present time.

#### ***Liquidity Stage***

Disposition Fees—Advisor or its affiliates	If our advisor provides a substantial amount of services in connection with the sale of a property or other investment, as determined by our independent directors, we may pay our advisor a disposition fee equal to the lesser of (1)(a) where a brokerage commission is also payable to a third party, one-half of the aggregate brokerage commission paid, including brokerage commissions payable to third parties, or (b) where no brokerage commission is payable to any third party, the competitive real estate commission or (2) 3.0% of the contract sales price of each property or other investment sold, provided, however, in no event may the aggregate of the disposition fees paid to our advisor and any real estate commissions paid to unaffiliated third parties exceed 6.0% of the contract sales price. With respect to a property held in a joint venture, the foregoing commission will be reduced to a percentage of such amount reflecting our economic interest in the joint venture.	Actual amounts depend upon the sales price of investments, and therefore cannot be determined at this time.
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<b>Compensation/ Reimbursement and Recipient</b>	<b>Description and Method of Computation</b>	<b>Estimated Amount Maximum Offering</b>
Special Limited Partnership Interest—Moody National LPOP II, LLC	The special limited partnership interest holder, was issued special limited partnership interests upon its initial investment of \$1,000 in our operating partnership and in consideration of services to be provided by our advisor, and as the holder of special limited partnership interests will be entitled to receive distributions equal to 15.0% of our net cash flows, whether from continuing operations, the repayment of loans, the disposition of assets or otherwise, but only after our stockholders have received, in the aggregate, cumulative distributions equal to their total invested capital plus a 6.0% cumulative, non-compounded annual pre-tax return on such aggregated invested capital. In addition, the special limited partnership interest holder will be entitled to a separate payment if it redeems its special limited partnership interests. The special limited partnership interests may be redeemed upon: (1) the listing of our common stock on a national securities exchange; or (2) the occurrence of certain events that result in the termination or non-renewal of our advisory agreement, in each case for an amount that Moody LPOP II would have been entitled to receive, as described above, as if our operating partnership had disposed of all of its assets at the enterprise valuation as of the date of the event triggering the redemption. If the event triggering the redemption is: (1) a listing of our shares on a national securities exchange, the enterprise valuation will be calculated based on the average share price of our shares for a specified period; or (2) an underwritten public offering, the enterprise value will be based on the valuation of the shares as determined by the initial public offering price in such offering. If the triggering event is the termination or non-renewal of our advisory agreement other than for cause, the enterprise valuation will be calculated based on an appraisal or valuation of our assets.	Actual amounts depend upon future liquidity events, and therefore cannot be determined at this time.

### **Prior Investment Programs**

The section of this prospectus entitled “Prior Performance Summary” contains a discussion of the programs sponsored by Moody National and its affiliates. Certain financial data relating to these programs is also provided in the “Prior Performance Tables” in Appendix A to this prospectus. The prior performance of our affiliates’ previous real estate programs may not be indicative of our ultimate performance and, thus, you should not assume that you will experience financial performance and returns comparable to those experienced by investors in these prior programs. You may experience a small return or no return on, or may lose some or all of, your investment in our shares.

### **Conflicts of Interest**

Our advisor and its affiliates may experience conflicts of interest in connection with this offering and the management of our business and the other businesses of our sponsor, including Moody National REIT I, a public, non-listed REIT also sponsored by our sponsor which has investment objectives generally similar to this offering. Such conflicts of interest include the following:

- although our advisor does not currently manage other real estate programs, the directors, officers and key personnel of our advisor and our affiliated property and sub-property manager must allocate their time between advising us and managing other real estate projects and business activities in which they may be involved;
- the compensation payable by us to our advisor and other affiliates may not be on terms that would result from arm’s-length negotiations between unaffiliated parties, and fees such as the acquisition fees and asset management fees payable to our advisor, in most cases, regardless of the performance of the investments we make, and thus may create an incentive for the advisor to accept a higher purchase price for assets or to purchase assets that may not otherwise be in our best interest;
- real estate professionals acting on behalf of our advisor must determine which investment opportunities to recommend to us and other Moody National affiliates, including Moody National REIT I, which could reduce the number of potential investments presented to us;
- our property manager is an affiliate of our advisor and, as a result, may benefit from our advisor’s determination to retain our assets while our stockholders may be better served by the sale or disposition of our assets;
- our advisor may terminate our advisory agreement with good reason upon 60 days written notice. Upon termination of our advisory agreement by our advisor, Moody LPOP II, as the holder of special limited partnership interests, may be entitled to have the special limited partnership interests redeemed as of the termination date if our stockholders have received, or are deemed to receive, in the aggregate, cumulative distributions equal to total invested capital plus a 6.0% cumulative non-

compounded annual pre-tax return on such aggregate invested capital. The amount of the payment will be based on an appraisal or valuation of our assets as of the termination date. This potential obligation would reduce the overall return to stockholders to the extent such return exceeds 6.0%;

- our dealer manager is an affiliate of ours and, as a result, you will not have the benefit of an independent due diligence review and investigation of the type normally performed by an unaffiliated, independent underwriter in connection with a securities offering; and
- other real estate programs sponsored by our sponsor and offered through our dealer manager, including both privately and publicly offered real estate programs, may conduct offerings concurrently with this offering, and our sponsor and dealer manager will face potential conflicts of interest arising from competition among us and these other programs for investment capital and hospitality investments.

## Distribution Policy

We intend to qualify as a REIT commencing with the taxable year in which we satisfy the minimum offering requirements. To qualify as a REIT, we are required to distribute 90% of our annual taxable income to our stockholders. We intend to make distributions on a monthly basis beginning no later than the first calendar month after the month in which the minimum offering requirements are met. In connection with a distribution to our stockholders, our board of directors will approve a monthly distribution of a certain dollar amount per share of our common stock. We will then calculate each stockholder's specific distribution amount for the month using daily record and declaration dates and your distributions will begin to accrue on the date we mail a confirmation of your subscription for shares of our common stock.

Our distributions may exceed our earnings, particularly during the period before we have acquired a substantial portfolio of real estate assets. Our distributions may be paid from other sources such as borrowings, offering proceeds or deferral of fees and expense reimbursements by our advisor, as determined by our board of directors in its sole discretion. Payment of distributions from sources other than our cash flow from operations would reduce the funds available to us for investments in properties, which could reduce your overall return. Because this is a blind pool offering, it is likely that distributions paid during the early stages of our offering and before we have acquired a substantial portfolio of real estate assets will be funded primarily from offering proceeds.

## Distribution Reinvestment Plan

You may participate in our distribution reinvestment plan and elect to have the cash distributions you receive reinvested in shares of our common stock at an initial price of \$23.75 per share. Our board of directors may, in its sole discretion, from time to time, change this price based upon changes in our estimated value per share, the then current net asset value of our portfolio, the then current public offering price of shares of our common stock and other factors that our board of directors deems relevant. If we determine to change the price at which we offer shares pursuant to our distribution reinvestment plan, we do not anticipate that we will do so more frequently than quarterly.

Our board of directors may terminate the distribution reinvestment plan at its discretion at any time upon ten days' notice to you. Following any termination of the distribution reinvestment plan, all subsequent distributions to stockholders will be made in cash. No sales commissions or dealer manager fees are payable on shares sold through our distribution reinvestment plan.

## Share Repurchase Program

Our common stock is currently not listed on a national securities exchange, and we have no present plan or intention to list our common stock on a national securities exchange in the near future. In order to provide stockholders with the benefit of some interim liquidity, we have adopted a share repurchase program that enables our stockholders to have shares of our common stock repurchased, subject to certain restrictions and limitations. Prior to the date we publish an estimated value per share of our common stock, the purchase price for shares repurchased under our share repurchase program will be at a price equal to, or at a discount from, the purchase price paid for the shares being repurchased. The discount will vary based upon the length of time that a stockholder has held the shares of our common stock subject to repurchase, as described in the following table:

Share Purchase Anniversary	Repurchase Price as a Percentage of Purchase Price
Less than 1 year .....	No Repurchase Allowed
1 year .....	92.5%
2 years .....	95.0%
3 years .....	97.5%
4 years and longer .....	100.0%

Unless the shares are being repurchased in connection with a stockholder's death or qualifying disability, shares may not be repurchased under our share repurchase program until after the first anniversary of the date of purchase of such shares. Repurchase requests made within two years of the death or qualifying disability of a stockholder will be repurchased at a price equal to the purchase price paid by such deceased or disabled stockholder for such shares.

Pursuant to current rules and regulations, we will establish an estimated value per share no later than 150 days following the second anniversary of breaking escrow in this offering, or the valuation date. From and after the valuation date, our board of directors will determine an estimated value per share of our common stock. After we begin providing an estimated per share value, we will repurchase shares under our share repurchase program for the lesser of the price paid for the shares by the stockholders where shares are being repurchased or 95% of the estimated per share value as determined by our board of directors.

Repurchases of shares of our common stock will be made upon the request of a stockholder and generally will be made on a quarterly basis, subject to certain restrictions and limitations. Our board of directors may, in its sole discretion, accept or reject any share repurchase request made by any stockholder at any time. Repurchases during any calendar year will be limited to the lesser of (1) 5.0% of the weighted average of common stock outstanding during the prior calendar year and (2) the number of shares of our common stock that could be repurchased with the net proceeds from the sale of shares under the distribution reinvestment plan in the prior calendar year plus such additional funds as may be reserved for share repurchase by our board of directors; provided, however that shares subject to a repurchase request upon the death of a stockholder will be included in calculating the maximum number of shares that may be repurchased, but the above volume limitations shall not apply to repurchases requested upon the death of a stockholder. In the event that we do not have sufficient funds available to repurchase all of the shares for which repurchase requests have been submitted in any quarter, we will repurchase the shares on a pro rata basis on the repurchase date. Our board of directors may, in its sole discretion, amend, suspend or terminate the share repurchase program at any time upon 30 days' prior written notice. The share repurchase program will terminate if (1) shares of our common stock are listed on a national securities exchange or (2) our board of directors determines that termination of the share repurchase program is in our best interests. Therefore, stockholders may not have the opportunity to make a repurchase request prior to any potential termination of our share repurchase program.

### **Liquidity Strategy**

We presently intend, but are not required, to complete a transaction providing liquidity for our stockholders within three to six years from the completion of our initial public offering; however the timing of any such event will be significantly dependent upon economic and market conditions after completion of our primary offering. Our charter does not require our board of directors to pursue a liquidity event. However, we expect that our board of directors will determine to pursue a liquidity event when it believes that then-current market conditions are favorable for a liquidity event, and that such a transaction is in the best interests of our stockholders. A liquidity event could include (1) the sale of all or substantially all of our assets either on a portfolio basis or individually followed by a liquidation, (2) a merger or another transaction approved by our board of directors in which our stockholders will receive cash or shares of a publicly traded company or (3) a listing of our shares on a national securities exchange. There can be no assurance as to when such a suitable transaction will be available.

### **Investment Company Act Considerations**

We intend to conduct our operations so that neither we, nor our operating partnership nor the subsidiaries of our operating partnership are required to register as investment companies under the Investment Company Act of 1940, as amended, or the Investment Company Act.

Section 3(a)(1)(A) of the Investment Company Act defines an investment company as any issuer that is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Investment Company Act defines an investment company as any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis, which we refer to as the "40% test." Excluded from the term "investment securities," among other things, are U.S. government securities and securities issued by majority-owned subsidiaries that are not themselves investment companies and are not relying on the exception from the definition of investment company set forth in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.

We believe that we, our operating partnership and most of the subsidiaries of our operating partnership will not fall within either definition of investment company as we intend to invest primarily in real property, rather than in securities, through our operating partnership or our operating partnership's wholly or majority-owned subsidiaries, the majority of which we expect will have at least 60% of their assets in real property. As these subsidiaries would be investing either solely or primarily in real property, they would not be within the definition of "investment company" under Section 3(a)(1)(C) of the Investment Company Act. We are organized as a holding company that conducts its businesses primarily through our operating partnership, which in turn is a company conducting its business of investing in real property either directly or through its subsidiaries. Both we and our operating partnership intend to conduct our operations so that we comply with the 40% test. We will monitor our holdings to ensure continuing and ongoing compliance with this test. In addition, we believe neither we nor our operating partnership will be considered an investment company

under Section 3(a)(1)(A) of the Investment Company Act because neither we nor our operating partnership will engage primarily or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Rather, through our operating partnership or our operating partnership's wholly owned or majority-owned subsidiaries, we and our operating partnership will be primarily engaged in the business of purchasing or otherwise acquiring real property.

Even if the value of investment securities held by a subsidiary of our operating partnership were to exceed 40% of its total assets, we expect that subsidiary to be able to rely on the exclusion from the definition of "investment company" provided by Section 3(c)(5)(C) of the Investment Company Act, which is available for entities "primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on, and interests in, real estate." This exception generally requires that at least 55% of a subsidiary's portfolio must be comprised of qualifying real estate assets and at least 80% of its portfolio must be comprised of qualifying real estate assets and real estate-related assets (and no more than 20% comprised of miscellaneous assets).

For purposes of the exclusion provided by Sections 3(c)(5)(C), we will classify the investments made by our subsidiaries based in large measure on no-action letters issued by the SEC staff and other SEC interpretive guidance and, in the absence of SEC guidance, on our view of what constitutes a qualifying real estate asset and a real estate-related asset. These no-action letters were issued in accordance with factual situations that may be substantially different from the factual situations we may face, and a number of these no-action letters were issued more than ten years ago. Pursuant to this guidance, and depending on the characteristics of the specific investments, certain mortgage loans, participations in mortgage loans, mortgage-backed securities, mezzanine loans, joint venture investments and the equity securities of other entities may not constitute qualifying real estate assets and therefore investments in these types of assets may be limited. No assurance can be given that the SEC or its staff will concur with our classification of our assets. Future revisions to the Investment Company Act or further guidance from the SEC staff may cause us to lose our exclusion from the definition of investment company or force us to re-evaluate our portfolio and our investment strategy. Such changes may prevent us from operating our business successfully.

To the extent that the SEC or its staff provides more specific or different guidance regarding the treatment of assets as qualifying real estate assets or real estate-related assets, we may be required to adjust our investment strategy accordingly. Any additional guidance from the SEC or its staff could provide additional flexibility to us, or it could further inhibit our ability to pursue the investment strategy we have chosen. There can be no assurance that the laws and regulations governing the Investment Company Act status of REITs, including more specific or different guidance regarding these exclusions that may be published by the SEC or its staff, will not change in a manner that adversely affects our operations. For instance, in 2011, the SEC solicited public comment on a wide range of issues relating to Section 3(c)(5)(C) of the Investment Company Act, including the nature of the assets that qualify for purposes of the exclusion. We cannot assure you that the SEC or its staff will not take action that results in our or our subsidiary's failure to maintain an exception or exemption from the Investment Company Act.

In the event that we, or our operating partnership, were to acquire assets that could make either entity fall within one of the definitions of investment company under Section 3(a)(1) of the Investment Company Act, we believe that we would still qualify for an exclusion from the definition of "investment company" provided by Section 3(c)(6). Although the SEC staff has issued little interpretive guidance with respect to Section 3(c)(6), we believe that we and our operating partnership may rely on Section 3(c)(6) if 55% of the assets of our operating partnership consist of, and at least 55% of the income of our operating partnership is derived from, qualifying real estate investment assets owned by wholly owned or majority-owned subsidiaries of our operating partnership.

Finally, to remain outside the definition of an investment company or maintain compliance with exceptions from the definition of investment company, we, our operating company or our subsidiaries may be unable to sell assets we would otherwise want to sell and may need to sell assets we would otherwise wish to retain. In addition, we, our operating partnership or our subsidiaries may have to acquire additional income- or loss-generating assets that we might not otherwise have acquired or may have to forego opportunities to acquire interest in companies that we would otherwise want to acquire and that may be important to our investment strategy. If our subsidiaries fail to own a sufficient amount of qualifying real estate assets or additional qualifying real estate assets or real estate related assets to satisfy the requirements of Section 3(c)(5)(C) and cannot rely on any other exemption or exclusion under the Investment Company Act, we could be characterized as an investment company. Our advisor will continually review our investment activity to attempt to ensure that we will not be regulated as an investment company. Among other things, our advisor will attempt to monitor the proportion of our portfolio that is placed in investments in securities.

### **Emerging Growth Company Status**

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act, or the JOBS Act, and we are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We do not intend to take advantage of these exemptions.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can use the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. This permits an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to take advantage of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

We could remain an emerging growth company for up to five years, or until the earliest of (1) the last day of the first fiscal year in which our annual gross revenues exceed \$1 billion, (2) the date that we become a “large accelerated filer” as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the last business day of our most recently completed second fiscal quarter and we have been publicly reporting for at least 12 months, or (3) the date on which we have issued more than \$1 billion in non-convertible debt during the preceding three-year period.

## RISK FACTORS

*An investment in our common stock involves various risks and uncertainties. You should carefully consider the risks described below in conjunction with the other information contained in this prospectus before purchasing shares of our common stock. The risks and uncertainties described below represent those risks and uncertainties that we believe are material to us. Additional risks and uncertainties not presently known to us may also harm our business.*

### INVESTMENT RISKS

***There is no public trading market for shares of our common stock and we are not required to effectuate a liquidity event by a certain date. As a result, it will be difficult for you to sell your shares of common stock and, if you are able to sell your shares, you are likely to sell them at a substantial discount.***

This is an initial public offering. There is no current public market for the shares of our common stock and we have no obligation to list our shares on any public securities market or provide any other type of liquidity to our stockholders. It will therefore be difficult for you to sell your shares of common stock promptly or at all. Even if you are able to sell your shares of common stock, the absence of a public market may cause the price received for any shares of our common stock sold to be less than what you paid or less than your proportionate value of the assets we own. We have adopted a share repurchase program but it is limited in terms of the amount of shares that stockholder may sell back to us each quarter. Our board of directors may amend, suspend or terminate our share repurchase program upon 30 days' prior notice to our stockholders. Additionally, our charter does not require that we consummate a transaction to provide liquidity to stockholders on any date certain or at all. As a result, you should purchase shares of our common stock only as a long-term investment, and you must be prepared to hold your shares for an indefinite length of time.

***This is a "blind pool" offering, and you will not have the opportunity to evaluate our investments prior to purchasing shares of our common stock.***

Neither we nor our advisor has presently identified, acquired or contracted to acquire any real estate assets. As a result, you will not be able to evaluate the economic merits, transaction terms or other financial or operational data concerning our investments prior to purchasing shares of our common stock. You must rely on our advisor and our board of directors to implement our investment policies, to evaluate our investment opportunities and to structure the terms of our investments. Because investors are not able to evaluate our investments in advance of purchasing shares of our common stock, this offering may entail more risk than other types of offerings. This additional risk may hinder your ability to achieve your own personal investment objectives related to portfolio diversification, risk-adjusted investment returns and other objectives.

***We have no prior operating history and there is no assurance that we will be able to successfully achieve our investment objectives.***

We have no prior operating history and may not be able to successfully operate our business or achieve our investment objectives. As a result, an investment in our shares of common stock may entail more risk than the shares of common stock of a real estate investment trust with a substantial operating history. In addition, you should not rely on the past performance of real property, real estate securities or debt-related investments owned by Moody National affiliates to predict our future results. Nor should you assume that the prior performance of other investment programs sponsored by our sponsor, Moody National REIT Sponsor, LLC, or its affiliates (private or publicly offered, including, without limitation, Moody National REIT I) will be indicative of our future results.

***This is a "best efforts" offering and if we are unable to raise substantial funds, we will be limited in the number and type of investments we may make, which could negatively impact your investment.***

This offering is being made on a "best efforts" basis, whereby the broker-dealers participating in the offering are only required to use their best efforts to sell shares of our common stock and have no firm commitment or obligation to purchase any of the shares of our common stock. If we are unable to raise substantially more than the minimum offering amount of \$2,000,000, we will make fewer investments, resulting in less diversification in terms of the number of investments owned, the geographic regions in which our assets are located and the types of investments that we make. Further, it is likely that in our early stages of growth we may not be able to achieve a portfolio that is consistent with our longer-term investment objectives, increasing the likelihood that any single investment's poor performance would materially affect our overall investment performance. Our inability to raise substantial funds would also increase our fixed operating expenses as a percentage of gross income. Each of these factors could have an adverse effect on our financial condition and ability to make distributions to our stockholders.

***Our ability to successfully conduct this offering is dependent, in part, on the ability of our dealer manager to successfully establish, operate and maintain a network of broker-dealers.***

The dealer manager for this offering is Moody Securities, LLC, which we refer to as "Moody Securities." Moody Securities only has experience acting as a dealer manager for one public offering in addition to ours, Moody National REIT I. The success of this offering, and correspondingly our ability to implement our business strategy, is dependent upon the ability of our dealer manager to establish and maintain a network of licensed securities broker-dealers and other agents. If our dealer manager fails to perform, we may

not be able to raise sufficient proceeds through this offering to implement our investment strategy. If we are unsuccessful in implementing our investment strategy, you could lose all or a part of your investment.

***Because our charter does not require our listing or liquidation by a specified date, you should only purchase our shares as a long-term investment and be prepared to hold them for an indefinite period of time.***

In the future, our board of directors will consider alternatives for providing liquidity to our stockholders, which we refer to as a liquidity event. A liquidity event may include the sale of our assets, a sale or merger of our company or a listing of our shares on a national securities exchange. In the future, our board of directors will consider various types of liquidity events, including but not limited to: (1) the listing of shares of our common stock on a national securities exchange; (2) a sale or merger in a transaction that provides our stockholders with cash or securities of a publicly traded company; and (3) the sale of all or substantially all of our assets for cash or other consideration. It is anticipated that our board of directors will consider a liquidity event within three to six years after the completion of our initial primary offering; however the timing of any such event will be significantly dependent upon economic and market conditions after completion of our offering stage. Because our charter does not require us to pursue a liquidity event by a specified date, you should only purchase our shares as a long-term investment and be prepared to hold them for an indefinite period of time.

***We pay substantial fees and expenses to our advisor and its affiliates, including the dealer manager. These fees were not negotiated at arm's length, may be higher than fees payable to unaffiliated third parties and reduce cash available for investment.***

A portion of the offering price from the sale of our shares are used to pay fees and expenses to our advisor and its affiliates. These fees were not negotiated at arm's length and may be higher than fees payable to unaffiliated third parties. In addition, because the full offering price paid by stockholders will not be invested in hospitality assets. Stockholders will only receive a full return of their invested capital if we either (1) sell our assets or our company for a sufficient amount in excess of the original purchase price of our assets or (2) the market value of our company after we list our shares of common stock on a national securities exchange is substantially in excess of the original purchase price of our assets.

***You are limited in your ability to sell your shares of common stock pursuant to our share repurchase program. You may not be able to sell any of your shares of our common stock back to us, and if you do sell your shares, you may not receive the price you paid.***

Our share repurchase program may provide you with a limited opportunity to have your shares of common stock repurchased by us at a price equal to or at a discount from the purchase price of the shares of our common stock being repurchased. Unless the shares are being repurchased in connection with a stockholder's death or qualifying disability, shares may not be repurchased under our share repurchase program until after the first anniversary of the date of purchase of such shares. We anticipate that shares of our common stock may be repurchased on a quarterly basis. However, our share repurchase program contains certain restrictions and limitations, including those relating to the number of shares of our common stock that we can repurchase at any given time and limiting the repurchase price. Specifically, we presently intend to limit the number of shares to be repurchased to no more than the lesser of (1) 5.0% of the weighted-average number of shares of our common stock outstanding during the prior calendar year and (2) the number of shares of our common stock that could be purchased with the net proceeds from the sale of shares under the distribution reinvestment plan in the prior calendar year plus such additional funds as may be reserved for share repurchase by our board of directors; provided, however that shares subject to a repurchase request upon the death of a stockholder will be included in calculating the maximum number of shares that may be repurchased, but the above limitation shall not apply to repurchases requested upon the death of a stockholder. In addition, our board of directors reserves the right to amend or suspend the share repurchase program at any time or terminate the share repurchase program upon a determination that termination would be in our best interests. Therefore, you may not have the opportunity to make a repurchase request prior to a potential termination of the share repurchase program and you may not be able to sell any of your shares of common stock back to us pursuant to our share repurchase program. Moreover, if you do sell your shares of common stock back to us pursuant to the share repurchase program, you may not receive the same price you paid for any shares of our common stock being repurchased.

***Investors who invest in us at the beginning of this offering may realize a lower rate of return than later investors.***

There can be no assurances as to when we will begin to generate sufficient cash flow to fully fund the payment of distributions. As a result, investors who invest in us before we generate significant cash flow may realize a lower rate of return than later investors. We expect to have little cash flow from operations available for distribution until we make substantial investments. In addition, to the extent our investments are in properties that have significant capital requirements, our ability to make distributions may be negatively impacted, especially during our early periods of operation. Therefore, until such time as we have sufficient cash flow from operations to fully fund the payment of distributions, some or all of our distributions may be paid from other sources, such as from the proceeds of our public offerings, cash advances to us by our advisor, cash resulting from a waiver of fees by our advisor, and borrowings.

***The offering price of our shares of common stock for this offering was not determined on an independent basis, and therefore it may not accurately represent the current value of our assets at any particular time.***

The offering price of our shares of common stock for this offering was not determined on an independent basis and bears no relationship to our book or asset values or to any other established criteria for valuing shares. Because the offering price is not based

upon any independent valuation, the offering price may not be indicative of the proceeds that you would receive upon our liquidation. Further, the offering price may be significantly more than the price at which our shares of common stock would trade if they were to be listed on an exchange or actively traded by broker-dealers.

***We may not provide stockholders with an estimated value per share of our common stock until 150 days following the second anniversary of breaking escrow in this offering. Therefore, you will not be able to determine the true value of your shares on an ongoing basis during this offering.***

Unless the rules and regulations governing valuations change, from and after 150 days following the second anniversary of breaking escrow in this offering, our advisor or another firm we choose for that purpose will establish an estimated value per share of our common stock that we will disclose in a report under the Exchange Act and in each annual report thereafter. Therefore, you will not be able to determine the true value of your shares on an ongoing basis during this offering. Our estimated value per share will be based upon valuations of all of our assets by independent third-party appraisers and qualified independent valuation experts selected by our advisor. Our estimated value per share may not be indicative of the price our stockholders would receive if they sold our shares in an arm's-length transaction, if our shares were actively traded or if we were liquidated.

***If we internalize our management functions, your interest in us could be diluted and we could incur other significant costs associated with being self-managed.***

Our board of directors may decide in the future to internalize our management functions. If we do so, we may elect to negotiate to acquire our advisor's assets and personnel. At this time, we cannot anticipate the form or amount of consideration or other terms relating to any such acquisition. Such consideration could take many forms, including cash payments, promissory notes and shares of our common stock. The payment of such consideration could result in dilution of your interests as a stockholder and could reduce the earnings per share and funds from operations per share attributable to your investment.

Additionally, while we would no longer bear the costs of the various fees and expenses we pay to our advisor under the advisory agreement, our direct expenses would include general and administrative costs, including legal, accounting and other expenses related to corporate governance, SEC reporting and compliance. We would also be required to employ personnel and would be subject to potential liabilities commonly faced by employers, such as workers disability and compensation claims, potential labor disputes and other employee-related liabilities and grievances as well as incur the compensation and benefits costs of our officers and other employees and consultants that we now expect will be paid by our advisor or its affiliates. We may issue equity awards to officers, employees and consultants, which awards would decrease net income and funds from operations and may further dilute your investment. We cannot reasonably estimate the amount of fees to our advisor we would save or the costs we would incur if we became self-managed. If the expenses we assume as a result of an internalization are higher than the expenses we avoid paying to our advisor, our earnings per share and funds from operations per share would be lower as a result of the internalization than it otherwise would have been, potentially decreasing the amount of funds available to distribute to our stockholders and the value of our shares.

If we internalize our management functions, we could have difficulty integrating these functions as a stand-alone entity. Currently, our advisor and its affiliates perform asset management and general and administrative functions, including accounting and financial reporting, for multiple entities. These personnel have a great deal of know-how and experience which provides us with economies of scale. We may fail to properly identify the appropriate mix of personnel and capital needs to operate as a stand-alone entity. An inability to manage an internalization transaction effectively could thus result in our incurring excess costs and suffering deficiencies in our disclosure controls and procedures or our internal control over financial reporting. Such deficiencies could cause us to incur additional costs, and our management's attention could be diverted from most effectively managing our real estate assets.

***If we were to internalize our management or if another investment program, whether sponsored by our sponsor or otherwise, hires the employees of our advisor in connection with its own internalization transaction or otherwise, our ability to conduct our business may be adversely affected.***

We rely on persons employed by our advisor and its affiliates to manage our day-to-day operations. If we were to effectuate an internalization of our advisor, we may not be able to retain all of the employees of our advisor and its affiliates or to maintain a relationship with our sponsor. In addition, some of the employees of our advisor and its affiliates provide services to one or more other investment programs, including Moody National REIT I. These programs or third parties may decide to retain some or all of our advisor's key employees in the future. If this occurs, these programs could hire certain of the persons currently employed by our advisor and its affiliates who are most familiar with our business and operations, thereby potentially adversely impacting our business.

***Our cash distributions are not guaranteed, may fluctuate and may constitute a return of capital or taxable gain from the sale or exchange of property.***

The actual amount and timing of distributions will be determined by our board of directors and typically will depend upon the amount of funds available for distribution, which will depend on items such as current and projected cash requirements and tax considerations. As a result, our distribution rate and payment frequency may vary from time to time. Our long-term strategy is to fund

the payment of monthly distributions to our stockholders entirely from our funds from operations. However, during the early stages of our operations, we may need to borrow funds, request that our advisor in its discretion, defer its receipt of fees and reimbursements of expenses or, to the extent necessary, utilize offering proceeds in order to make cash distributions. Accordingly, the amount of distributions paid at any given time may not reflect current cash flow from operations. Distributions payable to stockholders may also include a return of capital, rather than a return on capital.

***We may pay distributions from sources other than our cash flow from operations. To the extent that we pay distributions from sources other than our cash flow from operations, we will have reduced funds available for investment and the overall return to our stockholders may be reduced.***

Our organizational documents permit us to pay distributions from any source, including net proceeds from our public offerings, borrowings, advances from our sponsor or advisor and the deferral of fees and expense reimbursements by our advisor, in its sole discretion. Until we make substantial investments, we may fund distributions from the net proceeds from this offering or sources other than cash flow from operations. Further, because this is a blind pool offering, it is likely that distributions paid during the early stages of our offering and before we have acquired a substantial portfolio of real estate assets will be funded primarily from offering proceeds. We have not established a limit on the amount of offering proceeds, or other sources other than cash flow from operations, which we may use to fund distributions.

If we are unable to consistently fund distributions to our stockholders entirely from our cash flow from operations, the value of your shares upon a listing of our common stock, the sale of our assets or any other liquidity event may be reduced. To the extent that we fund distributions from sources other than our cash flow from operations, our funds available for investment will be reduced relative to the funds available for investment if our distributions were funded solely from cash flow from operations, our ability to achieve our investment objectives will be negatively impacted and the overall return to our stockholders may be reduced. In addition, if we make a distribution in excess of our current and accumulated earnings and profits, the distribution will be treated first as a tax-free return of capital, which will reduce the stockholder's tax basis in its shares of common stock. The amount, if any, of each distribution in excess of a stockholder's tax basis in its shares of common stock will be taxable as gain realized from the sale or exchange of property. For further information regarding the tax consequences in the event we make distributions other than from cash flow from operations, please see "Federal Income Tax Considerations—Taxation of Taxable U.S. Stockholders."

***We may not meet the minimum offering requirements for this offering. Therefore, you may not have access to your funds for one year from the date of this prospectus.***

If the minimum offering requirements are not met within one year from the date of this prospectus, this offering will terminate and subscribers who have delivered their funds into escrow will not have access to those funds until such time. In addition, the interest rate on the funds delivered into escrow may be less than the rate of return you could have achieved from an alternative investment.

***The price of our shares of common stock may be adjusted to a price less than the price you paid for your shares of common stock.***

The price of our shares of common stock may be adjusted periodically, in the sole and absolute discretion of our board of directors, to reflect changes in the estimated value of our assets and other factors our board of directors deems relevant and therefore future adjustments may result in an offering price lower than the price you paid for your shares.

## **RISKS RELATED TO OUR BUSINESS**

***We, our sponsor and our advisor have limited experience in operating a public company or a REIT, and our failure to operate successfully or profitably could have a material adverse effect on our ability to generate cash flow.***

We and our advisor are each recently formed companies. Our advisor and our sponsor and of our advisor's and sponsor's respective officers or employees in their capacities with our advisor and our sponsor have limited experience operating a public company or an entity that has elected to be taxed as a REIT. You should not rely upon the past performance of other real estate investment programs of our affiliates to predict our future results. As of the date of this prospectus, we have not purchased any real estate or made any other investments, and we have not identified any probable investments. You should consider our prospects in light of the risks, uncertainties and difficulties frequently encountered by companies that are, like us, in their early stage of development. To be successful, we must, among other things:

- identify and acquire investments that align with our investment strategies;
- establish and maintain contacts with licensed securities brokers and other agents to successfully complete this offering;
- attract, integrate, motivate and retain qualified personnel to manage our day-to-day operations;
- respond to competition for our targeted real estate properties, real estate securities and debt-related investments as well as for potential investors in our shares; and
- continue to build and expand our operations structure to support our business.

Our failure, or our advisor's or sponsor's failure, to operate successfully or profitably could have a material adverse effect on our ability to generate cash flow to make distributions to our stockholders and could cause you to lose all or a portion of your investment in our shares.

***Our success is dependent on the performance of our sponsor and Moody National affiliates.***

Our ability to achieve our investment objectives and to pay distributions is dependent upon the performance of our advisor, our sponsor and other affiliates of our sponsor, and any adverse change in their financial health could cause our operations to suffer. Our sponsor and its other affiliates are sensitive to trends in the general economy, as well as the real estate and credit markets. The most recent market downturn has adversely impacted, and could continue to adversely impact, certain prior real estate programs of our sponsor's affiliates, resulting in a decrease or deferral of distributions with respect to such programs. Certain prior real estate programs have also requested additional cash infusions from investors to fund outstanding debt service payments. Further such requests may be necessary in the future depending upon the then-current economic conditions. These adverse developments have resulted in a reduction in payments to investors for certain prior real estate programs.

To the extent that any decline in revenues and operating results impacts our sponsor's ability to provide our advisor with sufficient resources to perform its obligations to us pursuant to the advisory agreement, our results of operations, financial condition and ability to pay distributions to our stockholders could also suffer. Additionally, such adverse conditions could require a substantial amount of time on the part of the management of our advisor and its affiliates, particularly with regard to other real estate programs, thereby decreasing the amount of time they spend actively managing our investments.

***If we are delayed or unable to find suitable investments, we may not be able to achieve our investment objectives.***

Delays in selecting, acquiring and developing hospitality assets could adversely affect investor returns. Because we are conducting this offering on a "best efforts" basis over time, our ability to commit to purchase specific assets will depend, in part, on the amount of proceeds we have received at a given time. As of the date of this prospectus, we have not identified the real estate assets that we will purchase with the proceeds of this offering. If we are unable to access sufficient capital, we may suffer from delays in deploying the capital into suitable investments.

***We are uncertain of our sources for funding our future capital needs. If we do not have sufficient funds from operations to cover our expenses or to fund improvements to any hospitality properties we may acquire and cannot obtain debt or equity financing on acceptable terms, our ability to cover our expenses or to fund improvements to our hospitality properties will be adversely affected.***

The net proceeds of this offering will be used for investments in hospitality assets and for payment of operating expenses, various fees and other expenses. During the initial stages of the offering, we may not have sufficient funds from operations to cover our expenses or to fund improvements to our properties. Accordingly, in the event that we develop a need for additional capital in the future for the improvement of our properties or for any other reason, sources of funding may not be available to us. If we do not have sufficient funds from cash flow generated by our investments or out of net sale proceeds, or cannot obtain debt or equity financing on acceptable terms, our financial condition and ability to make distributions may be adversely affected.

***Public, non-listed REITs have been the subject of scrutiny by regulators and media outlets resulting from inquiries and investigations initiated by FINRA, the SEC and certain States. We could also become the subject of scrutiny and may face difficulties in raising capital should negative perceptions develop regarding public, non-listed REITs. As a result, we may be unable to raise substantial funds which will limit the number and type of investments we may make and our ability to diversify our assets.***

Our securities, like other public, non-listed REITs, are sold through the independent broker-dealer channel (i.e., U.S. broker-dealers that are not affiliated with money center banks or similar financial institutions). Governmental and self-regulatory organizations like the SEC, the States and FINRA impose and enforce regulations on broker-dealers, investment banking firms, investment advisers and similar financial services companies. Self-regulatory organizations such as FINRA adopt rules, subject to approval by the SEC, that govern aspects of the financial services industry and conduct periodic examinations of the operations of registered investment dealers and broker-dealers.

Recently, FINRA and certain States have initiated investigations of broker-dealers with respect to the sales practices related to the sale of shares of public, non-listed REITs. The SEC recently approved rules proposed by FINRA that may significantly affect the manner in which public, non-listed REITs, such as our company, raise capital. These rules may cause a negative impact on our ability to achieve our business plan and to successfully sell shares in our offering.

As a result of this increased scrutiny and accompanying negative publicity and coverage by media outlets, FINRA may impose additional restrictions on sales practices in the independent broker-dealer channel for public, non-listed REITs, and accordingly we may face increased difficulties in raising capital in our offering. This could result in a reduction in the returns achieved on those investments as a result of a smaller capital base limiting our investments. If we become the subject of scrutiny, even if we have complied with all applicable laws and regulations, responding to such scrutiny could be expensive and distracting to our management.

## **RISKS RELATED TO OUR ORGANIZATIONAL STRUCTURE**

### ***Maryland law and our organizational documents limit your right to bring claims against our officers and directors.***

Maryland law provides that a director will not have any liability as a director so long as he or she performs his or her duties in accordance with the applicable standard of conduct. In addition, our charter provides that, subject to the applicable limitations set forth therein or under Maryland law, no director or officer will be liable to us or our stockholders for monetary damages. Our charter also provides that we will generally indemnify and advance expenses to our directors, our officers, our advisor and its affiliates for losses they may incur by reason of their service in those capacities subject to any limitations under Maryland law or in our charter. Moreover, we have entered into separate indemnification agreements with each of our directors and executive officers. As a result, we and our stockholders may have more limited rights against these persons than might otherwise exist under common law. In addition, we may be obligated to fund the defense costs incurred by these persons in some cases. However, our charter provides that we may not indemnify our directors, our advisor and its affiliates for loss or liability suffered by them or hold our directors or our advisor and its affiliates harmless for loss or liability suffered by us unless they have determined that the course of conduct that caused the loss or liability was in our best interests, they were acting on our behalf or performing services for us, the liability was not the result of negligence or misconduct by our non-independent directors, our advisor and its affiliates or gross negligence or willful misconduct by our independent directors, and the indemnification or obligation to hold harmless is recoverable only out of our net assets, including the proceeds of insurance, and not from the stockholders. See “Management—Limited Liability and Indemnification of Directors, Officers and Others.”

### ***The limit on the percentage of shares of our common stock that any person may own may discourage a takeover or business combination that may benefit our stockholders.***

Our charter restricts the direct or indirect ownership by one person or entity to no more than 9.8% of the value of the aggregate of our then outstanding shares of capital stock (which includes common stock and any preferred stock or convertible stock we may issue) and no more than 9.8% of the value or number of shares, whichever is more restrictive, of the aggregate of our then outstanding common stock unless exempted (prospectively or retroactively) by our board of directors. These restrictions may discourage a change of control of us and may deter individuals or entities from making tender offers for shares of our common stock on terms that might be financially attractive to stockholders or which may cause a change in our management. In addition to deterring potential transactions that may be favorable to our stockholders, these provisions may also decrease your ability to sell your shares of our common stock.

### ***We may issue preferred stock, convertible stock or other classes of common stock, which issuance could adversely affect the holders of our common stock issued pursuant to this offering.***

Investors in this offering do not have preemptive rights to any shares issued by us in the future. We may issue, without stockholder approval, preferred stock, convertible stock or other classes of common stock with rights that could dilute the value of your shares of common stock. However, the issuance of preferred stock or convertible stock must be approved by a majority of our independent directors not otherwise interested in the transaction, who will have access, at our expense, to our legal counsel or to independent legal counsel. The issuance of preferred stock or other classes of common stock could increase the number of stockholders entitled to distributions without simultaneously increasing the size of our asset base.

Our charter authorizes us to issue 1,100,000,000 shares of capital stock, of which 1,000,000,000 shares of capital stock are designated as common stock, par value \$0.01 per share; 100,000,000 shares of capital stock are classified as preferred stock, par value \$0.01 per share; and 1,000 shares of capital stock are classified as convertible stock, par value \$0.01 per share. Our board of directors, with the approval of a majority of the entire board of directors and without any action by our stockholders, may amend our charter from time to time to increase or decrease the aggregate number of authorized shares of capital stock or the number of authorized shares of capital stock of any class or series. If we ever created and issued preferred stock or convertible stock with a distribution preference over common stock, payment of any distribution preferences of outstanding preferred stock or convertible stock would reduce the amount of funds available for the payment of distributions on our common stock. Further, holders of preferred stock are normally entitled to receive a preference payment in the event we liquidate, dissolve or wind up before any payment is made to our common stockholders, likely reducing the amount common stockholders would otherwise receive upon such an occurrence. In addition, under certain circumstances, the issuance of preferred stock or a separate class or series of common stock may render more difficult or tend to discourage:

- a merger, tender offer or proxy contest;
- the assumption of control by a holder of a large block of our securities; and
- the removal of incumbent management.

***Our UPREIT structure may result in potential conflicts of interest with limited partners in our operating partnership whose interests may not be aligned with those of our stockholders.***

We are structured as an “UPREIT,” which stands for “umbrella partnership real estate investment trust.” We use the UPREIT structure because a contribution of property directly to us is generally a taxable transaction to the contributing property owner. In the UPREIT structure, a contributor of a property who desires to defer taxable gain on the transfer of a property may transfer the property to our operating partnership in exchange for limited partnership interests and defer taxation of gain until the contributor later exchanges his or her limited partnership interests for shares of our common stock. We believe that using an UPREIT structure gives us an advantage in acquiring desired properties from persons who may not otherwise sell their properties because of unfavorable tax results.

Our operating partnership may issue limited partner interests in connection with certain transactions. Limited partners in our operating partnership have the right to vote on certain amendments to the operating partnership agreement, as well as on certain other matters. Persons holding such voting rights may exercise them in a manner that conflicts with the interests of our stockholders. As general partner of our operating partnership, we are obligated to act in a manner that is in the best interest of all partners of our operating partnership. Circumstances may arise in the future when the interests of limited partners in our operating partnership may conflict with the interests of our stockholders. These conflicts may be resolved in a manner stockholders do not believe are in their best interest.

In addition, the special limited partnership interest holder is an affiliate of our advisor and, as the special limited partner in our operating partnership, may be entitled to: (1) certain cash distributions upon the disposition of certain of our operating partnership’s assets; or (2) a one-time payment in the form of cash or shares in connection with the redemption of the special limited partnership interests upon the occurrence of a listing of our shares on a national stock exchange or certain events that result in the termination or non-renewal of our advisory agreement. The special limited partnership interest holder will only become entitled to the compensation after stockholders have received, in the aggregate, cumulative distributions equal to their invested capital plus a 6.0% cumulative, non-compounded annual pre-tax return on such invested capital. This potential obligation to make substantial payments to the holder of the special limited partnership interests would reduce the overall return to stockholders to the extent such return exceeds 6.0%.

***We may grant stock-based awards to our directors, employees and consultants pursuant to our long-term incentive plan, which will have a dilutive effect on your investment in us.***

We expect that our board of directors will adopt a long-term incentive plan, pursuant to which we are authorized to grant restricted stock, stock options, restricted or deferred stock units, performance awards or other stock-based awards to directors, employees and consultants selected by our board of directors for participation in the plan. We currently intend only to issue awards of restricted stock to our independent directors under our long-term incentive plan. If we issue additional stock-based awards to eligible participants under our long-term incentive plan, the issuance of these stock-based awards will dilute your investment in our shares of common stock.

Certain features of our long-term incentive plan could have a dilutive effect on your investment in us, including (1) a lack of annual award limits, individually or in the aggregate (subject to the limit on the maximum number of shares which may be issued pursuant to awards granted under the plan), (2) the fact that the limit on the maximum number of shares which may be issued pursuant to awards granted under the plan is not tied to the amount of proceeds raised in the offering and (3) share counting procedures which provide that shares subject to certain awards, including, without limitation, substitute awards granted by us to employees of another entity in connection with our merger or consolidation with such company or shares subject to outstanding awards of another company assumed by us in connection with our merger or consolidation with such company, are not subject to the limit on the maximum number of shares which may be issued pursuant to awards granted under the plan.

***Your investment return may be reduced if we are required to register as an investment company under the Investment Company Act; if we are subject to registration under the Investment Company Act, we will not be able to continue our business.***

Neither we, our operating partnership or any of our subsidiaries intend to register as an investment company under the Investment Company Act. Our operating partnership’s and subsidiaries’ intended investments in real estate will represent the substantial majority of our total asset mix. In order for us not to be subject to regulation under the Investment Company Act, we intend to engage, through our operating partnership and our wholly and majority-owned subsidiaries, primarily in the business of buying real estate. These investments must be made within a year after this offering ends.

Section 3(a)(1)(A) of the Investment Company Act defines an investment company as any issuer that is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Investment Company Act defines an investment company as any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer’s total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis, which we refer to as the “40% test.” Excluded from the term “investment securities,” among other things, are U.S. government securities and securities issued by majority-owned subsidiaries that are not themselves investment companies and are not relying on the exception from the definition of investment company set forth in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.

We believe that we, our operating partnership and most of the subsidiaries of our operating partnership will not fall within either definition of investment company under Section 3(a)(1) of the Investment Company Act as we intend to invest primarily in real property, through our operating partnership or our operating partnership's wholly or majority-owned subsidiaries, the majority of which we expect to have at least 60% of their assets in real property. As these subsidiaries would be investing either solely or primarily in real property, they would be outside of the definition of "investment company" under Section 3(a)(1)(C) of the Investment Company Act. We are organized as a holding company that conducts its businesses primarily through our operating partnership, which in turn is a company conducting its business of investing in real property either directly or through its subsidiaries. Both we and our operating partnership intend to conduct our operations so that we comply with the 40% test. We will monitor our holdings to ensure continuing and ongoing compliance with this test. In addition, we believe that neither we nor our operating partnership will be considered an investment company under Section 3(a)(1)(A) of the Investment Company Act because neither we nor our operating partnership will engage primarily or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Rather, through our operating partnership or our operating partnership's wholly owned or majority-owned subsidiaries, we and our operating partnership will be primarily engaged in the business of purchasing or otherwise acquiring real property.

In the event that the value of investment securities held by a subsidiary of our operating partnership were to exceed 40% of the value of its total assets, we expect that subsidiary to be able to rely on the exclusion from the definition of "investment company" provided by Section 3(c)(5)(C) of the Investment Company Act. Section 3(c)(5)(C), as interpreted by the staff of the SEC, requires each of our subsidiaries relying on this exception to invest at least 55% of its portfolio in "mortgage and other liens on and interests in real estate," which we refer to as "qualifying real estate assets," and maintain at least 80% of its assets in qualifying real estate assets or other real estate-related assets. The remaining 20% of the portfolio can consist of miscellaneous assets. What we buy and sell is therefore limited by these criteria. How we determine to classify our assets for purposes of the Investment Company Act will be based in large measure upon no-action letters issued by the SEC staff in the past and other SEC interpretive guidance and, in the absence of SEC guidance, on our view of what constitutes a qualifying real estate asset and a real estate-related asset. These no-action positions were issued in accordance with factual situations that may be substantially different from the factual situations we may face, and a number of these no-action positions were issued more than ten years ago. Pursuant to this guidance, and depending on the characteristics of the specific investments, certain mortgage loans, participations in mortgage loans, mortgage-backed securities, mezzanine loans, joint venture investments and the equity securities of other entities may not constitute qualifying real estate assets and therefore investments in these types of assets may be limited. No assurance can be given that the SEC or its staff will concur with our classification of our assets. Future revisions to the Investment Company Act or further guidance from the SEC staff may cause us to lose our exclusion from the definition of investment company or force us to re-evaluate our portfolio and our investment strategy. Such changes may prevent us from operating our business successfully.

There can be no assurance that the laws and regulations governing the Investment Company Act status of REITs, including more specific or different guidance regarding these exclusions that may be published by the SEC or its staff, will not change in a manner that adversely affects our operations. For instance, in 2011, the SEC solicited public comment on a wide range of issues relating to Section 3(c)(5)(C) of the Investment Company Act, including the nature of the assets that qualify for purposes of the exclusion. In addition, the SEC or its staff could take action that results in our or our subsidiary's failure to maintain an exception or exemption from the Investment Company Act.

In the event that we, or our operating partnership, were to acquire assets that could make either entity fall within one of the definitions of an investment company under Section 3(a)(1) of the Investment Company Act, we believe that we would still qualify for an exclusion from registration pursuant to Section 3(c)(6) of the Investment Company Act. Although the SEC staff has issued little interpretive guidance with respect to Section 3(c)(6), we believe that we and our operating partnership may rely on Section 3(c)(6) if 55% of the assets of our operating partnership consist of, and at least 55% of the income of our operating partnership is derived from, qualifying real estate assets owned by wholly owned or majority-owned subsidiaries of our operating partnership.

To ensure that neither we, our operating partnership or any of our subsidiaries are required to register as an investment company, each entity may be unable to sell assets that it would otherwise want to sell and may need to sell assets that it would otherwise wish to retain. In addition, we, our operating partnership or our subsidiaries may be required to acquire additional income- or loss-generating assets that we might not otherwise acquire or forego opportunities to acquire interests in companies that we would otherwise want to acquire. Although we, our operating partnership and our subsidiaries intend to monitor our portfolio periodically and prior to each acquisition and disposition, any of these entities may not be able to remain outside the definition of investment company or maintain an exclusion from the definition of an investment company. If we, our operating partnership or our subsidiaries are required to register as an investment company but fail to do so, the unregistered entity would be prohibited from engaging in our business, and criminal and civil actions could be brought against such entity. In addition, the contracts of such entity would be unenforceable unless a court required enforcement, and a court could appoint a receiver to take control of the entity and liquidate its business.

For more information on issues related to compliance with the Investment Company Act, see "Investment Strategy, Objectives and Policies – Investment Company Act Considerations."

## RISKS RELATED TO CONFLICTS OF INTEREST

***You will not have the benefit of an independent due diligence review in connection with this offering.***

Because Moody Securities is an affiliate of ours, investors will not have the benefit of an independent due diligence review and investigation of the type normally performed by an unaffiliated, independent underwriter in connection with a securities offering. The lack of an independent due diligence review and investigation increases the risk of your investment because it may not have uncovered facts that would be important to a potential investor.

***We depend on our advisor and its key personnel and if any of such key personnel were to cease to be affiliated with our advisor, our business could suffer.***

Our ability to make distributions and achieve our investment objectives is dependent upon the performance of our advisor in the acquisition, disposition and management of real estate assets, the selection of tenants for our real properties and the determination of any financing arrangements. In addition, our success depends to a significant degree upon the continued contributions of certain of the key personnel of Moody National REIT Sponsor, LLC, our sponsor, including Brett C. Moody and Robert W. Engel, each of whom would be difficult to replace. We currently do not have key man life insurance on any of these key personnel. If our advisor were to lose the benefit of the experience, efforts and abilities of one or more of these individuals, our operating results could suffer.

***We may compete with affiliates of our sponsor, including Moody National REIT I, for opportunities to acquire or sell investments, which may have an adverse impact on our operations.***

We may compete with affiliates of our sponsor, including Moody National REIT I, which generally invests in hospitality assets, and which has more resources than we do, for opportunities to acquire or sell hospitality properties. We may also buy or sell hospitality properties at the same time as affiliates of our sponsor. In this regard, there is a risk that our sponsor will select for us investments that provide lower returns to us than investments purchased by its affiliates. Certain of our affiliates own or manage hospitality properties in geographical areas in which we expect to own hospitality properties. As a result of our potential competition with affiliates of our sponsor, certain investment opportunities that would otherwise be available to us may not in fact be available. This competition may also result in conflicts of interest that are not resolved in our favor.

***The time and resources that Moody National affiliates devote to us may be diverted, and we may face additional competition due to the fact that Moody National affiliates are not prohibited from raising money for, or managing, another entity that makes the same types of investments that we target.***

Moody National affiliates are not prohibited from raising money for, or managing, another investment entity that makes the same types of investments as those we target. For example, our advisor's management has successfully completed approximately 46 fully subscribed private placements in real estate programs of multiple property types with over 1,308 investors across the United States, and, in addition, our advisor's management team also advises another publicly offered investment program, our affiliate, Moody National REIT I, which has primarily invested in hospitality assets. As a result, the time and resources they could devote to us may be diverted to other investment activities. Additionally, some of our directors and officers serve as directors and officers of investment entities sponsored by our sponsor and its affiliates, including Moody National REIT I. Since these professionals engage in and will continue to engage in other business activities on behalf of themselves and others, these professionals will face conflicts of interest in allocating their time among us, our advisor, and its affiliates and other business activities in which they are involved. This could result in actions that are more favorable to other affiliates of our advisor than us.

In addition, we may compete with affiliates of our advisor for the same investors and investment opportunities. We may also co-invest with any such affiliate. Even though all such co-investments will be subject to approval by our independent directors, they could be on terms not as favorable to us as those we could achieve co-investing with a third-party.

***Because other real estate programs sponsored by our sponsor and offered through our dealer manager may conduct offerings concurrently with this offering, our sponsor and dealer manager will face potential conflicts of interest arising from competition among us and these other programs for investors and investment capital, and such conflicts may not be resolved in our favor.***

Moody National REIT I's public offering is expected to terminate prior to the commencement of our offering. However, future programs that our sponsor may decide to sponsor may seek to raise capital through public or private offerings conducted concurrently with this offering. As a result, our sponsor and our dealer manager may face conflicts of interest arising from potential competition with these other programs for investors and investment capital. Such conflicts may not be resolved in our favor and our stockholders will not have the opportunity to evaluate the manner in which these conflicts of interest are resolved before or after making their investment in our shares.

***Our advisor and its affiliates, including our officers and some of our directors, will face conflicts of interest caused by compensation arrangements with us and other Moody National affiliates, which could result in actions that are not in the best interests of our stockholders.***

Our advisor and its affiliates receive substantial fees from us in return for their services and these fees could influence the advice provided to us. Among other matters, the compensation arrangements could affect their judgment with respect to:

- public offerings of equity by us, which allow our dealer manager to earn additional dealer manager fees;
- real estate acquisitions, which allow our advisor to earn acquisition fees upon purchases of assets and increase asset management fees;
- real estate asset sales, since the asset management fees payable to our advisor will decrease and since our advisor will be entitled to disposition fees upon sales;
- the purchase of real estate assets from other Moody National affiliates, including our sponsor and its affiliates, which may allow our advisor or its affiliates to earn additional asset management fees, hotel management fees and disposition fees; and
- whether and when we seek to list our common stock on a national securities exchange, which listing could entitle Moody LPOP II, as the holder of special limited partnership interests, to have its interests in our operating partnership redeemed.

Further, our advisor may recommend that we invest in a particular asset or pay a higher purchase price for the asset than it would otherwise recommend if it did not receive an acquisition fee. Certain potential acquisition fees and asset management fees payable to our advisor and hotel management and leasing fees payable to the property manager would be paid irrespective of the quality of the underlying real estate or hotel management services during the term of the related agreement. These fees may incentivize our advisor to recommend transactions with respect to the sale of a property or properties that may not be in our best interest at the time. Investments with higher net operating income growth potential are generally riskier or more speculative. In addition, the premature sale of an asset may add concentration risk to the portfolio or may be at a price lower than if we held on to the asset. Moreover, our advisor will have considerable discretion with respect to the terms and timing of acquisition, disposition and leasing transactions. In evaluating investments and other management strategies, the opportunity to earn these fees may lead our advisor to place undue emphasis on criteria relating to its compensation at the expense of other criteria, such as the preservation of capital, to achieve higher short-term compensation. Considerations relating to our affiliates' compensation from us and other Moody National affiliates could result in decisions that are not in the best interests of our stockholders.

***Our advisor may have conflicting fiduciary obligations if we acquire assets from affiliates of our sponsor or enter into joint ventures with affiliates of our sponsor. As a result, in any such transaction we may not have the benefit of arm's-length negotiations of the type normally conducted between unrelated parties.***

Our advisor may cause us to invest in a property owned by, or make an investment in equity securities in or real estate-related loans to, our sponsor or its affiliates or through a joint venture with affiliates of our sponsor. In these circumstances, our advisor will have a conflict of interest when fulfilling its fiduciary obligation to us. In any such transaction, we would not have the benefit of arm's-length negotiations of the type normally conducted between unrelated parties.

***The fees we pay to affiliates in connection with this offering and in connection with the acquisition and management of our investments were not determined on an arm's-length basis; therefore, we do not have the benefit of arm's-length negotiations of the type normally conducted between unrelated parties.***

The fees to be paid to our advisor, our property manager, sub-property managers, our dealer manager and other affiliates for services they provide for us were not determined on an arm's-length basis. As a result, the fees have been determined without the benefit of arm's-length negotiations of the type normally conducted between unrelated parties and could be in excess of amounts that we would otherwise pay to third parties for such services.

***We may purchase real estate assets from third parties who have existing or previous business relationships with affiliates of our advisor, and, as a result, in any such transaction, we may not have the benefit of arm's-length negotiations of the type normally conducted between unrelated parties.***

We may purchase assets from third parties that have existing or previous business relationships with affiliates of our advisor. The officers, directors or employees of our advisor and its affiliates and the principals of our advisor who also perform services for other Moody National affiliates may have a conflict in representing our interests in these transactions on the one hand and the interests of such affiliates in preserving or furthering their respective relationships on the other hand. In any such transaction, we will not have the benefit of arm's-length negotiations of the type normally conducted between unrelated parties, and the purchase price or fees paid by us may be in excess of amounts that we would otherwise pay to third parties.

## **RISKS RELATED TO INVESTMENTS IN REAL ESTATE**

***Disruptions in the financial markets and deteriorating economic conditions could adversely impact our ability to implement our investment strategy and achieve our investment objectives.***

United States and global financial markets may experience extreme volatility and disruption resulting in tightening in overall credit markets, devaluation of the assets underlying certain financial contracts, and increased borrowing by governmental entities. Recent turmoil in the capital markets resulted in constrained equity and debt capital available for investment in the real estate market, resulting in fewer buyers seeking to acquire properties, increases in capitalization rates and lower property values. Recently, capital has been more available and the overall economy has begun to improve. However, the failure of a sustained economic recovery or future disruptions in the financial markets and deteriorating economic conditions could impact the value of our investments in properties. In addition, if potential purchasers of properties have difficulty obtaining capital to finance property acquisitions, capitalization rates could increase and property values could decrease. Current economic conditions greatly increase the risks of our investments.

***Changes in national, regional or local economic, demographic or real estate market conditions may adversely affect our results of operations and returns to our stockholders.***

We are subject to risks generally attributable to the ownership of real estate assets, including: changes in national, regional or local economic, demographic or real estate market conditions; changes in supply of or demand for similar properties in an area; increased competition for real estate assets targeted by our investment strategy; bankruptcies, financial difficulties or lease defaults by our tenants; changes in interest rates and availability of financing; and changes in government rules, regulations and fiscal policies, including changes in tax, real estate, environmental and zoning laws. These conditions, or others we cannot predict, may adversely affect our results of operations and returns to our stockholders.

***We have established investment criteria based on certain target markets and geographic areas. If our investments are concentrated in an area that experiences adverse economic conditions, our investments may lose value and we may experience losses.***

Our hospitality properties may be concentrated in one or few geographic locations, namely the East Coast, the West Coast and the Sunbelt regions. These investments may carry the risks associated with significant geographical concentration. We have not established and do not plan to establish any investment criteria to limit our exposure to these risks for future investments, and, as a result, we may experience losses as a result. A worsening of economic conditions in the geographic area in which our investments may be concentrated could have an adverse effect on our business.

***Changes in supply of, or demand for, similar real properties in a particular area may increase the price of real properties we seek to purchase and decrease the price of real properties when we seek to sell them.***

The real estate industry is subject to market forces. We are unable to predict certain market changes including changes in supply of, or demand for, similar real properties in a particular area. Any potential purchase of an overpriced asset could decrease our rate of return on these investments and result in lower operating results and overall returns to our stockholders.

***Competition with third parties in acquiring properties and other investments may reduce our profitability and the return on your investment.***

We will compete with many other entities engaged in real estate investment activities, including individuals, corporations, bank and insurance company investment accounts, other REITs, real estate limited partnerships, and other entities engaged in real estate investment activities, many of which have greater resources than we do. Larger REITs may enjoy significant competitive advantages that result from, among other things, a lower cost of capital and enhanced operating efficiencies. In addition, the number of entities and the amount of funds competing for suitable investments may increase. Any such increase would result in increased demand for these assets and therefore increased prices paid for them. If we pay higher prices for properties and other investments, our profitability will be reduced and you may experience a lower return on your investment.

***Uninsured losses or premiums for insurance coverage relating to real property may adversely affect your returns.***

There are types of losses, generally catastrophic in nature, such as losses due to wars, acts of terrorism, earthquakes, floods, hurricanes, pollution or environmental matters that are uninsurable or not economically insurable, or may be insured subject to limitations, such as large deductibles or co-payments. Risks associated with potential acts of terrorism could sharply increase the premiums we pay for coverage against property and casualty claims. Additionally, mortgage lenders sometimes require commercial property owners to purchase specific coverage against terrorism as a condition for providing mortgage loans. These policies may not be available at a reasonable cost, if at all, which could inhibit our ability to finance or refinance our properties. In such instances, we may be required to provide other financial support, either through financial assurances or self-insurance, to cover potential losses. Changes in the cost or availability of insurance could expose us to uninsured casualty losses. In the event that any of our properties incurs a casualty loss which is not fully covered by insurance, the value of our assets will be reduced by any such uninsured loss. In addition, we cannot assure you that funding will be available to us for repair or reconstruction of damaged hospitality property in the future.

***Our hotel properties will be subject to property taxes that may increase in the future, which could adversely affect our cash flow.***

Our hotel properties will be subject to property taxes that may increase as tax rates change and as our hotel properties are assessed or reassessed by taxing authorities. As the owner of the hotel properties, we are responsible for payment of the taxes to the applicable government authorities. If we fail to pay any such taxes, the applicable taxing authority may place a lien on the property and the property may be subject to a tax sale.

***Our property manager's or sub-property manager's failure to integrate their subcontractors into their operations in an efficient manner could reduce the return on your investment.***

Our property manager or sub-property manager may rely on multiple subcontractors for on-site hotel management of our properties. If our property manager and sub-property manager are unable to integrate these subcontractors into their operations in an efficient manner, our property manager or sub-property manager may have to expend substantial time and money coordinating with these subcontractors, which could have a negative impact on the revenues generated from such properties.

***Actions of joint venture partners could negatively impact our performance.***

We may enter into joint ventures with third parties, including with entities that are affiliated with our advisor. We may also purchase and develop properties in joint ventures or in partnerships, co-tenancies or other co-ownership arrangements with the sellers of the properties, affiliates of the sellers, developers or other persons. Such investments may involve risks not otherwise present with a direct investment in real estate, including, for example:

- the possibility that our venture partner in an investment might become bankrupt;
- that the venture partner may at any time have economic or business interests or goals which are, or which become, inconsistent with our business interests or goals;
- that such venture partner may be in a position to take action contrary to our instructions or requests or contrary to our policies or objectives;
- the possibility that we may incur liabilities as a result of an action taken by such venture partner;
- that disputes between us and a venture partner may result in litigation or arbitration that would increase our expenses and prevent our officers and directors from focusing their time and effort on our business;
- the possibility that if we have a right of first refusal or buy/sell right to buy out a venture partner, we may be unable to finance such a buy-out if it becomes exercisable or we may be required to purchase such interest at a time when it would not otherwise be in our best interest to do so; or
- the possibility that we may not be able to sell our interest in the joint venture if we desire to exit the joint venture.

Under certain joint venture arrangements, neither venture partner may have the power to control the venture and an impasse could be reached, which might have a negative influence on the joint venture and decrease potential returns to you. In addition, to the extent that our venture partner is an affiliate of our advisor, certain conflicts of interest will exist.

***Costs of complying with governmental laws and regulations related to environmental protection and human health and safety may be high.***

All real property investments and the operations conducted in connection with such investments are subject to federal, state and local laws and regulations relating to environmental protection and human health and safety. Some of these laws and regulations may impose joint and several liability on customers, owners or operators for the costs to investigate or remediate contaminated properties, regardless of fault or whether the acts causing the contamination were legal.

Under various federal, state and local environmental laws, a current or previous owner or operator of real property may be liable for the cost of removing or remediating hazardous or toxic substances on such real property. Such laws often impose liability whether or not the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances. In addition, the presence of hazardous substances, or the failure to properly remediate these substances, may adversely affect our ability to sell, rent or pledge such real property as collateral for future borrowings. Environmental laws also may impose restrictions on the manner in which real property may be used or businesses may be operated. Some of these laws and regulations have been amended so as to require compliance with new or more stringent standards as of future dates. Compliance with new or more stringent laws or regulations or stricter interpretation of existing laws may require us to incur material expenditures. Future laws, ordinances or regulations may impose material environmental liability. Additionally, our tenants' operations, the existing condition of land when we buy it, operations in the vicinity of our real properties, such as the presence of underground storage tanks, or activities of unrelated third parties may affect our real properties. There are also various local, state and federal fire, health, life-safety and similar regulations with which we may be required to comply and which may subject us to liability in the form of fines or damages for noncompliance. In

connection with the acquisition and ownership of our real properties, we may be exposed to such costs in connection with such regulations. The cost of defending against environmental claims, of any damages or fines we must pay, of compliance with environmental regulatory requirements or of remediating any contaminated real property could materially and adversely affect our business, lower the value of our assets or results of operations and, consequently, lower the amounts available for distribution to you.

***The costs associated with complying with the Americans with Disabilities Act may reduce the amount of cash available for distribution to our stockholders.***

Investment in real properties may also be subject to the Americans with Disabilities Act of 1990, as amended, or the ADA. Under the ADA, all places of public accommodation are required to comply with federal requirements related to access and use by disabled persons. The ADA has separate compliance requirements for “public accommodations” and “commercial facilities” that generally require that buildings and services be made accessible and available to people with disabilities. With respect to the properties we acquire, the ADA’s requirements could require us to remove access barriers and could result in the imposition of injunctive relief, monetary penalties or, in some cases, an award of damages. We cannot assure you that we will be able to acquire properties which comply with the ADA or allocate the responsibility for compliance with the ADA to another third party, such as the seller or the tenant of the property. Any monies we use to comply with the ADA will reduce the amount of cash available for distribution to our stockholders.

## **RISKS RELATED TO THE HOSPITALITY INDUSTRY**

***A concentration of our investments in the hospitality industry may leave our profitability vulnerable to a downturn or slowdown in the sector.***

We expect to concentrate our investments in the hospitality sector. As a result, we will be subject to risks inherent in investments in a single type of property. If our investments are substantially in the hospitality sector, then the potential effects on our revenues, and as a result, on cash available for distribution to our stockholders, resulting from a downturn or slowdown in the hospitality sector could be more pronounced than if we had more fully diversified our investments.

***A possible lack of diversification increases the risk of investment.***

There is no limit on the number of hotels of a particular hotel brand which we may acquire, or on the number of hotels we may acquire in a specific geographic region. We plan to invest primarily in the select-service hotel properties with premier brands including, but not limited to, Marriott, Hilton, and Hyatt that are located in major metropolitan markets in the East Coast, West Coast and Sunbelt regions of the United States. If our hotel properties become geographically concentrated, or if we acquire a substantial number of hotel properties of a particular brand, an economic downturn in one or more of the markets in which we have invested or a negative event relating to a brand in which we have a concentration of hotels could have an adverse effect on our financial condition and our ability to make distributions to our stockholders.

***If we do not successfully attract and retain franchise flagships for premier-brand, select-service hotel properties, our business will suffer, and this result will reduce the value of your investment.***

Generally, we must attract and retain premier-brand hospitality franchises, including, Marriott, Hilton, and Hyatt franchises, for any hotel properties we may choose to acquire. Hospitality franchises generally require that design and quality standards be met for guest room and common areas before a hospitality franchise will agree to provide the franchise agreement to operate a property. Compliance with these brand standards may impose significant costs upon us. Failure to maintain our hospitality properties in accordance with these standards or comply with other terms and conditions of the applicable franchise agreement could result in a franchise license being canceled. If a franchise license terminates due to our failure to make required improvements or to otherwise comply with its terms, we may also be liable to the franchisor for a termination fee. The loss of a franchise license could materially and adversely affect the operations or the underlying value of the hotel property because of the loss associated with the brand recognition and the marketing support and centralized reservation systems provided by the franchisor. A loss of a franchise license for one or more hotel properties could materially and adversely affect our results of operations, financial condition and our cash flows, including our ability to service debt and make distributions to our stockholders.

***There are risks associated with employing hotel employees.***

While we will not directly employ or manage the labor force at our hospitality properties, we will be subject to many of the costs and risks generally associated with the hotel labor force. Our property manager or sub-property manager will be responsible for hiring and maintaining the labor force at each of our hotel properties and for establishing and maintaining the appropriate processes and controls over such activities. From time to time, the operations of our hotel properties may be disrupted through strikes, public demonstrations or other labor actions and related publicity. We may also incur increased legal costs and indirect labor costs as a result of the aforementioned disruptions, or contract disputes or other events. Significant adverse disruptions caused by union activities or increased costs affiliated with such activities could materially and adversely affect our results of operations, financial condition and our cash flows, including our ability to service debt and make distributions to our stockholders.

***Hospitality properties are illiquid investments, and we may be unable to adjust our portfolio in response to changes in economic or other conditions or sell a property if or when we decide to do so.***

Hospitality properties are illiquid investments. We may be unable to adjust our portfolio in response to changes in economic or other conditions. In addition, the hospitality property market is affected by many factors, such as general economic conditions, availability of financing, interest rates and other factors, including supply and demand, that are beyond our control. We cannot predict whether we will be able to sell any real property for the price or on the terms set by us, or whether any price or other terms offered by a prospective purchaser would be acceptable to us. We cannot predict the length of time needed to find a willing purchaser and to close the sale of a real property. Additionally, we may be required to expend funds to correct defects or to make improvements before a property can be sold. We cannot assure you that we will have funds available to correct such defects or to make such improvements.

In acquiring a hospitality property, we may agree to restrictions that prohibit the sale of that property for a period of time or impose other restrictions, such as a limitation on the amount of debt that can be placed or repaid on that real property. All these provisions would restrict our ability to sell a property, which could reduce the amount of cash available for distribution to our stockholders.

***Our ability to make distributions to our stockholders will depend upon the ability of hotel managers to operate our hotels effectively.***

We expect to invest a portion of the proceeds from this offering in hotel properties. To qualify as a REIT, we cannot operate any hotel or directly participate in the decisions affecting the daily operations of any hotel. Our property manager or a third-party property manager or sub-property manager will have direct control of the daily operations of our hotels. We will not have the authority to directly control any particular aspect of the daily operations of any hotel (e.g., setting room rates). Thus, even if we believed the hotels were being operated in an inefficient or sub-optimal manner, we would not be able to require a change to the method of operation. Our only alternative for changing the operation of the hotels would be to replace the manager of one or more hotels in situations where the applicable management agreement permits us to terminate the existing manager.

Our ability to make distributions to stockholders will be impacted by the performance of the hotel managers in generating sufficient revenues from the hotels in excess of operating expenses. The hotel managers will be affected by factors beyond their control, such as changes in the level of demand for rooms and related services of the hotels, their ability to maintain and increase gross revenues and operating margins at the hotels and other factors. Therefore, any operating difficulties or other factors affecting the hotel managers' ability to maintain and increase gross revenues and operating margins at the hotels could significantly adversely affect our financial condition and results of operations.

***The expanding use of internet travel websites by customers can adversely affect our profitability.***

The increasing use of internet travel intermediaries by consumers may cause us to experience fluctuations in our operating performance and otherwise adversely affect our profitability and cash flows. Our property managers will likely rely upon Internet travel intermediaries such as Travelocity.com, Expedia.com, Orbitz.com, Hotels.com and Priceline.com to generate demand for our hotel properties. As Internet bookings increase, these intermediaries may be able to obtain higher commissions, reduced room rates or other significant contract concessions from our property managers. Moreover, some of these Internet travel intermediaries are attempting to offer hotel rooms as a commodity, by increasing the importance of price and general indicators of quality (such as "three-star downtown hotel") at the expense of brand identification. Consumers may eventually develop brand loyalties to their reservations system rather than the premier-brand, select-service hotel properties we intend to primarily invest in, which could have an adverse effect on our business because we will rely heavily on brand identification. If the amount of sales made through Internet intermediaries increases significantly and our property managers fail to appropriately price room inventory in a manner that maximizes the opportunity for enhanced profit margins, room revenues may flatten or decrease and our profitability may be adversely affected.

***Our profitability may be adversely affected by unstable market and business conditions and insufficient demand for lodging due to reduced business and leisure travel.***

Any hotel properties that we may acquire will be subject to all the risks common to the hotel industry and subject to market conditions that affect all hotel properties. These risks could adversely affect hotel occupancy and the rates that can be charged for hotel rooms as well as hotel operating expenses, and generally include: increases in supply of hotel rooms that exceed increases in demand; increases in energy costs and other travel expenses that reduce business and leisure travel; reduced business and leisure travel due to continued geo-political uncertainty, including terrorism; adverse effects of declines in general and local economic activity; and adverse effects of a downturn in the hotel industry.

***Competition in the hospitality industry and with third parties in acquiring properties may reduce our profitability and the return on your investment.***

The hospitality industry is generally characterized as being intensely competitive. Any hotel in which we invest will compete with existing and new hotels in their geographic markets, including with independent hotels, hotels which are part of local or regional chains and hotels in other well-known national chains, including those offering different types of accommodations and services. The

principal competitive factors that will affect the hotel properties in which we will seek to invest include, but are not limited to, brand recognition, location, range of services and guest amenities and the quality and price of the hotel rooms and services provided. Any one of the foregoing could impact our profitability and ability to pay distributions.

We expect to face significant competition for attractive hotel investment opportunities from other major real estate investors with significant capital, including both publicly traded REITs and private institutional investment funds. Because of competition from other well-capitalized real estate investors, we can provide no assurance that we will be able to acquire desired hotel properties. Where it is possible to acquire desired hotel properties, we can provide no assurance that we will be able to do so on favorable terms or that such properties will meet our return expectations or conform to our investment criteria. The competition to acquire attractive hotel investment opportunities could have an adverse effect on our financial condition and ability to pay distributions.

***The hospitality industry is subject to unique, unforeseeable risks that may negatively impact our business and the value of your investment.***

The hospitality industry is subject to unique, unforeseeable risks, such as natural disasters, pandemics and threats of pandemics, acts of terror and other catastrophes. We have no control over events of this type and they could have a substantial impact on the hospitality industry and our business if we decide to invest in additional hotel properties. Because we are unable to control the timing, duration or magnitude of these unforeseen events, the negative impact upon our business could be great.

## **RISKS ASSOCIATED WITH REAL ESTATE SECURITIES AND DEBT-RELATED INVESTMENTS**

***Disruptions in the financial markets and deteriorating economic conditions could adversely impact the commercial mortgage market as well as the market for debt-related investments generally, which could hinder our ability to implement our business strategy and generate returns for our stockholders.***

As part of our investment strategy, we may acquire real estate-related loans, real estate-related debt securities and other real estate-related investments in the hospitality sector. The returns available to investors on these investments are determined by: (1) the supply and demand for such investments and (2) the existence of a market for such investments, which includes the ability to sell or finance such investments. During periods of volatility, the number of investors participating in the market may change at an accelerated pace. As liquidity or “demand” increases, the returns available to investors will decrease. Conversely, a lack of liquidity will cause the returns available to investors to increase. Recently, concerns pertaining to the deterioration of credit in the residential mortgage market have expanded to almost all areas of the debt capital markets including corporate bonds, asset-backed securities and commercial real estate mortgages and loans. Continued or future instability may interfere with the successful implementation of our business strategy.

***If we make or invest in mortgage loans, our mortgage loans may be affected by unfavorable real estate market conditions, which could decrease the value of those loans and the return on your investment.***

If we make or invest in mortgage loans, we will be at risk of defaults by the borrowers on those mortgage loans. These defaults may be caused by many conditions beyond our control, including interest rate levels and local and other economic conditions affecting real estate values. We will not know whether the values of the properties securing our mortgage loans will remain at the levels existing on the dates of origination of those mortgage loans. If the values of the underlying properties drop, our risk will increase because of the lower value of the security associated with such loans.

***To the extent we make or invest in mortgage loans, our mortgage loans will be subject to interest rate fluctuations that could reduce our returns as compared to market interest rates and reduce the value of the mortgage loans in the event we sell them; accordingly, the value of your investment would be subject to fluctuations in interest rates.***

To the extent we invest in fixed-rate, long-term mortgage loans and market interest rates rise, the mortgage loans could yield a return that is lower than then-current market rates, which would lower the proceeds we would receive in the event we sell such assets. If market interest rates decrease, we will be adversely affected to the extent that mortgage loans are prepaid because we may not be able to make new loans at the higher interest rate. To the extent we invest in variable-rate loans and interest rates decrease, our revenues will also decrease. Finally, to the extent we invest in variable-rate loans and interest rates increase, the value of the loans we own at such time would decrease, which would lower the proceeds we would receive in the event we sell such assets. For these reasons, if we invest in mortgage loans, our returns on those loans and the value of your investment will be subject to fluctuations in market interest rates.

***The CMBS and CDOs in which we may invest are subject to several types of risks.***

Commercial mortgage-backed securities, or CMBS, are bonds which evidence interests in, or are secured by, a single commercial mortgage loan or a pool of commercial mortgage loans. Collateralized debt obligations, or CDOs, are a type of debt obligation that are backed by commercial real estate assets, such as CMBS, commercial mortgage loans, B-notes, or mezzanine paper. Accordingly, the mortgage backed securities we may invest in are subject to all the risks of the underlying mortgage loans.

In a rising interest rate environment, the value of CMBS and CDOs may be adversely affected when payments on underlying mortgages do not occur as anticipated, resulting in the extension of the security's effective maturity and the related increase in interest rate sensitivity of a longer-term instrument. The value of CMBS and CDOs may also change due to shifts in the market's perception of issuers and regulatory or tax changes adversely affecting the mortgage securities markets as a whole. In addition, CMBS and CDOs are subject to the credit risk associated with the performance of the underlying mortgage properties. In certain instances, third-party guarantees or other forms of credit support can reduce the credit risk.

CMBS and CDOs are also subject to several risks created through the securitization process. Subordinate CMBS and CDOs are paid interest only to the extent that there are funds available to make payments. To the extent the collateral pool includes a large percentage of delinquent loans, there is a risk that interest payment on subordinate CMBS and CDOs will not be fully paid. Subordinate securities of CMBS and CDOs are also subject to greater credit risk than those CMBS and CDOs that are more highly rated.

***The mezzanine loans in which we may invest would involve greater risks of loss than senior loans secured by income-producing real properties.***

We may invest in mezzanine loans that take the form of subordinated loans secured by second mortgages on the underlying real property or loans secured by a pledge of the ownership interests of the entity owning the real property, the entity that owns the interest in the entity owning the real property or other assets. These types of investments involve a higher degree of risk than long-term senior mortgage lending secured by income-producing real property because the investment may become unsecured as a result of foreclosure by the senior lender. In the event of a bankruptcy of the entity providing the pledge of its ownership interests as security, we may not have full recourse to the assets of such entity, or the assets of the entity may not be sufficient to satisfy our mezzanine loan. If a borrower defaults on our mezzanine loan or debt senior to our loan, or in the event of a borrower bankruptcy, our mezzanine loan will be satisfied only after the senior debt. As a result, we may not recover some or all of our investment. In addition, mezzanine loans may have higher loan-to-value ratios than conventional mortgage loans, resulting in less equity in the real property and increasing the risk of loss of principal.

## **RISK ASSOCIATED WITH DEBT FINANCING**

***We will incur mortgage indebtedness and other borrowings, which may increase our business risks, could hinder our ability to make distributions and could decrease the value of your investment.***

We intend to finance a portion of the purchase price of our hotel investment properties by borrowing funds. Under our charter, we are prohibited from borrowing in excess of 300% of the value of our net assets. "Net assets" for purposes of this calculation is defined to be our total assets (other than intangibles), valued at cost prior to deducting depreciation, reserves for bad debts or other non-cash reserves, less total liabilities. Generally speaking, the preceding calculation is expected to approximate 75% of the aggregate cost of our real estate assets before non-cash reserves and depreciation. We may temporarily borrow in excess of these amounts if such excess is approved by a majority of the independent directors and is disclosed to stockholders in our next quarterly report, along with justification for such excess. In addition, we may incur mortgage debt and pledge some or all of our real estate assets as security for that debt to obtain funds to acquire additional real estate assets or for working capital. We may also borrow funds as necessary or advisable to ensure we maintain our REIT tax qualification, including the requirement that we distribute at least 90% of our annual REIT taxable income to our stockholders (computed without regard to the distribution paid deduction and excluding net capital gains). Furthermore, we may borrow if we otherwise deem it necessary or advisable to ensure that we maintain our qualification as a REIT for federal income tax purposes. However, there is no assurance that we will be able to obtain such borrowings on satisfactory terms.

High debt levels will cause us to incur higher interest charges, which would result in higher debt service payments and could be accompanied by restrictive covenants. If there is a shortfall between the cash flow from a property and the cash flow needed to service mortgage debt on that property, then the amount available for distributions to stockholders may be reduced. In addition, incurring mortgage debt increases the risk of loss since defaults on indebtedness secured by a property may result in lenders initiating foreclosure actions. In that case, we could lose the property securing the loan that is in default, thus reducing the value of your investment. For tax purposes, a foreclosure on any of our properties will be treated as a sale of the property for a purchase price equal to the outstanding balance of the debt secured by the mortgage. If the outstanding balance of the debt secured by the mortgage exceeds our tax basis in the property, we will recognize taxable income on foreclosure, but we would not receive any cash proceeds. If any mortgage contains cross collateralization or cross default provisions, a default on a single property could affect multiple properties. If any of our properties are foreclosed upon due to a default, our ability to pay cash distributions to our stockholders will be adversely affected.

***Instability in the debt markets and our inability to find financing on attractive terms may make it more difficult for us to finance or refinance properties, which could reduce the number of properties we can acquire and the amount of cash distributions we can make to our stockholders.***

If mortgage debt is unavailable on reasonable terms as a result of increased interest rates, underwriting standards, capital market instability or other factors, we may not be able to finance the initial purchase of properties. In addition, if we place mortgage debt on properties, we run the risk of being unable to refinance such debt when the loans come due, or of being unable to refinance on favorable terms. If interest rates are higher when we refinance debt, our income could be reduced. We may be unable to refinance debt

at appropriate times, which may require us to sell properties on terms that are not advantageous to us, or could result in the foreclosure of such properties. If any of these events occur, our cash flow would be reduced. This, in turn, would reduce cash available for distribution to our stockholders and may hinder our ability to raise more capital by issuing securities or by borrowing more money.

***Increases in interest rates could increase the amount of our debt payments and negatively impact our operating results.***

Interest we pay on our debt obligations will reduce cash available for distributions. If we incur variable rate debt, increases in interest rates would increase our interest costs, which would reduce our cash flows and our ability to make distributions to you. If we need to repay existing debt during periods of rising interest rates, we could be required to liquidate one or more of our investments at times which may not permit realization of the maximum return on such investments.

***Lenders may require us to enter into restrictive covenants relating to our operations, which could limit our ability to make distributions to our stockholders.***

When providing financing, a lender may impose restrictions on us that affect our distribution and operating policies and our ability to incur additional debt. Loan documents we enter into may contain covenants that limit our ability to further mortgage a property, discontinue insurance coverage, or replace Moody National Advisor II, LLC as our advisor. In addition, loan documents may limit our ability to replace a property's property manager or terminate certain operating or lease agreements related to a property. These or other limitations may adversely affect our flexibility and our ability to achieve our investment objectives.

***Our derivative financial instruments that we may use to hedge against interest rate fluctuations may not be successful in mitigating our risks associated with interest rates and could reduce the overall returns on your investment.***

We may use derivative financial instruments to hedge exposures to changes in interest rates on loans secured by our real estate assets, but no hedging strategy can protect us completely. We cannot assure you that our hedging strategy and the derivatives that we use will adequately offset the risk of interest rate volatility or that our hedging transactions will not result in losses. In addition, the use of such instruments may reduce the overall return on our investments. These instruments may also generate income that may not be treated as qualifying REIT income for purposes of the 75% or 95% REIT income test.

## **FEDERAL INCOME TAX RISKS**

***Failure to qualify as a REIT could adversely affect our operations and our ability to make distributions.***

We intend to operate in a manner designed to permit us to qualify as a REIT for federal income tax purposes commencing with the taxable year ending December 31 in which we satisfy the minimum offering requirements and issue shares of our common stock to investors.

Our qualification as a REIT will depend on our ongoing satisfaction of numerous requirements established under highly technical and complex provisions of the Internal Revenue Code for which there are only limited judicial or administrative interpretations and involve the determination of various factual matters and circumstances not entirely within our control. The complexity of these provisions and of the applicable income tax regulations that have been promulgated under the Internal Revenue Code is greater in the case of a REIT that holds its assets through a partnership, as we do. Moreover, no assurance can be given that legislation, new regulations, administrative interpretations or court decisions will not change the tax laws with respect to qualification as a REIT or the federal income tax consequences of that qualification.

If we were to fail to qualify as a REIT for any taxable year, we would be subject to federal income tax on our taxable income at corporate rates. In addition, we would generally be disqualified from treatment as a REIT for the four taxable years following the year in which we fail to qualify as a REIT. Losing our REIT status would reduce our net earnings available for investment or distribution to stockholders because of the additional tax liability. In addition, distributions to stockholders would no longer be deductible in computing our taxable income, and we would no longer be required to make distributions. To the extent that distributions had been made in anticipation of our qualifying as a REIT, we might be required to borrow funds or liquidate some investments to pay the applicable corporate income tax. In addition, although we intend to operate in a manner intended to qualify as a REIT, it is possible that future economic, market, legal, tax or other considerations may cause our board of directors to recommend that we revoke our REIT election.

We believe that our operating partnership will be treated for federal income tax purposes as a partnership and not as an association or as a publicly traded partnership taxable as a corporation. If the Internal Revenue Service were successfully to determine that our operating partnership should properly be treated as a corporation, our operating partnership would be required to pay federal income tax at corporate rates on its net income. In addition, we would fail to qualify as a REIT, with the resulting consequences described above.

***To qualify as a REIT we must meet annual distribution requirements, which may result in us distributing amounts that may otherwise be used for our operations.***

To qualify as a REIT, we will be required each year to distribute to our stockholders at least 90% of our real estate investment trust taxable income, determined without regard to the dividends paid deduction and excluding net capital gains. We will be subject to federal income tax on any undistributed taxable income and to a 4% nondeductible excise tax on any amount by which distributions we pay with respect to any calendar year are less than the sum of (1) 85% of our ordinary income, (2) 95% of our capital gain net income and (3) 100% of our undistributed income from prior years. These requirements could cause us to distribute amounts that otherwise would be spent on investments in real estate assets, and it is possible that we might be required to borrow funds or sell assets to fund these distributions. If we fund distributions through borrowings, then we will have to repay debt using money we could have otherwise used to acquire properties. If we sell assets or use offering proceeds to pay distributions, we also will have fewer investments. Fewer investments may impact our ability to generate future cash flows from operations and, therefore, reduce your overall return. Although we intend to make distributions sufficient to meet the annual distribution requirements and to avoid corporate income and excise taxes, it is possible that we might not always be able to do so.

***The use of TRSs will increase our overall tax liability.***

Our TRS lessees and any other of our domestic taxable REIT subsidiaries will be subject to federal and state income tax on their taxable income. Accordingly, although our ownership of TRS lessees allows us to participate in the operating income from hotel properties in addition to receiving rent, that operating income is fully subject to income tax. Such taxes could be substantial.

We will incur a 100% excise tax on transactions with our TRS lessees or other taxable REIT subsidiaries that are not conducted on an arm's length basis. For example, to the extent that the rent paid by one of our TRS lessees exceeds an arm's length rental amount, such excess may be subject to the excise tax. We intend that all transactions between us and our TRS lessees will be conducted on an arm's length basis and, therefore, that the rent paid by our TRS lessees to us will not be subject to the excise tax.

***If the leases of our hotels to the TRS lessees are not respected as true leases for U.S. federal income tax purposes, we will fail to qualify as a REIT.***

To qualify as a REIT, we must annually satisfy two gross income tests, under which specified percentages of our gross income must be derived from certain sources, such as "rents from real property." Rents paid to our operating partnership by TRS lessees pursuant to the leases of our hotels will constitute substantially all of our gross income. In order for such rent to qualify as "rents from real property" for purposes of the gross income tests, the leases must be respected as true leases for U.S. federal income tax purposes and not be treated as service contracts, financing arrangements, joint ventures or some other type of arrangement. If our leases are not respected as true leases for U.S. federal income tax purposes, we will fail to qualify as a REIT.

***If any hotel managers that we may engage do not qualify as "eligible independent contractors," or if our hotels are not "qualified lodging facilities," we will fail to qualify as a REIT.***

Rent paid by a lessee that is a "related party tenant" of ours generally will not be qualifying income for purposes of the two gross income tests applicable to REITs, but an exception is provided, however, for leases of "qualified lodging facilities" to a TRS so long as the hotels are managed by an "eligible independent contractor" and certain other requirements are satisfied. We expect to lease all or substantially all of our hotels to TRS lessees, which are disregarded subsidiaries of corporations that are intended to qualify as TRSs. We expect that the TRS lessees will engage hotel managers, including our affiliated property manager and third-party property managers that are intended to qualify as "eligible independent contractors." Among other requirements, in order to qualify as an eligible independent contractor, the hotel manager must not own, directly or through its equity owners, more than 35% of our outstanding stock, and no person or group of persons can own more than 35% of our outstanding stock and the equity interests of the hotel manager, taking into account certain ownership attribution rules. The ownership attribution rules that apply for purposes of these 35% thresholds are complex, and monitoring actual and constructive ownership of our stock by our hotel managers and their owners may not be practical. Accordingly, there can be no assurance that these ownership levels will not be exceeded.

In addition, for a hotel management company to qualify as an eligible independent contractor, such company or a related person must be actively engaged in the trade or business of operating "qualified lodging facilities" (as defined below) for one or more persons not related to the REIT or its TRSs at each time that such company enters into a hotel management contract with a TRS or its TRS lessee. No assurances can be provided that any hotel managers that we may engage will in fact comply with this requirement in the future. Failure to comply with this requirement would require us to find other managers for future contracts, and if we hired a management company without knowledge of the failure, it could jeopardize our status as a REIT.

Finally, each property that we lease to our TRS lessees must be a "qualified lodging facility." A "qualified lodging facility" is a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis, including customary amenities and facilities, provided that no wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility. The REIT provisions of the Internal Revenue Code provide only limited guidance for making determinations under the requirements for qualified lodging facilities, and there can be no assurance that these requirements will be satisfied.

***Recharacterization of sale-leaseback transactions may cause us to lose our REIT status.***

We may purchase real properties and lease them back to the sellers of such properties. We cannot guarantee that the Internal Revenue Service will not challenge our characterization of any sale-leaseback transactions. In the event that any such sale-leaseback transaction is challenged and recharacterized as a financing transaction or loan for federal income tax purposes, deductions for depreciation and cost recovery relating to such property would be disallowed. If a sale-leaseback transaction were so recharacterized, we might fail to satisfy the REIT qualification “asset tests” or the “income tests” and, consequently, lose our REIT status. Alternatively, the amount of our REIT taxable income could be recalculated which might also cause us to fail to meet the distribution requirement for a taxable year.

***You may have current tax liability on distributions if you elect to reinvest in shares of our common stock.***

If you participate in our distribution reinvestment plan, you will be deemed to have received a cash distribution equal to the fair market value of the stock received pursuant to the plan, which will be taxed as a dividend to the extent of our current or accumulated earnings and profits. As a result, unless you are a tax-exempt entity, you may have to use funds from other sources to pay your tax liability on the value of the common stock received.

***Sales of our properties at gains are potentially subject to the prohibited transaction tax, which could reduce the return on your investment.***

Our ability to dispose of property is restricted as a result of our REIT status. Under applicable provisions of the Internal Revenue Code regarding prohibited transactions by REITs, we will be subject to a 100% tax on any gain realized on the sale or other disposition of any property (other than foreclosure property) we own, directly or through a subsidiary entity, including our operating partnership, but excluding our taxable REIT subsidiaries, that is deemed to be inventory or property held primarily for sale to customers in the ordinary course of trade or business. Whether property is inventory or otherwise held primarily for sale to customers in the ordinary course of a trade or business depends on the particular facts and circumstances surrounding each property. We intend to avoid the 100% prohibited transaction tax by (1) conducting activities that may otherwise be considered prohibited transactions through a taxable REIT subsidiary, (2) conducting our operations in such a manner so that no sale or other disposition of an asset we own, directly or through any subsidiary other than a taxable REIT subsidiary, will be treated as a prohibited transaction, or (3) structuring certain dispositions of our properties to comply with certain safe harbors available under the Internal Revenue Code for properties held at least two years. However, no assurance can be given that any particular property will not be treated as inventory or property held primarily for sale to customers in the ordinary course of a trade or business.

***In certain circumstances, we may be subject to federal and state taxes as a REIT, which would reduce our cash available for distribution to you.***

Even if we qualify as a REIT, we may be subject to federal and state taxes. For example, net income from a “prohibited transaction” will be subject to a 100% tax. We may not be able to make sufficient distributions to avoid excise taxes applicable to REITs. We may also decide to retain income we earn from the sale or other disposition of our real estate assets and pay income tax directly on such income. We may also be subject to state and local taxes on our income or property, either directly or at the level of the companies through which we indirectly own our assets. In addition, our TRSs will be subject to federal income tax and applicable state and local taxes on their net income. Any federal or state taxes we pay will reduce our cash available for distribution to you.

***Distributions to tax-exempt investors may be classified as unrelated business taxable income.***

Neither ordinary nor capital gain distributions with respect to our common stock nor gain from the sale of common stock should generally constitute unrelated business taxable income to a tax-exempt investor. However, there are certain exceptions to this rule. In particular:

- part of the income and gain recognized by certain qualified pension trusts with respect to our common stock may be treated as unrelated business taxable income if shares of our common stock are predominately held by qualified employee pension trusts, and we are required to rely on a special look-through rule for purposes of meeting one of the REIT share ownership tests, and we are not operated in a manner to avoid treatment of such income or gain as unrelated business taxable income;
- part of the income and gain recognized by a tax-exempt investor with respect to our common stock would constitute unrelated business taxable income if the investor incurs debt to acquire the common stock; and
- part or all of the income or gain recognized with respect to our common stock by social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans which are exempt from federal income taxation under Sections 501(c)(7), (9), (17), or (20) of the Internal Revenue Code may be treated as unrelated business taxable income.

***Complying with the REIT requirements may cause us to forego otherwise attractive opportunities.***

To qualify as a REIT for federal income tax purposes, we must continually satisfy tests concerning, among other things, the sources of our income, the nature and diversification of our assets, the amounts we distribute to our stockholders and the ownership of shares of our common stock. We may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution. Thus, compliance with the REIT requirements may hinder our ability to operate solely on the basis of maximizing profits.

***Complying with the REIT requirements may force us to liquidate otherwise attractive investments.***

To qualify as a REIT, we must ensure that at the end of each calendar quarter, at least 75% of the value of our assets consists of cash, cash items, government securities and qualified real estate assets, including shares of stock in other REITs and certain mortgage loans and mortgage-backed securities. The remainder of our investment in securities (other than government securities and qualified real estate assets) generally cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of any one issuer. In addition, in general, no more than 5% of the value of our assets (other than government securities and qualified real estate assets) can consist of the securities of any one issuer and no more than 25% of the value of our total securities can be represented by securities of one or more taxable REIT subsidiaries. If we fail to comply with these requirements at the end of any calendar quarter, we must correct such failure within 30 days after the end of the calendar quarter to avoid losing our REIT status and suffering adverse tax consequences. As a result, we may be required to liquidate otherwise attractive investments.

***Liquidation of assets may jeopardize our REIT status.***

To qualify as a REIT, we must comply with requirements regarding our assets and our sources of income. If we are compelled to liquidate any investments we make to satisfy our obligations to our lenders, we may be unable to comply with these requirements, ultimately jeopardizing our status as a REIT, or we may be subject to a 100% tax on any resultant gain if we sell assets that are treated as dealer property or inventory.

***Legislative or regulatory action could adversely affect investors.***

In recent years, numerous legislative, judicial and administrative changes have been made to the federal income tax laws applicable to REITs. Additional changes to tax laws are likely to continue to occur in the future, and we cannot assure you that any such changes will not adversely affect us or the taxation of our stockholders. Any such changes could have an adverse effect on an investment in shares of our common stock. We urge you to consult with your own tax advisor with respect to the status of legislative, regulatory or administrative developments and proposals and their potential effect on an investment in shares of our common stock.

***The failure of a mezzanine loan to qualify as a real estate asset could adversely affect our ability to qualify as a REIT.***

We may acquire mezzanine loans. If a mezzanine loan satisfies an Internal Revenue Service safe harbor in Revenue Procedure 2003-65, the mezzanine loan will be treated as a real estate asset for purposes of the REIT asset tests and interest derived from the mezzanine loan will be treated as qualifying mortgage interest for purposes of the REIT 75% gross income test. Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive tax law. We intend to make investments that comply with the various requirements applicable to our qualification as a REIT. We may, however, acquire mezzanine loans that do not meet all of the requirements of this safe harbor. In the event we own a mezzanine loan that does not meet the safe harbor, the Internal Revenue Service could challenge such loan's treatment as a real estate asset for purposes of the REIT asset tests and could challenge treatment of interest on such loan as qualifying income for purposes of the 75% gross income test, and, if such a challenge were sustained, we could fail to qualify as a REIT.

***The use of TRSs will increase our overall tax liability.***

Our domestic TRSs will be subject to federal and state income tax on their taxable income. Accordingly, although our ownership of TRS lessees allows us to participate in the operating income from any hotel properties that may be acquired in addition to receiving rent, that operating income is fully subject to income tax. Such taxes could be substantial.

***Non-U.S. investors may be subject to U.S. federal income tax on the sale of shares of our common stock if we are unable to qualify as a "domestically controlled" REIT.***

A non-U.S. person disposing of a U.S. real property interest, including shares of a U.S. corporation whose assets consist principally of U.S. real property interests, is generally subject to U.S. federal income tax on the gain recognized on such disposition. A non-U.S. stockholder generally would not be subject to U.S. federal income tax, however, on gain from the disposition of stock in a REIT if the REIT is a "domestically controlled REIT." A domestically controlled REIT is a REIT in which, at all times during a specified testing period, less than 50% in value of its shares is held directly or indirectly by non-U.S. holders. We cannot assure you that we will qualify as a domestically controlled REIT. If we were to fail to so qualify, gain realized by a non-U.S. investor on a sale of our common stock would be subject to U.S. federal income tax unless our common stock was traded on an established securities market and the non-U.S. investor did not at any time during a specified testing period directly or indirectly own more than 5% of the value of our outstanding common stock.

***If we were considered to actually or constructively pay a “preferential dividend” to certain of our stockholders, our status as a REIT could be adversely affected.***

In order to qualify as a REIT, we must distribute to our stockholders at least 90% of our annual REIT taxable income (excluding net capital gain and determined without regard to the deduction for dividends paid). In order for distributions to be counted as satisfying the annual distribution requirements for REITs, and to provide us with a REIT-level tax deduction, the distributions must not be “preferential dividends.” A dividend is not a preferential dividend if the distribution is pro rata among all outstanding shares of stock within a particular class, and in accordance with the preferences among different classes of stock as set forth in our organizational documents. If the IRS were to take the position that we paid a preferential dividend, we may be deemed to have failed the 90% distribution test, and our status as a REIT could be terminated if we were unable to cure such failure.

## **RETIREMENT PLAN RISKS**

***There are special considerations for pension or profit-sharing or 401(k) plans, health or welfare plans or individual retirement accounts whose assets are being invested in our common stock due to requirements under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and the Internal Revenue Code. Furthermore, a person acting on behalf of a plan not subject to ERISA may be subject to similar penalties under applicable federal, state, local, or non-U.S. law by reason of purchasing our stock.***

If you are investing the assets of a pension, profit sharing or 401(k) plan, health or welfare plan, or an IRA, or other plan or arrangement subject to ERISA or Section 4975 of the Internal Revenue Code in us, you should consider:

- whether your investment is consistent with the applicable provisions of ERISA and the Internal Revenue Code;
- whether your investment is made in accordance with the documents and instruments governing your plan, IRA, or other arrangement, including the investment policy;
- whether your investment satisfies the prudence, diversification, and other applicable fiduciary requirements in Section 404(a) of ERISA;
- whether your investment will impair the liquidity of the plan, IRA, or other arrangement;
- whether your investment will produce unrelated business taxable income, referred to as UBTI and as defined in Sections 511 through 514 of the Internal Revenue Code, to the plan; and
- your need to value the assets of the plan annually.

You should consider whether your investment in us will cause some or all of our assets to be considered assets of an employee benefit plan, IRA, or other arrangement. We do not believe that under ERISA and U.S. Department of Labor regulations currently in effect that our assets would be treated as “plan assets” for purposes of ERISA, although there can be no assurances. However, if our assets were considered to be plan assets, transactions involving our assets would be subject to ERISA and Section 4975 of the Internal Revenue Code and some of the transactions we have entered into with our advisor and its affiliates could be considered “prohibited transactions,” under ERISA or the Internal Revenue Code. If such transactions were considered “prohibited transactions,” our advisor and its affiliates could be subject to liabilities and excise taxes or penalties. In addition, our officers and directors, our advisor and its affiliates could be deemed to be fiduciaries under ERISA, subject to other conditions, restrictions and prohibitions under Part 4 of Title I of ERISA and those serving as fiduciaries of plans investing in us may be considered to have improperly delegated fiduciary duties to us. Additionally, other transactions with “parties-in-interest” or “disqualified persons” with respect to an investing plan might be prohibited under ERISA, the Internal Revenue Code or other governing authority in the case of a government plan. Therefore, we would be operating under a burdensome regulatory regime that could limit or restrict investments we can make or our management of our real estate assets. Even if our assets are not considered to be plan assets, a prohibited transaction could occur if we or any of our affiliates is a fiduciary (within the meaning of ERISA) with respect to an employee benefit plan purchasing shares and, therefore, in the event any such persons are fiduciaries (within the meaning of ERISA) of your plan or IRA, you should not purchase shares unless an administrative or statutory exemption applies to your purchase. For a discussion of the considerations associated with an investment in our shares by an employee benefit plan or an IRA, see “ERISA Considerations.”

Failure to satisfy the fiduciary standards of conduct and other requirements of ERISA, the Internal Revenue Code, or other applicable statutory or common law may result in the imposition of civil (and criminal, if the violation was willful) penalties, and can subject the fiduciary to equitable remedies and/or damages. In addition, if an investment in our common stock constitutes a prohibited transaction under ERISA or the Internal Revenue Code, the fiduciary that authorized or directed the investment may be subject to the imposition of excise taxes with respect to the amount invested. Furthermore, to the extent that the assets of a plan or arrangement not subject to the fiduciary provisions of ERISA (for example, governmental plans, non-electing church plans, and foreign plans) will be used to purchase our stock, such plans should consider the impact of applicable federal, state, local, or non-U.S. law on the decision to make such purchase.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements included in this prospectus that are not historical facts (including any statements concerning investment objectives, other plans and objectives of management for future operations or economic performance, or assumptions or forecasts related thereto) are forward-looking statements. These statements are only predictions. We caution that forward-looking statements are not guarantees. Actual events or our investments and results of operations could differ materially from those expressed or implied in any forward-looking statements. Forward-looking statements are typically identified by the use of terms such as “may,” “should,” “expect,” “could,” “intend,” “plan,” “anticipate,” “estimate,” “believe,” “continue,” “predict,” “potential” or the negative of such terms and other comparable terminology.

The forward-looking statements included herein are based upon our current expectations, plans, estimates, assumptions and beliefs that involve numerous risks and uncertainties. Assumptions relating to the foregoing involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond our control. Although we believe that the expectations reflected in such forward-looking statements are based on reasonable assumptions, our actual results and performance could differ materially from those set forth in the forward-looking statements. Factors which could have a material adverse effect on our operations and future prospects include, but are not limited to:

- our ability to raise proceeds in this offering;
- our ability to effectively deploy the proceeds raised in this offering;
- our ability to identify and acquire real estate and real estate-related assets on terms that are favorable to us;
- risks inherent in the real estate business, including the lack of liquidity of real estate investments and potential liability relating to environmental matters;
- our ability to successfully compete in the hospitality industry;
- our levels of debt and the terms and limitations imposed on us by our debt agreements;
- our ability to obtain financing on acceptable terms;
- adverse developments affecting our sponsor and its affiliates;
- changes in economic conditions generally and the real estate and debt markets specifically;
- real estate values in markets in which we plan to operate;
- conflicts of interest arising out of our relationship with our advisor and its affiliates;
- the availability of qualified personnel at our advisor, our property manager, our sub-property manager and dealer manager;
- legislative or regulatory changes (including changes to the laws governing the taxation of REITs);
- interest rates; and
- changes to generally accepted accounting principles, or GAAP.

Any of the assumptions underlying forward-looking statements could be inaccurate. You are cautioned not to place undue reliance on any forward-looking statements included in this prospectus. All forward-looking statements are made as of the date of this prospectus and the risk that actual results will differ materially from the expectations expressed in this prospectus will increase with the passage of time. Except as otherwise required by the federal securities laws, we undertake no obligation to publicly update or revise any forward-looking statements after the date of this prospectus, whether as a result of new information, future events, changed circumstances or any other reason. In light of the significant uncertainties inherent in the forward-looking statements included in this prospectus, including, without limitation, the risks described under “Risk Factors,” the inclusion of such forward-looking statements should not be regarded as a representation by us or any other person that the objectives and plans set forth in this prospectus will be achieved.

## ESTIMATED USE OF PROCEEDS

The table below presents information regarding our intended use of the gross and net proceeds from our primary offering and our distribution reinvestment plan. The table assumes we sell (1) the minimum of \$2,000,000 in shares of our common stock pursuant to the primary offering and no shares of our common stock pursuant to our distribution reinvestment plan, (2) the maximum of \$1,000,000,000 in shares of our common stock pursuant to the primary offering and no shares of our common stock pursuant to our distribution reinvestment plan and (3) the maximum of \$1,000,000,000 in shares of our common stock pursuant to the primary offering and \$100,000,000 in shares of our common stock pursuant to our distribution reinvestment plan. We reserve the right to reallocate the shares of common stock we are offering between the primary offering and the distribution reinvestment plan. The actual use of the capital we raise is likely to be different than the figures presented in the table because we may not raise the entire amounts set forth in the table. Raising less than the full \$1,000,000,000 in the primary offering or the full \$100,000,000 pursuant to our distribution reinvestment plan will alter the amounts of commissions, fees and expenses set forth below.

Shares of our common stock are being offered in our primary offering to the public at a price of \$25.00 per share. During the offering, shares sold under our distribution reinvestment plan are being sold for \$23.75 per share. Our board of directors may, from time to time, in its sole and absolute discretion, change the price at which we offer shares to the public in the primary offering or pursuant to our distribution reinvestment plan to reflect changes in our estimated value per share, changes in applicable law and other factors that our board of directors deems relevant. If we determine to change the price at which we offer shares, we do not anticipate that we will do so more frequently than quarterly.

The amounts in the table below assume that the full fees and commissions are paid on all shares of our common stock offered to the public in the primary offering. The sales commission and, in some cases, all or a portion of our dealer manager fee, may be reduced or eliminated in connection with certain categories of sales, such as sales for which a volume discount applies, sales through investment advisors or banks acting as trustees or fiduciaries and sales to our affiliates. The reduction in these fees will be accompanied by a corresponding reduction in the per share purchase price but will not affect the amounts available to us for investments. After paying the sales commission, the dealer manager fee and our organizational and offering expenses, we will use the net proceeds of the offering to invest in hospitality real estate assets and to pay the fees set forth in the tables below. Because amounts in the following tables are estimates, they may not accurately reflect the actual receipt or use of the offering proceeds.

Generally, our policy is to pay distributions from cash flow from operations. However, our board of directors has the authority under our organizational documents, to the extent permitted by Maryland law, to fund distributions from sources such as borrowings, offering proceeds or the deferral of fees and expense reimbursements by our advisor in its sole discretion. Because this is a blind pool offering, it is likely that distributions paid during the early stages of our offering and before we have acquired a substantial portfolio of real estate assets will be funded primarily from offering proceeds. We have not established a limit on the amount of proceeds we may use from this offering to fund distributions.

	Minimum Primary Offering		Maximum Primary Offering		Maximum Primary Offering and Distribution Reinvestment Plan	
	Amount	%	Amount	%	Amount	%
Gross Offering Proceeds.....	\$ 2,000,000	100.00%	\$ 1,000,000,000	100.00%	\$ 1,100,000,000	100.00%
Less Offering Expenses:						
Sales Commissions .....	140,000	7.00	70,000,000	7.00	70,000,000	6.36
Dealer Manager Fee .....	60,000	3.00	30,000,000	3.00	30,000,000	2.73
Organization and Offering Expenses <sup>(1)</sup> .....	100,000	5.00	20,000,000	2.00	20,000,000	1.82
Net Proceeds <sup>(2)</sup> .....	<u>\$ 1,700,000</u>	<u>85.00%</u>	<u>\$ 880,000,000</u>	<u>88.00%</u>	<u>\$ 980,000,000</u>	<u>89.09%</u>
Less:						
Acquisition Fees <sup>(3)(4)</sup> .....	25,500	1.27	13,320,000	1.33	14,700,000	1.33
Acquisition Expenses <sup>(3)(4)</sup> ....	8,500	0.43	4,440,000	0.44	4,900,000	0.45
Estimated Amount Available for Investments <sup>(3)(4)(5)</sup> .....	<u>\$ 1,666,000</u>	<u>83.30%</u>	<u>\$ 874,680,000</u>	<u>86.23%</u>	<u>\$ 960,400,000</u>	<u>87.31%</u>

- (1) Includes all expenses (other than sales commissions and the dealer manager fee) to be paid by us in connection with the offering, including our legal, accounting, printing, mailing and filing fees, charges of our transfer agent, charges of our advisor for administrative services related to the issuance of shares of our common stock in the offering, reimbursing the dealer manager for amounts it may pay to reimburse the bona fide due diligence expenses of broker-dealers supported by detailed itemized invoices, amounts to reimburse our advisor for the salaries of its employees and other costs in connection with preparing supplemental sales materials, the cost of educational conferences held by us and attendance fees and cost reimbursement for employees of our affiliates to attend retail seminars conducted by broker-dealers. Our advisor has agreed to reimburse us to the extent sales commissions, the dealer manager fee and other organization and offering expenses incurred by us exceed 15% of aggregate gross offering proceeds. We expect that our organization and offering expenses will represent a lower percentage of the gross offering proceeds as the amount of proceeds we raise in the offering increases. In the table above, we have assumed organization and offering expenses will constitute approximately 5.0% of gross proceeds from our primary offering if we raise the minimum offering amount and that organization and offering expenses will constitute approximately 2.0% of gross proceeds from our primary offering if we raise the maximum offering amount.

- (2) Until required in connection with the acquisition and development of hospitality real estate assets, substantially all of the net offering proceeds may be invested in short-term, highly liquid investments, including, but not limited to, government obligations, bank certificates of deposit, short-term debt obligations, interest-bearing accounts and other authorized investments as determined by our board of directors.
- (3) This table excludes debt proceeds. To the extent we fund real estate asset acquisitions with debt, as we expect, the amount available for investment and the amount of acquisition fees will be proportionately greater. Acquisition fees are defined generally as fees and commissions paid by any party to any person in connection with identifying, reviewing, evaluating, investing in and the purchase of properties. We pay to our advisor acquisition fees up to a maximum amount of 1.5% of the contract purchase price of each property acquired (including our pro rata share of any indebtedness assumed or incurred in respect of that investment and exclusive of acquisition fees and financing coordination fees) and up to 1.5% of the amount advanced for a loan or other investment (including our pro rata share of debt attributable to such investment). This acquisition fee does not include any acquisition expenses payable to our advisor. In addition to the acquisition fee, we may also incur customary third-party acquisition expenses in connection with the acquisition (or attempted acquisition) of a real estate asset. Once the proceeds from this offering have been fully invested, the aggregate amount of acquisition fees and financing coordination fees shall not exceed 1.9% of the contract purchase price and the amount advanced for a loan or other investment, as applicable, for all of the assets acquired.
- (4) Amounts available for investments include customary third-party acquisition expenses that are included in the total acquisition costs of the real estate assets acquired. Third-party acquisition expenses may include legal, accounting, consulting, appraisals, engineering, due diligence, title insurance, closing costs and other expenses related to potential investments regardless of whether the asset is actually acquired. Acquisition expenses as a percentage of a real estate asset's contract purchase price, or the amount actually paid or allocated in respect of the purchase, development, construction or improvement of a property or the amount of funds advanced with respect to a loan, or the amount actually paid or allocated in respect of the purchase of other assets, in each case exclusive of acquisition fees and acquisition expenses, vary. However, in no event will total acquisition fees (including financing coordination fees) and acquisition expenses on a real estate asset exceed 6.0% of the contract purchase price of the real estate asset. Furthermore, in no event will the total of all acquisition fees and acquisition expenses paid by us, including acquisition expenses on real properties which are not acquired, exceed 6.0% of the aggregate contract purchase price of all real estate assets acquired by us.
- (5) We do not anticipate establishing a general working capital reserve out of the proceeds from this offering during the initial stages of the offering; however, we may establish capital reserves with respect to particular investments. We also may, but are not required to, establish reserves out of cash flow generated by our real estate assets or out of net sale proceeds in non-liquidating sale transactions.

## INVESTMENT STRATEGY, OBJECTIVES AND POLICIES

### Investment Strategy

We expect that our portfolio will consist primarily of select-service hotel properties with premier brands, including, but not limited to, Marriott, Hilton, and Hyatt, that are located in major metropolitan markets in the East Coast, West Coast and Sunbelt regions of the United States. To a lesser extent, we may also invest in other hospitality properties located within other markets and regions as well as real estate securities and debt-related investments related to the hospitality sector. Our board of directors may adjust our investment focus from time to time based upon market conditions and other factors our board of directors deem relevant.

In identifying investments, we rely upon a market optimization investment strategy and acquisition model that analyzes economic fundamentals and demographic trends in major metropolitan markets. By utilizing a targeted, disciplined approach, we believe that we will be able to capitalize on market inefficiencies and identify undervalued investment opportunities with underlying intrinsic value that have the potential to create greater value at disposition. Our investment strategy seeks to identify technical pressures created by demographic, business and industry changes, which we believe leads to supply and demand imbalances within certain sectors of commercial real estate.

Based on our internal research, we believe that presently the hospitality sector, compared to other real estate asset classes, has the greatest supply-demand imbalance, which should lead to upward pressure on room rates. In addition, we believe that hotel properties continue to trade below historical price levels, resulting in attractive purchasing opportunities at this present time. More specifically, we believe that premier-brand, select-service hotel properties in major metropolitan markets have the potential to generate attractive returns relative to other types of hotel properties due to their ability to achieve Revenue per Available Room (RevPAR) levels at or close to those achieved by traditional, full-service hotels while achieving higher profit margins due to their more efficient operating model and more predictable net operating income. In addition, our market optimization investment strategy, accounting for growth potential and risks related to asset devaluation, takes into account current supply-demand imbalances and targets markets that offer stable population growth, high barriers to entry and multiple demand generators.

### Investment Objectives

Our investment objectives are to:

- preserve, protect and return stockholders' capital contributions;
- pay attractive and stable cash distributions to stockholders; and
- realize capital appreciation upon the ultimate sale of the real estate assets we acquire.

We cannot assure you that we will attain these objectives or that the value of our assets will not decrease. Furthermore, within the parameters of the investment objectives and policies established by our board of directors, our advisor, subject to the oversight and review of our board of directors, has substantial discretion with respect to the selection of specific investments and the purchase and sale of our assets. Our board of directors reviews our investment policies at least annually to determine whether our investment policies continue to be in the best interests of our stockholders. Each such determination and the basis therefore is set forth in the minutes of the meetings of our board of directors.

### Primary Focus—“Select-Service” Hospitality Real Property Investments

We intend to invest the majority of our assets in hotel properties, as we believe this asset class provides unique opportunities for return on investment at this time. Specifically we expect the majority of our direct real property investments will consist of stabilized, income-producing select-service hotel properties with premier brands, including, but not limited to, Marriott, Hilton, and Hyatt, that have been fully constructed and that have significant operating histories. Select-service hotels target business-oriented travelers by providing clean rooms with basic amenities. In contrast to lower-cost budget motels, select-service hotels provide amenities such as an exercise room, business facilities and breakfast buffets. In contrast to full-service hotels, select-service hotels typically do not have a full-service restaurant, which is relatively costly to operate.

To a lesser extent, we may also invest in other types of hotel properties and hospitality assets. For example, our portfolio may also include a relatively smaller proportion of “value added” investment opportunities that arise in circumstances where a hotel property may be situationally undervalued or where product repositioning, capital expenditures or improved hotel management may increase cash flows. In addition, we may also invest in “opportunistic” real properties or properties that are under development or construction, that are newly constructed or that have some level of vacancy at the time of acquisition.

We anticipate that the majority of our direct hotel property investments will be made in major metropolitan markets that are located in the East Coast, West Coast and Sunbelt regions of the United States. We may also selectively invest in other geographic regions, such as Canada and Mexico and potentially elsewhere on a limited basis, to the extent that opportunities exist that may help us meet our investment objectives.

When evaluating potential investments, our advisor will consider such factors as:

- diversification benefits relative to the rest of the investments within our portfolio;
- broad assessment of macro and microeconomic, employment and demographic data and trends;
- regional, market and property specific supply/demand dynamics;
- physical condition and location of the hotel property;
- market rents and opportunity for revenue and net operating income growth;
- opportunities for capital appreciation based on product repositioning, operating expense reductions and other factors;
- risk characteristics of the investment compared to the potential returns and available alternative investments; and
- additional factors considered important to meeting our investment objectives.

We may also invest a portion of the proceeds available for investment in unimproved land upon which improvements are to be constructed or completed. However, we may not invest more than 10.0% of the aggregate cost of the real property assets within our portfolio in unimproved land or real properties which are not expected to produce income within two years of their acquisition. Development of real properties is subject to risks relating to a builder's ability to control construction costs or to build in conformity with plans, specifications and timetables. To the extent we invest in development properties, we intend to require a guarantee of completion at the price contracted either by an adequate completion bond or performance bond to help ensure performance by the builders of real properties that are under construction. Our advisor may rely upon the net worth of the contractor or developer or a personal guarantee accompanied by financial statements showing a substantial net worth provided by an affiliate of the person entering into the construction or development contract as an alternative to a completion bond or performance bond. Our advisor may elect to employ one or more project managers (who under some circumstances may be affiliated with our advisor or our property manager) to plan, supervise and implement the development and construction of any unimproved real properties which we may acquire. Such persons would be compensated by us.

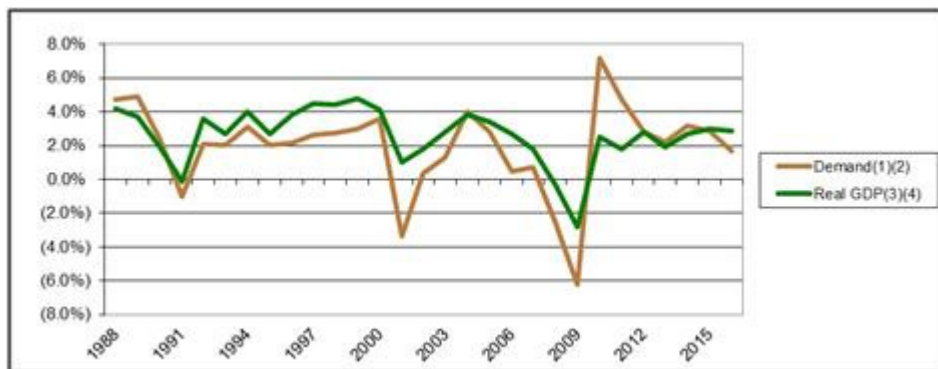
We may adjust our investment focus from time to time based upon market conditions and our advisor's views on relative value as market conditions evolve.

### ***The Hospitality Industry***

According to our research, at this time the hotel space has the greatest supply-demand imbalance among all real estate asset classes. We believe that hotel properties continue to be trading below their normal pricing, which creates buying opportunities today; while a supply-demand imbalance should create upward pressure on room rates.

Long-term room night demand has historically been positively correlated with gross domestic product, or GDP, growth. During the past 20 years, hotel demand growth was negative at only three points, most notably during the recent recession, which we refer to as the "Great Recession." However, hotel demand rose steadily during periods of economic growth, especially during the late 1990's and mid-2000's. As a result, many industry experts project a continued increase in hotel demand.

**U.S. Market Demand - Hospitality  
Demand vs. GDP (1988 - 2016)**



(1) Historical Total Supply/Demand Percent Change: STR Trend Report for 1987 through December 2013

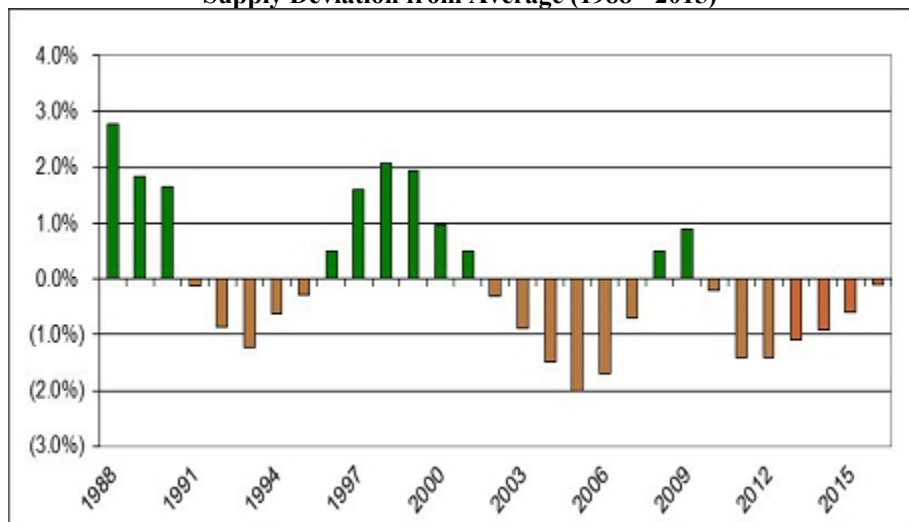
(2) Forecast Total Supply/Demand Percent Change: PKF Hotel Horizons Econometrics of U.S. Lodging Markets

(3) Historical GDP: <http://www.bea.gov/national/xls/gdpchg.xls>

(4) Forecast GDP: [http://www.ers.usda.gov/datafiles/International\\_Macroeconomic\\_Data/Baseline\\_Data\\_Files/ProjectedRealGDPValues.xls](http://www.ers.usda.gov/datafiles/International_Macroeconomic_Data/Baseline_Data_Files/ProjectedRealGDPValues.xls)

The hotel industry has been in a period of under-supply since 2001, with the exception of 2008 and 2009. The current slowdown in new supply is due to both the unavailability of new financing and the downturn in hotel rates experienced during the Great Recession. New hotel projects often take several years to complete, especially in the current environment with lenders still being cautious about approving new projects. Smith Travel Research projects new hotel supply will grow at a slower pace than the 20-year average of 1.9% per year. Consequently, existing operators should experience the full benefit of the impending hotel recovery because the new supply is not projected to equal the growth in demand.

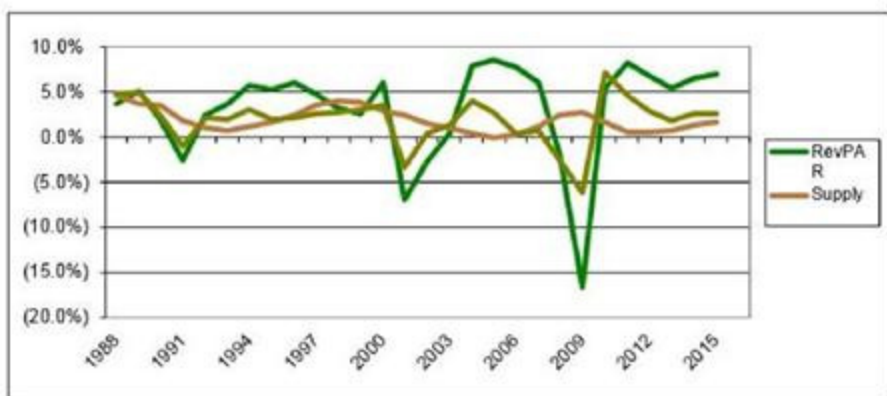
**U.S. Market Supply – Hotels**  
**Supply Deviation from Average (1988 - 2015)**



- (1) Historical Total Supply/Demand Percent Change: STR Trend Report for 1987 through December 2013  
 (2) Forecast Total Supply/Demand Percent Change: PKF Hotel Horizons Econometrics of U.S. Lodging Markets  
 (3) Average Supply Growth: <http://www.hospitalitynet.org/news/4053788.html>

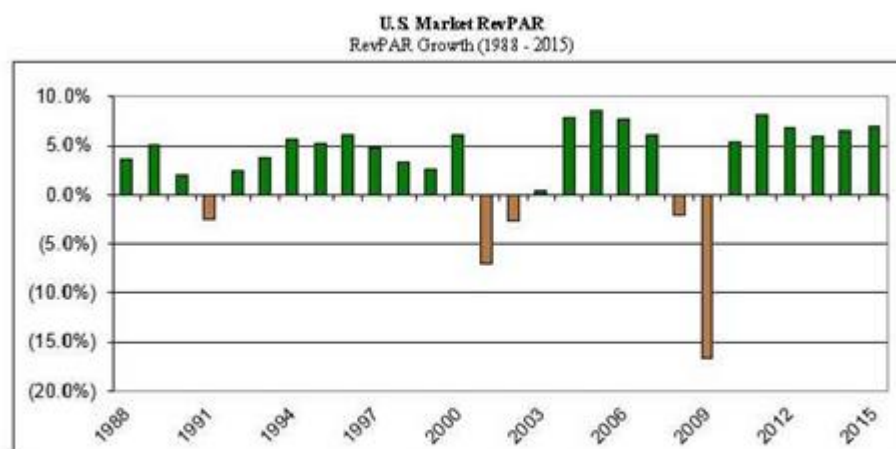
During 2009, Revenue Per Available Room (RevPAR), the primary metric for gauging the performance of hotel rooms and demand for hotel rooms, decreased by approximately 16.7% as a result of the decrease in demand. By contrast, beginning in 2010, demand began to eclipse supply and has continued in the following years. According to PKF Hospitality Consulting's 2014 projections, full-year industry room supply will increase by approximately 1.0%, while demand will increase by approximately 3.2%. As a result of this imbalance, RevPAR increases are expected for the next several years. PKF Hospitality Consulting projects RevPAR increases of 6.7%, 7.1%, and 5.0% from 2014 through 2016, respectively. Furthermore, these annual increases in RevPAR are expected to result in increased asset valuations. Thus, the combination of demand increasing faster than new supply should result in pricing power and asset appreciation for hotel investors.

**U.S. Hotel Supply, Demand, & RevPAR Trends**  
**RevPAR vs. Supply vs. Demand (1988 - 2015)**

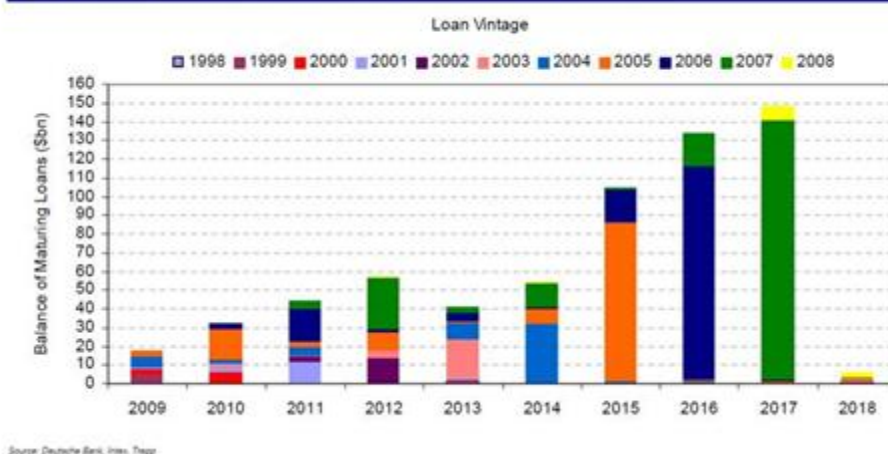


- (1) Historical RevPAR: STR Trend Report for 1987 through December 2013  
 (2) Forecast RevPAR: PKF Hotel Horizons Econometrics of U.S. Lodging Markets  
 (3) Historical Total Supply/Demand Percent Change: STR Trend Reports for 1987 through December 2013  
 (4) Forecast Total Supply/Demand Percent Change: PKF Hotel Horizons Econometrics of U.S. Lodging Markets

As hotel demand increases at a faster rate than new supply, the anticipated result will be pricing power. As a result, hotel property owners are expected to have the ability to increase room rates dramatically due to the under-supply of hotel rooms. As a result, hotel industry experts anticipate a rise in pricing power, increased revenues and asset appreciation during the near-term. The chart below reflects historical and projected trends in RevPAR.



**Figure 1: Maturity profile of fixed rate commercial mortgages in CMBS transactions**



Although multiple industry analysts project continued rate increases in the hospitality industry, we believe there will still be buying opportunities. While some investors purchase and sell hotel properties based on the timing of market fundamentals and therefore would be less inclined to sell into a market with rising rates and occupancies, other factors may motivate a seller. For example, we believe many hotel investors will consider selling hotel properties due to the number of 10-year loans coming due between 2014 and 2017. These loan maturities will, in many instances, create situations where owners are motivated to sell their hotels, even at discounted values, in order to pay off a maturing loan. Owners may also face pressure to return invested funds to investors within the timeframe they originally expected.

### ***Improvements***

We anticipate that property improvements required at the time of our investment in a hotel property will be funded from our offering proceeds. Maintenance of franchise licenses for our hotel properties is subject to our ability to maintain our franchisor's operating standards and other terms and conditions. To maintain our hotel properties in accordance with these standards, it is likely that we will be required to expend substantial funds for improvements and refurbishments.

### ***Hotel Property Ownership***

We will generally hold fee title or a long-term leasehold estate in the hotel properties we acquire. We intend to acquire such interests either (1) directly through our operating partnership or through wholly owned subsidiaries of our operating partnership or (2) indirectly through investments in joint ventures, partnerships, or other co-ownership arrangements with the developers of the real properties, Moody National affiliates or other persons. In addition, we may purchase real properties and lease them back to the sellers of such real properties. While we will use our best efforts to structure any such sale-leaseback transaction in which the lease will be characterized as a "true lease" so that we will be treated as the owner of the property for federal income tax purposes, we cannot assure you that the Internal Revenue Service will not challenge such characterization. In the event that any such recharacterization were successful, deductions for depreciation and cost recovery relating to such real property would be disallowed and it is possible that under some circumstances we could fail to qualify as a REIT as a result.

We intend to lease all hotels we acquire in the future, other than pursuant to sale-leaseback transactions, to a TRS lessee. We will negotiate the terms and provisions of each future lease, considering such things as the purchase price paid for the hotel, then current economic conditions and any other factors deemed relevant at the time. We expect the leases to generally provide for each TRS lessee to pay in each calendar month the base rent plus, in each calendar quarter, percentage rent, if any. Each TRS lessee shall be required to make (at our sole cost and expense) all capital expenditures required in connection with emergency situations, legal requirements, maintenance of the applicable franchise agreement, the performance by lessee of its obligations under the lease and other permitted additions to the leased property.

In determining whether to purchase a particular property, we may, in accordance with customary practices, obtain a purchase option on such property. The amount paid for a purchase option, if any, is normally surrendered if the property is not purchased and is normally credited against the purchase price if the property is purchased.

### ***Joint Venture Investments***

We may enter into joint ventures, partnerships and other co-ownership or participation arrangements with affiliated or non-affiliated third parties for the purpose of obtaining interests in hotel properties. We may also enter into joint ventures for the development or improvement of hotel properties. Joint venture investments permit us to own interests in large properties and other investments without unduly limiting the diversity of our portfolio. In determining whether to recommend a particular joint venture, our advisor will evaluate the property that the joint venture owns or is being formed to own under the same criteria used for the selection of our direct property investments.

Our advisor or its affiliates, including our property manager, will also evaluate the potential joint venture partner as to its financial condition, operating capabilities and integrity. We may enter into joint ventures with Moody National affiliates, but only provided that:

- a majority of our directors, including a majority of the independent directors, approve the transaction as being fair and reasonable to us; and
- the investment by us and such affiliate are on terms and conditions that are substantially the same as those received by the other joint venturers in such joint venture.

We have not established the specific terms we will require in our joint venture agreements. Instead, we will establish the terms with respect to any particular joint venture agreement on a case-by-case basis after our board of directors considers all the facts that are relevant, such as the nature and attributes of our potential joint venture partners, the proposed structure of the joint venture, the nature of the operations, the nature of the property and its operations, the liabilities and assets associated with the proposed joint venture and the size of our interest when compared to the interest owned by other partners in the venture. With respect to any joint venture we enter into, we expect to consider the following types of concerns and safeguards:

- Our ability to manage and control the joint venture—we will consider whether we should obtain certain approval rights in joint ventures we do not control and for proposed joint ventures in which we are to share control with another entity, we will consider the procedures to address decisions in the event of an impasse.
- Our ability to exit the joint venture—we will consider requiring buy/sell rights, redemption rights or forced liquidation rights.
- Our ability to control transfers of interests held by other partners to the venture—we will consider requiring consent provisions, a right of first refusal and forced redemption rights in connection with transfers.

Any joint ventures with our affiliates will result in certain conflicts of interest.

### ***Acquisition of Properties from Our Affiliates***

We are not precluded from acquiring hotel properties, directly or through joint ventures, from our affiliates. Any such acquisitions will be approved consistent with the conflict of interest procedures described in this prospectus. Subject to this limitation, our sponsor, its affiliates and its employees (including our officers and directors) may make substantial profits in connection with any such investment and our cost to acquire the property may be in excess of the cost that we would have incurred if we had acquired the property on an arm's-length basis from a third party. In addition, our advisor and its affiliates receive fees for such transactions including acquisition fees.

### ***Due Diligence***

Prior to acquiring a hotel property, our advisor or its affiliates, including our property manager, will perform a diligence review on investments we make. As part of this review, our advisor will obtain an environmental site assessment for each proposed property acquisition, which at a minimum will include a Phase I assessment. We will generally not close the purchase of any property unless we are satisfied with the environmental status of the property except under limited exceptional circumstances in which we determine that there are factors that off-set any potential environmental risk or liability. We will also generally seek to condition our obligation to close upon the delivery and verification of certain documents from the seller or developer, including, where appropriate:

- plans and specifications;
- environmental reports;
- surveys;
- evidence of marketable title subject to such liens and encumbrances as are acceptable to our advisor;
- audited financial statements covering recent operations of real properties having operating histories; and
- title and liability insurance policies.

## **Secondary Focus—Securities and Debt-Related Investments**

In addition to direct investments in hotel properties, we also plan to acquire real estate securities and debt-related investments in the hospitality sector. We expect that our total investments in real estate securities and debt-related investments would be a substantially smaller proportion of our overall portfolio than our direct investments in hotel properties. However, we are not specifically limited in the number or size of our real estate securities and debt-related investments, or on the percentage of the net proceeds from this offering that we may invest in a single real estate-related security or debt-related investment. The specific number and mix of real estate securities and debt-related assets in which we invest will depend upon real estate market conditions, other circumstances existing at the time we are investing and the amount of proceeds we raise in the offering.

Our advisor has substantial discretion with respect to identifying and evaluating specific securities and debt-related investments. Our charter provides that we may not invest in equity securities unless a majority of our directors, including a majority of our independent directors, not otherwise interested in the transaction approve such investment as being fair, competitive and commercially reasonable. Consistent with such requirements, in determining the types of real estate securities and debt-related investments to make, our advisor will evaluate the following criteria:

- positioning the overall portfolio to achieve an optimal mix of real property, real estate securities and debt-related investments;
- diversification benefits relative to the rest of the securities and debt-related investments within our portfolio;
- fundamental securities analysis;
- quality and sustainability of underlying property cash flows;
- broad assessment of macro-economic data and regional property level supply and demand dynamics;
- potential for delivering high current income and attractive risk-adjusted total returns; and
- additional factors considered important to meeting our investment objectives.

### ***Real Estate Securities***

We may make equity investments in REITs and other real estate companies if a majority of our directors, including a majority of our independent directors, not otherwise interested in the transaction approve such investment as being fair, competitive and commercially reasonable. We may purchase the common or preferred stock of these entities or options to acquire their stock. We may target a public company that owns commercial real estate assets when we believe its stock is trading at a discount to that company's net asset value. We may eventually seek to acquire or gain a controlling interest in the companies that we target. We may make investments in other entities when we consider it more efficient to acquire an entity that already owns real estate assets meeting our investment objectives than to acquire such assets directly.

### ***Debt-Related Investments***

The debt-related investments in which we may invest include first and second mortgages, mezzanine and bridge loans, debt and derivative securities related to real estate, including mortgage-backed securities, collateralized debt obligations (CDOs), debt securities issued by real estate companies and credit default swaps. We may structure, underwrite and originate the debt products in which we invest. Our underwriting process will involve comprehensive financial, structural, operational and legal due diligence to assess the risks of investments so that we can optimize pricing and structuring. If we originate loans directly, we will be able to efficiently structure a diverse range of products. For instance, we may sell some components of the debt we originate while retaining attractive, risk-adjusted strips of the debt for ourselves. Our advisor will source our debt investments and provide loan servicing. We pay our advisor acquisition fees for loans that we make or acquire and asset management fees for the loans that we hold for investment. We may sell some loans that we originate to third parties for a profit. We expect to hold other loans for investment and in some instances to securitize these loans through a CDO structure. We intend to fund the loans we originate with proceeds from our initial public offering and from lenders.

## **Borrowing Policies**

We intend to use secured and unsecured debt as a means of providing additional funds for the acquisition of real property, securities and debt-related investments. By operating on a leveraged basis, we expect that we will have more funds available for investments. This will generally allow us to make more investments than would otherwise be possible, potentially resulting in enhanced investment returns and a more diversified portfolio. However, our use of leverage increases the risk of default on loan payments and the resulting foreclosure on a particular asset. In addition, lenders may have recourse to assets other than those specifically securing the repayment of the indebtedness. When debt financing is unattractive due to high interest rates or other reasons, or when financing is otherwise unavailable on a timely basis, we may purchase certain assets for cash with the intention of obtaining debt financing at a later time.

Consistent with the leverage policy adopted by our board of directors, we expect that after we have invested substantially all of the proceeds of this offering, our debt financing will be approximately 75% of the aggregate costs of our investments before non-cash reserves and depreciation. Our board of directors may from time to time modify our leverage policy in light of then-current economic conditions, relative costs of debt and equity capital, fair values of our properties, general conditions in the market for debt and equity securities, growth and acquisition opportunities or other factors. Our actual leverage may be higher or lower than our target leverage depending on a number of factors, including the availability of attractive investment and disposition opportunities, inflows and outflows of capital and increases and decreases in the value of our portfolio.

There is no limitation on the amount we may invest in any single improved real property. However, under our charter, we are prohibited from borrowing in excess of 300% of the value of our net assets. "Net assets" for purposes of this calculation is defined to be our total assets (other than intangibles), valued at cost prior to deducting depreciation, reserves for bad debts and other non-cash reserves, less total liabilities. The preceding calculation is generally expected to approximate 75% of the aggregate cost of our assets before non-cash reserves and depreciation. However, we may temporarily borrow in excess of these amounts if such excess is approved by a majority of our independent directors and disclosed to stockholders in our next quarterly report, along with justification for such excess. In such event, we will review our debt levels at that time and take action to reduce any such excess as soon as practicable. We do not intend to exceed our charter's leverage limit except in the early stages of building our portfolio when the costs of our investments are most likely to exceed our net offering proceeds.

Our advisor will use its best efforts to obtain financing on the most favorable terms available to us and will seek to refinance assets during the term of a loan only in limited circumstances, such as when a decline in interest rates makes it beneficial to prepay an existing loan, when an existing loan is approaching maturity or if an attractive investment becomes available and the proceeds from the refinancing can be used to purchase such investment. The benefits of any such refinancing may include increased cash flow resulting from reduced debt service requirements, an increase in distributions from proceeds of the refinancing and an increase in diversification and assets owned if all or a portion of the refinancing proceeds are reinvested.

Our charter restricts us from obtaining loans from any of our directors, our advisor and any of our affiliates unless such loan is approved by a majority of the directors (including a majority of the independent directors) not otherwise interested in the transaction as fair, competitive and commercially reasonable and no less favorable to us than comparable loans between unaffiliated parties. Our aggregate borrowings, secured and unsecured, are reviewed by our board of directors at least quarterly.

## **Disposition Policies—Real Property Investments**

We will generally acquire hotel properties with an expectation of holding each property for an extended period. However, circumstances might arise which could result in a shortened holding period for certain properties. A property may be sold before the end of the expected holding period if:

- there exist diversification benefits associated with disposing of the property and rebalancing our investment portfolio;
- an opportunity has arisen to pursue a more attractive property or real estate securities or debt-related investment;
- in the judgment of our advisor, the value of the property might decline;
- the property was acquired as part of a portfolio acquisition and does not meet our general acquisition criteria;
- there exists an opportunity to enhance overall investment returns by raising capital through the sale of the property; or
- other factors that, in the judgment of our advisor, lead to a determination that the sale of the property is in our stockholders' best interests.

The determination of whether a particular property should be sold or otherwise disposed of will be made after consideration of relevant factors, including prevailing economic conditions, with a view toward achieving maximum total investment return for the property. We cannot assure you that this objective will be realized. The selling price of a property will be based on RevPAR and ADR. In connection with our sales of properties, we may lend the purchaser all or a portion of the purchase price. In these instances, our taxable income may exceed the cash received in the sale. The terms of payment will be affected by custom in the area in which the

property being sold is located and by the then-prevailing economic conditions. We may also sell properties to affiliates upon a determination by a majority of our board of directors, including a majority of our independent directors, not otherwise interested in the transaction that such transaction is fair and reasonable to us. While there is no minimum on the price we must receive in such transactions, our board of directors must approve such transactions as being fair and reasonable to us and on terms and conditions not less favorable to us than those available from unaffiliated third parties.

### **Disposition Policies—Securities and Debt-Related Investments**

Our advisor has substantial discretion in connection with the disposition of securities and debt-related investments. In general, the holding period for our securities and debt-related investments is expected to be shorter than the holding period for our properties. The determination of whether a particular security or debt-related asset should be sold or otherwise disposed of will be made after consideration of relevant factors with a view toward achieving maximum total investment return for the asset. Relevant factors to be considered by the advisor when disposing of a securities or debt-related asset include:

- the prevailing economic, real estate and securities market conditions;
- the extent to which the investment has realized its expected total return;
- portfolio rebalancing and optimization;
- diversification benefits;
- opportunity to pursue a more attractive real property, securities or debt-related investment;
- liquidity benefits with respect to having sufficient funds for our share repurchase program; and
- other factors that, in the judgment of our advisor, lead to a determination that the sale of the security or debt-related asset is in our best interests.

### **Investment Limitations**

Our charter places numerous limitations on us with respect to the manner in which we may invest our funds. Pursuant to our charter, we will not:

- invest in commodities or commodity futures contracts, except for futures contracts when used solely for the purpose of hedging in connection with our ordinary business of investing in real property, real estate securities and debt-related investments;
- invest in real estate contracts of sale, otherwise known as land sale contracts, unless the contract is in recordable form and is appropriately recorded in the chain of title;
- make or invest in individual mortgage loans unless an appraisal is obtained concerning the underlying property, except for those mortgage loans insured or guaranteed by a government or government agency. In cases where a majority of our independent directors determines and in all cases in which the transaction is with any of our directors, our sponsor, our advisor or any of their affiliates, such appraisal shall be obtained from an independent appraiser selected by the independent directors. We will maintain such appraisal in our records for at least five years and it will be available for our stockholders' inspection and duplication. We will also obtain a mortgagee's or owner's title insurance policy as to the priority of the mortgage;
- invest in indebtedness secured by a mortgage loan that is subordinate to any lien or other indebtedness of any of our directors, our sponsor, our advisor or any of our affiliates;
- invest in equity interests of another issuer unless a majority of the directors (including a majority of independent directors) not otherwise interested in the transaction approves such investment as being fair, competitive and commercially reasonable;
- make or invest in mortgage loans, including construction loans, on any one real property if the aggregate amount of all mortgage loans on such real property would exceed an amount equal to 85% of the appraised value of such real property as determined by appraisal, unless substantial justification exists because of the presence of other underwriting criteria;
- make investments in unimproved real property or mortgage loans on unimproved real property in excess of 10% of our total assets;
- issue equity securities redeemable solely at the option of the holder (this limitation, however, does not limit or prohibit the operation of our share repurchase program);
- issue debt securities in the absence of adequate cash flow to cover debt service;

- issue options or warrants to purchase shares to our sponsor, our advisor, any of our directors or any of their respective affiliates except on the same terms as the options or warrants, if any, are sold to the general public and unless the amount of the options or warrants does not exceed an amount equal to 10% of our outstanding shares on the date of grant of the warrants and options;
- issue equity securities on a deferred payment basis or under similar arrangement;
- engage in underwriting or the agency distribution of securities issued by others; or
- make any investment that we believe will be inconsistent with our objectives of qualifying and remaining qualified as a REIT unless and until our board of directors determines, in its sole discretion, that REIT qualification is not in our best interests.

## **Liquidity Strategy**

We presently intend, but are not required, to complete a transaction providing liquidity for our stockholders within three to six years from the completion of our initial public offering; however, the timing of any such event will be significantly dependent upon economic and market conditions after completion of our primary offering. Our charter does not require our board of directors to pursue a liquidity event. However, we expect that our board of directors will determine to pursue a liquidity event when it believes that then-current market conditions are favorable for a liquidity event, and that such a transaction is in the best interests of our stockholders. A liquidity event could include (1) the sale of all or substantially all of our assets either on a portfolio basis or individually followed by a liquidation, (2) a merger or another transaction approved by our board of directors in which our stockholders will receive cash or shares of a publicly traded company or (3) a listing of our shares on a national securities exchange. There can be no assurance as to when such a suitable transaction will be available.

Prior to our completion of a liquidity event, our share repurchase program may provide a limited opportunity for you to have your shares of common stock redeemed, subject to certain restrictions and limitations, at a price equal to or at a discount from the purchase price you paid for the shares being redeemed. For more information on our share repurchase program, see “Description of Capital Stock—Share Repurchase Program.”

## **Investment Company Act Considerations**

We intend to conduct our operations so that neither we, nor our operating partnership nor the subsidiaries of our operating partnership are required to register as investment companies under the Investment Company Act.

Section 3(a)(1)(A) of the Investment Company Act defines an investment company as any issuer that is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Investment Company Act defines an investment company as any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer’s total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis, which we refer to as the “40% test.” Excluded from the term “investment securities,” among other things, are U.S. government securities and securities issued by majority-owned subsidiaries that are not themselves investment companies and are not relying on the exception from the definition of investment company set forth in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.

We believe that we, our operating partnership and most of the subsidiaries of our operating partnership will not fall within either definition of investment company as we intend to invest primarily in real property, rather than in securities, through our operating partnership or our operating partnership’s wholly or majority-owned subsidiaries, the majority of which we expect will have at least 60% of their assets in real property. As these subsidiaries would be investing either solely or primarily in real property, they would not be within the definition of “investment company” under Section 3(a)(1)(C) of the Investment Company Act. We are organized as a holding company that conducts its businesses primarily through our operating partnership, which in turn is a company conducting its business of investing in real property either directly or through its subsidiaries. Both we and our operating partnership intend to conduct our operations so that we comply with the 40% test. We will monitor our holdings to ensure continuing and ongoing compliance with this test. In addition, we believe neither we nor our operating partnership will be considered an investment company under Section 3(a)(1)(A) of the Investment Company Act because neither we nor our operating partnership will engage primarily or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Rather, through our operating partnership or our operating partnership’s wholly owned or majority-owned subsidiaries, we and our operating partnership will be primarily engaged in the business of purchasing or otherwise acquiring real property.

Even if the value of investment securities held by a subsidiary of our operating partnership were to exceed 40% of its total assets, we expect that subsidiary to be able to rely on the exclusion from the definition of “investment company” provided by Section 3(c)(5)(C) of the Investment Company Act, which is available for entities “primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on, and interests in, real estate.” This exception generally requires that at least 55% of a subsidiary’s portfolio must be comprised of qualifying real estate assets and at least 80% of its portfolio must be comprised of qualifying real estate assets and real estate-related assets (and no more than 20% comprised of miscellaneous assets).

For purposes of the exclusion provided by Sections 3(c)(5)(C), we will classify the investments made by our subsidiaries based in large measure on no-action letters issued by the SEC staff and other SEC interpretive guidance and, in the absence of SEC guidance, on our view of what constitutes a qualifying real estate asset and a real estate-related asset. These no-action letters were issued in accordance with factual situations that may be substantially different from the factual situations we may face, and a number of these no-action letters were issued more than ten years ago. Pursuant to this guidance, and depending on the characteristics of the specific investments, certain mortgage loans, participations in mortgage loans, mortgage-backed securities, mezzanine loans, joint venture investments and the equity securities of other entities may not constitute qualifying real estate assets and therefore investments in these types of assets may be limited. No assurance can be given that the SEC or its staff will concur with our classification of our assets. Future revisions to the Investment Company Act or further guidance from the SEC staff may cause us to lose our exclusion from the definition of investment company or force us to re-evaluate our portfolio and our investment strategy. Such changes may prevent us from operating our business successfully.

To the extent that the SEC or its staff provides more specific or different guidance regarding the treatment of assets as qualifying real estate assets or real estate-related assets, we may be required to adjust our investment strategy accordingly. Any additional guidance from the SEC or its staff could provide additional flexibility to us, or it could further inhibit our ability to pursue the investment strategy we have chosen. There can be no assurance that the laws and regulations governing the Investment Company Act status of REITs, including more specific or different guidance regarding these exclusions that may be published by the SEC or its staff, will not change in a manner that adversely affects our operations. For instance, in 2011, the SEC solicited public comment on a wide range of issues relating to Section 3(c)(5)(C) of the Investment Company Act, including the nature of the assets that qualify for purposes of the exclusion. We cannot assure you that the SEC or its staff will not take action that results in our or our subsidiary's failure to maintain an exception or exemption from the Investment Company Act.

In the event that we, or our operating partnership, were to acquire assets that could make either entity fall within one of the definitions of investment company under Section 3(a)(1) of the Investment Company Act, we believe that we would still qualify for an exclusion from the definition of "investment company" provided by Section 3(c)(6). Although the SEC staff has issued little interpretive guidance with respect to Section 3(c)(6), we believe that we and our operating partnership may rely on Section 3(c)(6) if 55% of the assets of our operating partnership consist of, and at least 55% of the income of our operating partnership is derived from, qualifying real estate investment assets owned by wholly owned or majority-owned subsidiaries of our operating partnership.

Finally, to remain outside the definition of an investment company or maintain compliance with exceptions from the definition of investment company, we, our operating company or our subsidiaries may be unable to sell assets we would otherwise want to sell and may need to sell assets we would otherwise wish to retain. In addition, we, our operating partnership or our subsidiaries may have to acquire additional income- or loss-generating assets that we might not otherwise have acquired or may have to forego opportunities to acquire interest in companies that we would otherwise want to acquire and that may be important to our investment strategy. If our subsidiaries fail to own a sufficient amount of qualifying real estate assets or additional qualifying real estate assets or real estate related assets to satisfy the requirements of Section 3(c)(5)(C) and cannot rely on any other exemption or exclusion under the Investment Company Act, we could be characterized as an investment company. Our advisor will continually review our investment activity to attempt to ensure that we will not be regulated as an investment company. Among other things, our advisor will attempt to monitor the proportion of our portfolio that is placed in investments in securities.

## MANAGEMENT

### Board of Directors

We operate under the direction of our board of directors, the members of which are accountable to us and our stockholders as fiduciaries. Our board of directors is responsible for the management and control of our affairs. Our board of directors has retained our advisor to manage our day-to-day affairs and to implement our investment strategy, subject to our board of directors' direction, oversight and approval.

Prior to the commencement of this offering, we have a total of three directors, two of whom are independent of us, our advisor and our respective affiliates. To qualify as an "independent director" under our charter, a director may not, directly or indirectly (including through a member of his or her immediate family), be associated with us, our advisor, our sponsor or any of their affiliates within the last two years of becoming a director by virtue of (1) ownership of an interest in our sponsor, our advisor or any of their affiliates, other than us, (2) employment by our sponsor, our advisor or any of their affiliates, (3) service as an officer or director of our sponsor, our advisor or any of their affiliates, other than service as one of our directors, (4) performance of services, other than as a director, for us, (5) service as a director or trustee of more than three real estate investment trusts organized by our sponsor or advised by our advisor, or (6) maintenance of a material business or professional relationship with our sponsor, our advisor or any of their affiliates. We refer to our directors who are not independent as our "affiliated directors."

Our charter and bylaws provide that the number of our directors may be established by a majority of our board of directors from time to time. Our charter also provides that a majority of our directors must be independent directors, that each director must have at least three years of relevant experience demonstrating the knowledge and experience required to successfully acquire and manage the type of assets being acquired by us and that at least one of the independent directors must have at least three years of relevant real estate experience. The independent directors will nominate replacements for vacancies among the independent directors.

Each of our directors is elected by the stockholders and serves for a term of one year and until his or her successor is duly elected and qualifies. Although the number of directors may be increased or decreased, a decrease will not have the effect of shortening the term of any incumbent director. Any director may resign at any time and may be removed with or without cause by the stockholders upon the affirmative vote of at least a majority of all the votes entitled to be cast generally in the election of directors. The notice of any special meeting called for the purpose of the proposed removal will indicate that the purpose, or one of the purposes, of the meeting is to determine if the director will be removed.

A vacancy following the removal of a director or a vacancy created by an increase in the number of directors or the death, resignation, adjudicated incompetence or other incapacity of a director may be filled only by a vote of a majority of the remaining directors and, in the case of an independent director, the director must also be nominated by the remaining independent directors. Any director elected to fill a vacancy will serve for the remainder of the full term of the directorship in which the vacancy occurs. If there are no remaining independent directors, then a majority vote of the remaining directors will be sufficient to fill a vacancy among the independent directors' positions. If at any time there are no independent or affiliated directors in office, successor directors will be elected by the stockholders. Each director will be bound by our charter.

### Responsibilities of Directors

The responsibilities of our board of directors include:

- approving and overseeing our overall investment strategy, which will consist of elements such as investment selection criteria, diversification strategies and asset disposition strategies;
- approving all real property acquisitions, developments and dispositions, including real property portfolio acquisitions, developments and dispositions;
- approving and overseeing our debt financing strategies;
- approving and monitoring the relationship between our operating partnership and our advisor;
- approving joint ventures, limited partnerships and other such relationships with third parties;
- approving a potential liquidity event;
- determining our distribution policy and authorizing distributions from time to time; and
- approving amounts available for repurchases of shares of our common stock.

Our directors are not required to devote all of their time to our business and are only required to devote such time to our affairs as their duties require. Our directors will meet quarterly or more frequently as necessary.

Our directors have established and periodically review written policies on investments and borrowings consistent with our investment objectives and monitor our administrative procedures, investment operations and performance and those of our advisor to assure that such policies are carried out. Any change in our investment objectives as set forth in our charter must be approved by our common stockholders.

Because of the conflicts of interest created by the relationship among us, our advisor and various affiliates, our charter requires that a majority of our independent directors assume certain responsibilities. Our charter has been reviewed and ratified by a vote of the directors and at least a majority of the independent directors. The independent directors will determine, from time to time but at least annually, that (1) the total fees and expenses paid to our advisor, our property manager and our dealer manager, as applicable, are reasonable in light of our investment performance, net assets, net income and the fees and expenses of other comparable unaffiliated REITs and (2) the compensation paid to our advisor is reasonable in relation to the nature and quality of services performed and that such compensation is within the limits prescribed by this prospectus. The independent directors will also supervise the performance of our advisor and review the compensation we pay our advisor to determine that the provisions of the advisory agreement are carried out. If the independent directors determine to terminate the advisory agreement, our advisor will not be entitled to compensation for further services but shall be entitled to receive from us or our operating partnership within 30 days after such termination all unpaid reimbursements or expenses and all earned but unpaid fees payable prior to such termination, subject to certain limitations. The independent directors will also be responsible for reviewing the performance of our advisor and determining that the compensation to be paid to our advisor is reasonable in relation to the nature and quality of services performed and that the provisions of the advisory agreement are being carried out. A majority of our board of directors, including a majority of our independent directors, not otherwise interested in the transaction must approve all transactions with any of our directors, our sponsors, our advisors or any of our affiliates.

As part of their review of our advisor's compensation, the independent directors consider factors such as:

- the quality and extent of the services and advice furnished by our advisor;
- the amount of fees paid to our advisor in relation to the size, composition and performance of our investments;
- the success of our advisor in generating investment opportunities that meet our investment objectives;
- rates charged to other externally advised REITs and similar investors by advisors performing similar services;
- additional revenues realized by our advisor and its affiliates through their relationships with us, whether we pay them or they are paid by others with whom we do business;
- the performance of our real estate assets, including income, conservation or appreciation of capital, frequency of problem investments and competence in dealing with distress situations; and
- the quality of our real estate assets relative to the investments generated by our advisor for its own account.

The independent directors shall record their findings on the factors they deem relevant in the minutes of the meeting of the board of directors.

### **Committees of the Board of Directors**

Our board of directors may establish committees it deems appropriate to address specific areas in more depth than may be possible at a full board of directors meeting, provided that the majority of the members of each committee are independent directors. Our board of directors has established an audit committee.

#### **Audit Committee**

Our board of directors has established an audit committee, which will meet on a regular basis, at least quarterly and more frequently as necessary. The audit committee is currently comprised of two directors, Messrs. Douglas Bech and Charles Horn, each of whom is an independent director. Mr. Horn serves as the chairman of the audit committee and has been designated as the audit committee's financial expert.

All audit committee members must be able to read and understand fundamental financial statements, including a balance sheet, income statement, cash flow statement and footnotes. The audit committee has direct responsibility for the appointment, compensation and oversight of the work of the independent auditors we employ. The audit committee assists our directors in overseeing and monitoring: (1) the systems of our internal accounting and financial controls; (2) our financial reporting processes; (3) the independence, objectivity and qualification of our independent auditors; (4) the annual audit of our financial statements; and (5) our accounting policies and disclosures. The audit committee considers and approves (1) any non-audit services provided by an independent auditor and (2) certain non-audit services provided by an independent auditor to our advisor and its affiliates to the extent that such approval is required under applicable regulations of the SEC. The audit committee has sole authority to hire and fire any independent auditor we employ and is responsible for approving all audit engagement fees and terms and resolving disagreements between us and our independent auditors regarding financial reporting. Our independent auditors report directly to the audit committee.

## Directors and Executive Officers

As of the date of this prospectus, our directors and executive officers and their positions and offices are as follows:

<b>Name</b>	<b>Position</b>
Brett C. Moody .....	Chairman of the Board, Chief Executive Officer and President
Robert W. Engel .....	Chief Financial Officer
Douglas Y. Bech .....	Independent Director
Charles L. Horn .....	Independent Director

*Brett C. Moody*, age 51, serves as our Chairman of our board of directors, Chief Executive Officer and President. Mr. Moody also serves as Chief Executive Officer and President of our advisor. Mr. Moody also serves as Chairman of the board of directors, Chief Executive Officer and President of our affiliate, Moody National REIT I, Inc. and Chief Executive Officer and President of its advisor, positions he has held since its inception in 2008. Mr. Moody founded Moody Mortgage Corporation in 1996 and has served as its Chairman and Chief Executive Officer since its formation. Mr. Moody, who has over 20 years of commercial real estate experience, has since guided the growth of his company from a mortgage company to a full service real estate firm, which includes affiliates Moody National Mortgage Corporation, Moody National Realty Company, Moody National Management, Moody National Hospitality Management, LLC, Moody National Development Company and their respective subsidiaries, collectively referred to as the Moody National Companies. His primary responsibilities include overseeing real estate acquisitions and management as well as building, coaching and leading the Moody National Companies team of professionals. As Chairman of the Board and Chief Executive Officer of Moody National Mortgage Corporation, Mr. Moody has closed over 200 transactions totaling over \$2 billion. Prior to founding Moody National Mortgage Corporation, Mr. Moody was a financial analyst for the Dunkum Mortgage Group, now Live Oak Capital. Mr. Moody also serves on the Board of Directors of Foundation for the Future, the Yellowstone Academy for At Risk Children, and the Palmer Drug Abuse Program. Mr. Moody attended the University of Texas at Austin, but did not receive any degrees.

Our board of directors, excluding Mr. Moody, has determined that the leadership positions previously and currently held by Mr. Moody, and the extensive experience he has accumulated from acquiring and managing investments in commercial real estate and debt, have provided Mr. Moody with the experiences, attributes and skills necessary to effectively carry out the duties and responsibilities of a director.

*Robert W. Engel*, age 60, serves as our Chief Financial Officer. Mr. Engel also serves as Chief Financial Officer and Treasurer of our affiliate, Moody National REIT I, positions he has held since January 2008, and as Secretary of Moody National REIT I, a position he has held since May 2010. In addition, Mr. Engel also serves as the Chief Financial Officer—Real Estate Development and Management of the Moody National Companies Organization, a position he has held since September 2006. Prior to working at the Moody National Companies Organization, Mr. Engel served as the Division Controller, Real Estate Development and Management, of BMS Management, Inc., an owner and manager of commercial and multifamily properties primarily in Houston, Texas from May 2005 to September 2006. From November 1999 to May 2005, Mr. Engel served as Controller and Chief Financial Officer, Real Estate Development and Management for Hartman Management, Inc., advisor to Hartman Commercial Properties REIT, which provides commercial real estate services. Mr. Engel has a Bachelor of Business Administration with highest honors with a major in Accounting from the University of Texas at Austin in Austin, Texas. Mr. Engel is a CPA and holds memberships in the American Institute of Certified Public Accountants, and the Texas Society of Certified Public Accountants. Mr. Engel is also a CPM, with membership in the Institute of Real Estate Management, and a CCIM as a member of the CCIM Institute. He is a licensed real estate broker in the State of Texas. Mr. Engel holds Series 7, 22, 24, 27, 62 and 63 licenses with FINRA.

*Douglas Y. Bech*, age 69, has served as one of our independent directors since August 2014. Since 1997, Mr. Bech has also served as Chief Executive Officer of Raintree Resorts and its predecessors. Raintree Resorts is engaged in resort development, vacation ownership sales and resort and vacation club management and has resort and hotel properties in 15 destinations in the Western U.S., Mexico and Canada that serve more than 28,000 members. From 1970 through 1993, Mr. Bech practiced securities and corporate finance law with Andrews Kurth, LLP, a large law firm in Houston, Texas and, subsequently with two other law firms, most recently, as a partner with Akin, Gump Strauss, Hauer & Feld, LLP, a large international law firm from 1994 to 1997. Since November 2000, Mr. Bech has served as a director of j2 Global, Inc., or j2 Global, a NASDAQ listed company engaged in cloud services and digital media businesses. From August 1988 through November 2000, Mr. Bech served as a director of eFax.com, a company acquired by j2 Global in November 2000. Mr. Bech is Chairman of j2 Global's Corporate Governance & Nominating Committee as well as Chairman of its Compensation Committee. In addition, Mr. Bech has served as a director for HollyFrontier Corporation, a large independent refining company with refineries in the Mid-Continent and Rocky Mountain regions of the United States that is listed on the NYSE. Since 2011, Mr. Bech has served as lead presiding director, a member of the Executive Committee and Corporate Governance & Nominating Committee and as Chairman of the Compensation Committee for HollyFrontier Corporation. From 1993 to 2011, Mr. Bech also served on the board of Frontier Oil Corporation until it merged with Holly Corporation and formed HollyFrontier Corporation. Since early 2014, Mr. Bech has also served on the board of CIM Commercial Trust Corporation, a NASDAQ-listed real estate investment trust with commercial and multi-family residential properties throughout the United States. Mr. Bech also serves on the board of Global Healthcare, a private medical billings and collections management company serving the Texas Heart Institute and other medical practices throughout the United States. Mr. Bech received a Bachelor of Arts degree from

Baylor University, and a Doctor of Jurisprudence from The University of Texas School of Law and has been licensed to practice law in the States of Texas and New York.

Our board of directors, excluding Mr. Bech, has determined that Mr. Bech's current and previous leadership positions, with organizations primarily focused investment and management of resort and hotel properties, as well as his legal expertise in securities and corporate finance law, has provided Mr. Bech with the experiences, attributes and skills necessary to effectively carry out the duties and responsibilities of a director.

*Charles L. Horn*, age 54, has served as one of our independent directors, and as Chairman of our Audit Committee, since August 2014. Mr. Horn also serves as an independent director and as Chairman of the Audit Committee of our affiliate, Moody National REIT I, Inc., positions he has held since May 2012. Since December 2009, Mr. Horn has served as the Executive Vice President and Chief Financial Officer of Alliance Data Systems, Inc. (NYSE: ADS), a leading provider of customer loyalty and marketing solutions. From 1999 to November 2009, Mr. Horn served as Senior Vice President and Chief Financial Officer for Builders Firstsource, Inc. (NASDAQ: BLDR), a leading supplier of structural building materials to homebuilders. From 1994 to 1999, Mr. Horn served as Vice President of Finance and Treasury for the retail operations of Pier 1 Imports, Inc., and, from 1992 to 1994, Mr. Horn served as Executive Vice President and Chief Financial Officer of Conquest Industries. Mr. Horn holds a Bachelor's degree in business administration from Abilene Christian University and an MBA from the University of Texas at Austin. Mr. Horn is a Certified Public Accountant in the State of Texas.

Our board of directors, excluding Mr. Horn, has determined that Mr. Horn's experience as the chief financial officer of public, listed companies and as a certified public accountant has provided Mr. Horn with the experiences, attributes and skills necessary to effectively carry out his duties and responsibilities as a director.

### **Compensation of Executive Officers and Directors**

We do not currently have any employees nor do we currently intend to hire any employees who will be compensated directly by us. Each of our executive officers, including each executive officer who serves as a director, is employed by our advisor and receives compensation for his or her services, including services performed on our behalf, from our advisor. Although we indirectly bear some of the costs of the compensation paid to our executive officers, either through fees or expense reimbursements we pay to our advisor, we do not intend to pay any compensation directly to our executive officers. Our executive officers, as employees of our advisor, are entitled to receive awards in the future under our long-term incentive plan as a result of their status as employees of our advisor, although we do not currently intend to grant any such awards.

We pay each of our independent directors an annual retainer of \$50,000, plus \$2,000 for each in-person meeting of the board of directors attended, \$1,500 for each in-person committee meeting attended and \$1,000 for each telephonic meeting in which such independent director participates. The audit committee chairperson receives an additional \$10,000 annual retainer.

We have adopted an independent directors compensation plan, which operates as a sub-plan of our long-term incentive plan (described below) pursuant to which each of our independent directors is entitled, subject to the plan's conditions and restrictions, to receive an initial grant of 5,000 shares of restricted stock when we have raised \$2,000,000 in gross offering proceeds. Each subsequent independent director that joins our board of directors will receive an initial grant of 5,000 shares of restricted stock upon his or her election to our board of directors. In addition, on the date following an independent director's reelection to our board of directors, he or she will receive an additional grant of 2,500 shares of restricted stock upon each of the first four annual meetings of stockholders when he or she is reelected to our board of directors. The restricted stock will generally vest and become non-forfeitable in equal quarterly installments beginning on the first day of the first quarter following the date of grant; provided, however, that the restricted stock will become fully vested on the earlier of (1) the termination of the independent director's service as a director due to death or disability, or (2) we experience a change in control. All directors receive reimbursement of reasonable out-of-pocket expenses incurred in connection with attending meetings of the board of directors. If a director is also one of our executive officers, we will not pay any compensation to such person for services rendered as a director.

### **Long-Term Incentive Plan**

We have adopted a long-term incentive plan which we use to attract and retain qualified directors, officers, employees, and consultants. Our long-term incentive plan offers these individuals an opportunity to participate in our growth through awards in the form of, or based on, our common stock. We currently anticipate that we will issue awards only to our independent directors under our long-term incentive plan.

The long-term incentive plan authorizes the granting of restricted stock, stock options, stock appreciation rights, restricted or deferred stock units, dividend equivalents, other stock-based awards and cash-based awards to directors, employees and consultants of ours selected by the board of directors for participation in our long-term incentive plan. Stock options granted under the long-term incentive plan will not exceed an amount equal to 10.0% of the outstanding shares of our common stock on the date of grant of any such stock options. Stock options may not have an exercise price that is less than the fair market value of a share of our common stock on the date of grant.

Our board of directors or a committee appointed by our board of directors administers the long-term incentive plan, with sole authority to determine all of the terms and conditions of the awards, including whether the grant, vesting or settlement of awards may be subject to the attainment of one or more performance goals. As described above, our independent directors receive shares of restricted stock under a sub-plan to our long-term incentive plan, thereby aligning their interests more closely with the interests of our stockholders. No awards will be granted under the long-term incentive plan if the grant or vesting of the awards would jeopardize our status as a REIT under the Internal Revenue Code or otherwise violate the ownership and transfer restrictions imposed under our charter. Unless otherwise determined by our board of directors, no award granted under the long-term incentive plan will be transferable except through the laws of descent and distribution.

We have authorized and reserved an aggregate maximum number of 2,000,000 shares for issuance under the long-term incentive plan. In the event of a transaction between our company and our stockholders that causes the per-share value of our common stock to change (including, without limitation, any stock dividend, stock split, spin-off, rights offering or large nonrecurring cash dividend), the share authorization limits under the long-term incentive plan will be adjusted proportionately and the board of directors will make such adjustments to the long-term incentive plan and awards as it deems necessary, in its sole discretion, to prevent dilution or enlargement of rights immediately resulting from such transaction. In the event of a stock split, a stock dividend or a combination or consolidation of the outstanding shares of common stock into a lesser number of shares, the authorization limits under the long-term incentive plan will automatically be adjusted proportionately and the shares then subject to each award will automatically be adjusted proportionately without any change in the aggregate purchase price.

Our board of directors may in its sole discretion at any time determine that all or a portion of a participant's awards will become fully vested. The board may discriminate among participants or among awards in exercising such discretion. The long-term incentive plan will automatically expire on the tenth anniversary of the date on which it is approved by our board of directors and stockholders, unless extended or earlier terminated by our board of directors. Our board of directors may terminate the long-term incentive plan at any time. The expiration or other termination of the long-term incentive plan will not, without the participant's consent, have an adverse impact on any award that is outstanding at the time the long-term incentive plan expires or is terminated. Our board of directors may amend the long-term incentive plan at any time, but no amendment will adversely affect any award without the participant's consent and no amendment to the long-term incentive plan will be effective without the approval of our stockholders if such approval is required by any law, regulation or rule applicable to the long-term incentive plan.

#### **Limited Liability and Indemnification of Directors, Officers and Others**

Subject to certain limitations, our charter limits the personal liability of our stockholders, directors and officers for monetary damages and provides that we will indemnify and pay or reimburse reasonable expenses in advance of final disposition of a proceeding to our directors, officers and advisor and our advisor's affiliates. In addition, we have obtained directors and officers' liability insurance.

The Maryland General Corporation Law, or the MGCL, permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages, except for liability resulting from (1) actual receipt of an improper benefit or profit in money, property or services or (2) active and deliberate dishonesty established by a final judgment and which is material to the cause of action.

The MGCL requires a Maryland corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made or threatened to be made a party by reason of his service in that capacity. The MGCL allows directors and officers to be indemnified against judgments, penalties, fines, settlements and expenses actually incurred in a proceeding unless the following can be established:

- an act or omission of the director or officer was material to the cause of action adjudicated in the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- with respect to any criminal proceeding, the director or officer had reasonable cause to believe his act or omission was unlawful.

However, indemnification for an adverse judgment in a suit by us or in our right, or for a judgment of liability on the basis that personal benefit was improperly received, may not be made unless ordered by a court and then only for expenses.

The MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon receipt of a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification and a written undertaking by him or on his behalf to repay the amount paid or reimbursed if it is ultimately determined that the standard of conduct was not met.

However, our charter provides that we may indemnify our directors and our advisor and its affiliates for loss or liability suffered by them or hold them harmless for loss or liability suffered by us only if all of the following conditions are met:

- our directors and our advisor or its affiliates have determined, in good faith, that the course of conduct that caused the loss or liability was in our best interests;
- our directors and our advisor or its affiliates were acting on our behalf or performing services for us;
- in the case of affiliated directors and our advisor or its affiliates, the liability or loss was not the result of negligence or misconduct;
- in the case of our independent directors, the liability or loss was not the result of gross negligence or willful misconduct; and
- the indemnification or agreement to hold harmless is recoverable only out of our net assets and not from our stockholders.

Additionally, we have agreed to indemnify and hold harmless our advisor and its affiliates performing services for us from specific claims and liabilities arising out of the performance of their obligations under the advisory agreement, subject to the limitations set forth above. As a result, we and our stockholders may be entitled to a more limited right of action than we would otherwise have if these indemnification rights were not included in the advisory agreement.

The general effect to investors of any arrangement under which any of our controlling persons, directors or officers are insured or indemnified against liability is a potential reduction in distributions resulting from our payment of premiums associated with insurance or any indemnification for which we do not have adequate insurance.

The SEC takes the position that indemnification against liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, is against public policy and unenforceable. Indemnification of our directors and our advisor or its affiliates will not be allowed for liabilities arising from or out of a violation of state or federal securities laws, unless one or more of the following conditions are met:

- there has been a successful adjudication on the merits of each count involving alleged material securities law violations;
- such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction; or
- a court of competent jurisdiction approves a settlement of the claims against the indemnitee and finds that indemnification of the settlement and the related costs should be made and the court considering the request for indemnification has been advised of the position of the SEC and of the published position of any state securities regulatory authority in which the securities were offered as to indemnification for violations of securities laws.

We may advance funds to our directors, our advisor and its affiliates for legal expenses and other costs incurred as a result of legal action for which indemnification is being sought only if all of the following conditions are met:

- the legal proceeding relates to acts or omissions with respect to the performance of duties or services on behalf of us;
- the party seeking indemnification has provided us with written affirmation of his good faith belief that he has met the standard of conduct necessary for indemnification;
- the legal proceeding is initiated by a third party who is not a stockholder or the legal proceeding is initiated by a stockholder acting in his capacity as such and a court of competent jurisdiction specifically approves such advancement; and
- the party seeking indemnification provides us with a written agreement to repay the advanced funds to us, together with the applicable legal rate of interest thereon, in cases in which he is found not to be entitled to indemnification.

Indemnification may reduce the legal remedies available to us and our stockholders against the indemnified individuals.

The aforementioned charter provisions do not reduce the exposure of directors and officers to liability under federal or state securities laws, nor do they limit a stockholder's ability to obtain injunctive relief or other equitable remedies for a violation of a director's or an officer's duties to us or our stockholders, although the equitable remedies may not be an effective remedy in some circumstances.

## **Our Advisor**

Moody National Advisor II, LLC, our advisor, and a wholly owned subsidiary of our sponsor, was formed as a Delaware limited liability company in July 2014. Our Chairman of the Board, Chief Executive Officer and President, Mr. Brett C. Moody, controls and indirectly owns our advisor. We will rely on our advisor to manage our day-to-day activities and to implement our investment strategy.

Our advisor performs its duties and responsibilities as our fiduciary pursuant to an advisory agreement. Under the terms of the advisory agreement, our advisor will use its best efforts, subject to the oversight, review and approval of our board of directors, to perform the following:

- participate in formulating an investment strategy and asset allocation framework consistent with achieving our investment objectives;
- research, identify, review and recommend to our board of directors for approval investments in real estate assets and dispositions consistent with our investment policies and objectives;
- structure the terms and conditions of transactions pursuant to which acquisitions and dispositions of real estate assets will be made;
- actively oversee and manage our portfolio of real estate assets for purposes of meeting our investment objectives;
- manage our day-to-day affairs, including financial accounting and reporting, investor relations, marketing, informational systems and other administrative services on our behalf;
- select joint venture partners, structure corresponding agreements and oversee and monitor these relationships;
- arrange for financing and refinancing of our real estate assets; and
- recommend various liquidity events to our board of directors when appropriate.

The above summary is provided to illustrate the material functions that our advisor will perform for us as an advisor and is not intended to include all of the services that may be provided to us by our advisor, its affiliates or third parties.

Our advisor's real estate professionals have engaged in investing and managing real estate assets in 46 privately held real estate programs, including performing portfolio management, acquisitions, asset management, dispositions, finance, research, valuation, investor relations, legal and accounting functions. In addition, our advisor's management team currently advises Moody National REIT I, an affiliated public, non-listed REIT, in a similar capacity.

Our advisor is managed by the following individuals:

<u>Name</u>	<u>Position</u>
Brett C. Moody	Chief Executive Officer and President
Robert W. Engel	Chief Financial Officer

Mr. Moody has primary responsibility for management decisions of our advisor, including the selection of real property investments to be recommended to our board of directors, the negotiations in connection with these investments and the hotel management and leasing of real properties. For biographical information on Messrs. Moody and Engel, see "—Directors and Executive Officers."

### **The Advisory Agreement**

The term of the advisory agreement is for one year from the commencement of our offering, subject to renewals upon mutual consent of the parties for an unlimited number of successive one-year periods. The directors of our board of directors will evaluate the performance of our advisor before renewing the advisory agreement, and the criteria used in these evaluations will be reflected in the minutes of the meetings of our board of directors. The advisory agreement may be terminated:

- immediately by us or our operating partnership for "cause," or upon the bankruptcy of our advisor;
- without cause or penalty by a majority of our independent directors upon 60 days' written notice; or
- with "good reason" by our advisor upon 60 days' written notice.

"Good reason" is defined in the advisory agreement to mean either any failure to obtain a satisfactory agreement from any successor to assume and agree to perform our or our operating partnership's obligations under the advisory agreement or any material breach of the advisory agreement of any nature whatsoever by us or our operating partnership. "Cause" is defined in the advisory agreement to mean fraud, criminal conduct, misconduct or negligent breach of fiduciary duty by our advisor or a material breach of the advisory agreement by our advisor.

In the event of the termination of the advisory agreement, our advisor will cooperate with us and take all reasonable steps to assist in making an orderly transition of the advisory function.

Before selecting a successor advisor, the board of directors must determine that any successor advisor possesses sufficient qualifications to perform the advisory function and to justify the compensation it would receive from us.

Upon termination of our advisory agreement for any reason, including for cause, our advisor will be paid all accrued and unpaid fees and expense reimbursements earned prior to the date of termination. Additionally, the special limited partnership interest holder may be entitled to a one-time payment upon redemption of the special limited partnership interests (based on an appraisal or valuation of our portfolio) in the event that the special limited partnership interest holder would have been entitled to a subordinated distribution had the portfolio been liquidated on the termination date. See “Management Compensation” for a detailed discussion of the compensation payable to our advisor under our advisory agreement and the payments that the special limited partnership interest holder may be entitled to receive with respect to the special limited partnership interests. We also describe in that section our obligation to reimburse our advisor for organizational and offering expenses, the cost of providing services to us (other than services for which it earns asset management fees or acquisition, or dispositions fees for sales of properties or other investments) and payments made by our advisor to third parties in connection with potential investments.

### **Holdings of Shares of Common Stock, Limited Partnership Interests and Special Limited Partnership Interests**

We issued 8,000 shares of our common stock to Moody National REIT Sponsor, LLC, our sponsor, for \$200,000 in cash. Our sponsor may not sell these shares for so long as one of its affiliates serves as our advisor. Our limited partner contributed \$1,000 for limited partnership interests, and the special limited partnership interest holder contributed \$1,000 in exchange for special limited partnership interests. The resale of any of our shares of common stock by our affiliates is subject to the provisions of Rule 144 promulgated under the Securities Act, which rule limits the number of shares that may be sold at any one time.

### **Affiliated Dealer Manager**

Moody Securities, LLC, our dealer manager and an affiliate of our sponsor, is a member firm of FINRA. Moody Securities, LLC is indirectly owned by Mr. Moody. Moody Securities, LLC provides certain sales, promotional and marketing services to us in connection with the distribution of the shares of common stock offered pursuant to this prospectus. We pay our dealer manager a sales commission equal to 7.0% of the gross proceeds from the sale of shares of our common stock sold in the primary offering, all or a portion of which may be reallocated to participating broker-dealers. We also pay our dealer manager a dealer manager fee equal to 3.0% of the gross proceeds from the sale of shares of our common stock sold in the primary offering, all or a portion of which may be reallocated to participating broker-dealers (excluding funds retained for the payment of wholesaling commissions, training and education costs and overhead expenses). Moody Securities, LLC only has experience acting as a dealer manager for one public offering in addition to ours, Moody National REIT I.

Moody Securities, LLC is managed by the following individuals:

<u><b>Name</b></u>	<u><b>Position</b></u>
Melinda G. LeGaye	President
Robert W. Engel	Chief Financial Officer and Treasurer

For biographical information on Mr. Engel, see “— Directors and Executive Officers.” The biographical information of Ms. LeGaye is as follows:

*Melinda G. LeGaye* serves as President of Moody Securities, LLC. Ms. LeGaye also serves as President of MGL Consulting, LLC, a firm she founded in 1984 to provide registration and compliance services to broker-dealers, investment advisors and insurance companies. Ms. LeGaye holds a Bachelor of Business Administration from Sam Houston State University in Huntsville, Texas. She holds the General Securities Principal, General Securities Representative, Financial and Operations Principal, the Municipal Securities Principal, Direct Participation Program Principal, Direct Participation Program Representative, Commodities Representative and the Uniform State Agent Law Examination registrations with FINRA and the Texas State Securities Board. She is a member of the National Association of Compliance Professionals.

### **Affiliated Property Manager**

Certain of our hospitality properties are managed and operated by Moody National Hospitality Management, LLC, our affiliated property manager, or a sub-property manager.

Moody National Hospitality Management, LLC, a Texas limited partnership, is owned by 4MCH, LLC, a Texas limited liability company. Mr. Moody does not have a direct ownership interest in 4MCH, LLC; however, Mr. Moody is the manager, president, secretary and treasurer of 4MCH, LLC and serves as trustee for each of the trusts that have an ownership interest in 4MCH, LLC. Our property manager was organized in 2012 to lease and manage real properties acquired by Moody National affiliates and third parties. Currently, our property manager performs hotel management services for our affiliate, Moody National REIT I, a public, non-listed REIT also sponsored by our sponsor, which has investment objectives generally similar to ours.

We, indirectly through our taxable REIT subsidiaries, or TRSs, pay our property manager a monthly hotel management fee equal to 4.0% of the monthly gross receipts from the properties managed by our property manager for services it provides in connection with operating and managing properties. Our property manager may pay some or all of the compensation it receives from a TRS to a third-party property manager for management or leasing services. In the event that our TRS lessee contracts directly with a non-affiliated

third-party property manager, it will pay our property manager a market-based oversight fee. The hotel management fees we, indirectly through our TRS lessee, pay to our property manager will include, without additional expense to us, all of our property manager's general overhead costs. Our TRS lessee reimburses the costs and expenses incurred by our property manager, including legal, travel and other out-of-pocket expenses that are directly related to the management of specific properties but will not reimburse personnel costs other than employees or subcontractors who are engaged in the on-site operation, maintenance or access control of the properties.

We also, indirectly through our taxable REIT subsidiaries, pay an annual incentive fee to our property manager. Such annual incentive fee is equal to 15% of the amount by which the operating profit from the properties managed by our property manager for such fiscal year (or partial fiscal year) exceeds 8.5% of the total investment of such properties. Our property manager may pay some or all of this annual fee to third-party sub-property managers for management services. For purposes of this fee, "total investment" means the sum of (1) the price paid to acquire a property, including closing costs, conversion costs, and transaction costs; (2) additional invested capital; and (3) any other costs paid in connection with the acquisition of the property, whether incurred pre- or post-acquisition.

Our property manager hires, directs and establishes policies for employees who will have direct responsibility for the operations of each real property it manages, which may include, but is not limited to, on-site managers and building and maintenance personnel. Certain employees of our property manager may be employed on a part-time basis and may also be employed by our advisor, or companies affiliated with our advisor. Our property manager also directs the purchase of equipment and supplies and supervises all maintenance activity.

Our property manager may engage an affiliate or third-party property manager to provide management and/or leasing services at select properties. If our property manager engages an affiliate or third-party property manager, it will be responsible for supervising and compensating such third-party property manager.

## MANAGEMENT COMPENSATION TABLE

Although we have executive officers who manage our operations, we have no paid employees. Our advisor manages our day-to-day affairs and our portfolio of investments. The following table summarizes all of the compensation and fees, including reimbursement of expenses, to be paid by us to our advisor and its affiliates, including the dealer manager, in connection with our organization, this offering and our operations, assuming we sell the maximum of \$1,000,000,000 in shares in the primary offering, we sell all shares in this offering at the highest possible sales commissions and dealer manager fees and there are no discounts in the price per share. No effect is given to any shares sold through our distribution reinvestment plan.

Compensation/ Reimbursement and Recipient <sup>(1)</sup>	Description and Method of Computation	Estimated Amount Maximum Offering
<i>Organizational and Offering Stage</i>		
Sales Commission <sup>(2)</sup> — Dealer Manager	7.0% of the gross offering proceeds from the sale of shares in the primary offering (all or a portion of which may be reallocated to participating broker-dealers).	\$70,000,000
Dealer Manager Fee <sup>(2)</sup> — Dealer Manager	3.0% of the gross offering proceeds from the sale of shares in the primary offering, a portion of which may be reallocated to participating broker-dealers (excluding funds retained for the payment of wholesaling commissions, training and education costs and overhead expenses).	\$30,000,000
Organizational and Offering Expense Reimbursement— Advisor or its affiliates	Reimbursement for organizational and offering expenses incurred on our behalf, but only to the extent that such reimbursements do not exceed actual expenses incurred by the advisor and would not cause the cumulative sales commission, the dealer manager fee and other organization and offering expenses borne by us to exceed 15.0% of gross offering proceeds from the sale of shares in the primary offering as of the date of reimbursement. We estimate that organization and offering expenses (excluding sales commissions and dealer manager fees) will represent approximately 2.0% of gross proceeds from our primary offering, or approximately \$20,000,000, if we raise the maximum offering amount.	\$20,000,000
<i>Operational Stage</i>		
Acquisition Fees <sup>(3)</sup> — Advisor or its affiliates	1.5% of (1) the cost of all investments we acquire (including our pro rata share of any indebtedness assumed or incurred in respect of the investment and exclusive of acquisition and financing coordination fees), (2) our allocable cost of investments acquired in a joint venture (including our pro rata share of the purchase price and our pro rata share of any indebtedness assumed or incurred in respect of that investment and exclusive of acquisition fees and financing coordination fees) or (3) the amount funded by us to acquire or originate a loan or other investment, including mortgage, mezzanine or bridge loans (including any third-party expenses related to such investment and exclusive of acquisition fees and financing coordination fees). Once the proceeds from the primary offering have been fully invested, the aggregate amount of acquisition fees and financing coordination fees shall not exceed 1.9% of the contract purchase price and the amount advanced for a loan or other investment, as applicable, for all the assets acquired.	\$13,200,000 (assuming no leverage is used to purchase real estate assets). \$52,800,000 (assuming a leverage ratio of 75%).
Annual Incentive Fees <sup>(7)</sup> — Moody National Hospitality Management, LLC	We, indirectly through our TRS lessee, also pay an annual incentive fee to our property manager. Such annual incentive fee is equal to 15% of the amount by which the operating profit from the properties managed by our property manager for such fiscal year (or partial fiscal year) exceeds 8.5% of the total investment of such properties.	The actual amount will depend on gross revenues of properties and the total investment in properties, as well as the NASAA REIT Guidelines 15% limitation, and,

Compensation/ Reimbursement and Recipient <sup>(1)</sup>	Description and Method of Computation	Estimated Amount Maximum Offering
	Our property manager may pay some or all of this annual fee to third-party property managers for management services.	therefore, cannot be determined at this time.
	For purposes of this fee, “total investment” means the sum of (1) the price paid to acquire a property, including closing costs, conversion costs, and transaction costs; (2) additional invested capital; and (3) any other costs paid in connection with the acquisition of the property, whether incurred pre- or post-acquisition.	
Operating Expenses <sup>(4)</sup> — Advisor	We reimburse our advisor for all expenses paid or incurred by our advisor in connection with the services provided to us, including our allocable share of the advisor’s overhead, such as rent, personnel costs, utilities and IT costs; provided, however, that we do not reimburse our advisor or its affiliates for employee costs in connection with services for which our advisor or its affiliates receives acquisition, disposition or asset management fees or for the personnel costs our advisor pays with respect to persons who serve as our executive officers.	Actual amounts are dependent upon expenses paid or incurred and the NASAA REIT Guidelines 2%/25% limitation, and therefore, cannot be determined at the present time.
Disposition Fees <sup>(5)</sup> — Advisor or its affiliates	Liquidity Stage If our advisor provides a substantial amount of services in connection with the sale of a property or other investment, as determined by our independent directors, we may pay our advisor a disposition fee equal to the lesser of (1)(a) where a brokerage commission is also payable to a third party, one-half of the aggregate brokerage commission paid, including brokerage commissions payable to third parties, or (b) where no brokerage commission is payable to any third party, the competitive real estate commission or (2) 3.0% of the contract sales price of each property or other investment sold provided, however, in no event may the aggregate of the disposition fees paid to our advisor and any real estate commissions paid to unaffiliated third parties exceed 6.0% of the contract sales price. With respect to a property held in a joint venture, the foregoing commission will be reduced to a percentage of such amount reflecting our economic interest in the joint venture.	Actual amounts depend upon the sales price of investments, and therefore cannot be determined at this time.
Special Limited Partnership Interests <sup>(6)(7)</sup> — Moody National LPOP II, LLC	The special limited partnership interest holder, was issued special limited partnership interests upon its initial investment of \$1,000 in our operating partnership and in consideration of services to be provided by our advisor, and as the holder of special limited partnership interests will be entitled to receive distributions equal to 15.0% of our net cash flows, whether from continuing operations, the repayment of loans, the disposition of assets or otherwise, but only after our stockholders have received, in the aggregate, cumulative distributions equal to their total invested capital plus a 6.0% cumulative, non-compounded annual pre-tax return on such aggregated invested capital. In addition, the special limited partnership interest holder will be entitled to a separate payment if it redeems its special limited partnership interests. The special limited partnership interests may be redeemed upon: (1) the listing of our common stock on a national securities exchange; or (2) the occurrence of certain events that result in the termination or non-renewal of our advisory agreement, in each case for an amount that Moody LPOP II would have been entitled to receive, as described above, as if our operating partnership had disposed of all of its assets at the enterprise valuation as of the date of the event triggering the redemption. If the event triggering the redemption is: (1) a listing of	Actual amounts depend upon future liquidity events and the NASAA REIT Guidelines 15% limitation, and therefore cannot be determined at this time.

Compensation/ Reimbursement and Recipient <sup>(1)</sup>	Description and Method of Computation	Estimated Amount Maximum Offering
	our shares on a national securities exchange, the enterprise valuation will be calculated based on the average share price of our shares for a specified period; or (2) an underwritten public offering, the enterprise value will be based on the valuation of the shares as determined by the initial public offering price in such offering. If the triggering event is the termination or non-renewal of our advisory agreement other than for cause, the enterprise valuation will be calculated based on an appraisal or valuation of our assets.	
<p>(1) Our advisor may elect, in its sole discretion, to have any of the fees payable to advisor paid in cash, in shares of our common stock, or a combination of both. For the purposes of the payment of such fees in shares of our common stock, prior to the termination of our offering stage, each such share will be valued at the then-current public offering price of shares of our common stock minus the maximum allowed selling commissions and dealer manager fee. At all other times, each share will be valued at a price equal to the most recently determined estimated value per share.</p> <p>(2) The sales commissions and dealer manager fee may be reduced or waived in connection with certain categories of sales, such as sales for which a volume discount applies, sales through investment advisors or banks acting as trustees or fiduciaries, sales to our affiliates and sales under our distribution reinvestment plan. We may later elect to modify our commission structure, including adopting multiple share classes or trailing commissions, depending on changes in industry regulations and best practices. Any such modification, and subsequent offers and sales, will be subject to any applicable regulatory approvals.</p> <p>(3) Our charter limits our ability to pay acquisition fees if the total of all acquisition fees and expenses relating to the purchase would exceed 6.0% of the amount actually paid or allocated in respect of the purchase, development, construction or improvement of a property, or the amount of funds advanced with respect to a loan, or the amount actually paid or allocated in respect of the purchase of other assets, in each case exclusive of acquisition fees and acquisition expenses, which amount is referred to in our charter as the “costs of investments.” Acquisition expenses include expenses related to the acquisition of real estate assets including, but not limited to, legal fees and expenses, travel and communication expenses, cost of appraisals, nonrefundable option payments or property not acquired, accounting fees and expenses, title insurance and miscellaneous expenses related to the selection and acquisition of properties whether or not acquired. Acquisition expenses are generally paid to third parties and/or in addition to the acquisition fees paid to our advisor. Under our charter, a majority of our board of directors, including a majority of the independent directors, would have to approve any acquisition fees (or portion thereof) which would cause the total of all acquisition fees and expenses relating to a real estate asset acquisition to exceed 6.0% of the contract purchase price. We have assumed acquisition expenses will constitute 0.5% of net proceeds.</p> <p>(4) Our advisor must reimburse us for the amount by which our aggregate total operating expenses for the four fiscal quarters then ended exceed the greater of (1) 2.0% of our average invested assets, or (2) 25% of our net income, unless the independent directors have determined that such excess expenses were justified based on unusual and non-recurring factors, in which case such determination, together with an explanation of the factors considered in making such determination, will be disclosed to our stockholders within 60 days after the end of the quarter in which such excess occurred. Any such determination and the reasons supporting such determination will also be recorded in the minutes of the meetings of our board of directors. For purposes of these limits, (1) “average invested assets” means the average of the aggregate monthly book value of our assets invested directly or indirectly in equity interests and loans secured by real estate during the 12-month period before deducting depreciation, bad debts or other non-cash reserves, (2) “net income” is our total revenues less our total expenses excluding depreciation, reserves for bad debts or other similar non-cash reserves, and (3) “total operating expenses” means all expenses paid or incurred by us, as determined under generally accepted accounting principles in the United States, or GAAP, that are in any way related to our operation, including investment management fees, but excluding (a) the expenses of raising capital such as organization and offering expenses, legal, audit, accounting, underwriting, brokerage, listing, registration and other fees, printing and other such expenses and taxes incurred in connection with the issuance, distribution, transfer, listing and registration of shares of our common stock; (b) interest payments; (c) taxes; (d) non-cash expenditures such as depreciation, amortization and bad debt reserves; (e) reasonable incentive fees based on the gain in the sale of our assets; (f) acquisition fees and acquisition expenses (including expenses relating to potential acquisitions that we do not close); (g) real estate commissions on the resale of investments; and (h) other expenses connected with the acquisition, disposition, management and ownership of investments (including the costs of foreclosure, insurance premiums, legal services, maintenance, repair and improvement of real property).</p> <p>(5) Although we are most likely to pay disposition fees to our advisor or one of its affiliates in our liquidity stage, these fees may also be earned during our operational stage. With respect to the disposition of investments in securities, the disposition fee may be paid to an affiliate of our advisor that is registered as a FINRA member broker-dealer if applicable FINRA rules would prohibit the payment of the disposition fee to a firm that is not a registered broker-dealer. To the extent the disposition fee is paid upon the sale of any assets other than real property, it will count against the limit on “total operating expenses” described in note 3 above.</p> <p>(6) To the extent the distributions to the special limited partnership interest holder are not paid from net sales proceeds, such amounts will count against the limit on “total operating expenses” described above in note 4. Upon the termination of our advisory agreement for “cause,” we will redeem the special limited partnership interests in exchange for a one-time cash payment of \$1.00. Except for this potential payment and as described in “Management Compensation,” the special limited partnership interest holder shall not be entitled to receive any redemption or other payment from us or our operating partnership, including any participation in the monthly distributions we intend to make to our stockholders.</p> <p>(7) The total amount of incentive fees payable to our property manager and the distributions or redemption payments payable to the special limited partnership interest holder shall be “reasonable” (as determined pursuant to the NASAA REIT Guidelines) and shall be subject to the limitations and requirements set forth in our charter. To the extent necessary to comply with the 15% limitation set forth in the NASAA REIT Guidelines, we will reduce or withhold distributions or adjust the conversion ratio upon a redemption of the special limited partnership interests.</p>		

## CONFLICTS OF INTEREST

We are subject to various conflicts of interest arising out of our relationship with our sponsor, advisor and other affiliates, including (1) conflicts related to the compensation arrangements between our advisor, certain affiliates and us, (2) conflicts with respect to the allocation of the time of our advisor and its key personnel and (3) conflicts with respect to the allocation of investment opportunities. Our independent directors have an obligation to function on our behalf in all situations in which a conflict of interest may arise and will have a fiduciary obligation to act on behalf of our stockholders. The material conflicts of interest are discussed below.

### Interests in Other Real Estate Programs

Our sponsor is a part of Moody National Companies, a group of integrated real estate investment, management and development companies that have sponsored 46 privately offered real estate programs and Moody National REIT I, a public, non-listed REIT, all of which have investment objectives generally similar to this offering and may conduct offerings concurrently with this offering.

Our advisor, Moody National Advisor II, LLC, is a subsidiary of our sponsor, Moody National REIT Sponsor, LLC. Our advisor was formed in July 2014 and has no prior operating history; however, certain members of our advisor's management team are presently, and plan in the future to continue to be, involved with a number of other real estate programs and activities sponsored by Moody National affiliates, including another publicly offered investment program, Moody National REIT I, which has primarily invested in hotel properties. Moody National REIT I is conducting a "best efforts" public offering on a continuous basis that commenced on October 12, 2012 and is expected to terminate on January 31, 2015. Moody National REIT I owns seven hotel properties, holds a joint venture interest in a hotel property and holds a joint venture interest for a mortgage note secured by a hotel property.

Our executive officers, certain directors and the key real estate professionals who perform services for us on behalf of our advisor are also officers, directors, managers or key professionals of our sponsor, our dealer manager, our property manager and other affiliated entities, including Moody National REIT I. These persons have legal obligations with respect to those entities that are similar to, and may from time to time conflict with, their obligations to us and our stockholders.

Our sponsor, advisor and other affiliates are not prohibited from engaging, directly or indirectly, in any other business or from possessing interests in any other business venture or ventures, including businesses and ventures involved in the acquisition, ownership, development, management, leasing or sale of hospitality-related real property. None of the Moody National affiliates are prohibited from raising money for another entity that makes the same types of investments that we target and we may co-invest with any such entity. All such potential co-investments will be subject to approval by our independent directors.

### Allocation of Our Affiliates' Time

We will rely on our advisor, property manager, sponsor and their affiliates, including the key real estate professionals who act on behalf of our advisor and our property manager to manage our day-to-day activities and to implement our investment strategy. Certain of these real estate professionals are also executive officers of our sponsor and its affiliates, including Moody National REIT I, and are also responsible for managing the operations of Moody National REIT I, Inc. As a result of these activities, our advisor, its employees and certain of its affiliates have conflicts of interest in allocating their time between us and other activities in which they are or may become involved. Real estate professionals acting on behalf of our advisor must determine which investment opportunities to recommend to us and other Moody National entities, including Moody National REIT I, which could reduce the number of potential investments presented to us. Our advisor and its employees devote only as much of their time to our business as our advisor, in its judgment, determines is reasonably required, which may be substantially less than their full time. Therefore, our advisor and its employees may experience conflicts of interest in allocating management time, services, and functions among us and other Moody National affiliates and any other business ventures in which they or any of their key personnel, as applicable, are or may become involved. This could result in actions that are more favorable to other Moody National affiliates than to us. However, our advisor believes that it and its affiliates have sufficient personnel to discharge fully their responsibilities to all of the activities of Moody National affiliates in which they are involved.

### Competition

We may compete with other Moody National affiliates for opportunities to acquire or sell real properties in certain geographic areas. As a result of this competition, certain investment opportunities may not be available to us. As described below, we and our advisor have developed procedures to resolve potential conflicts of interest in the allocation of investment opportunities between us and Moody National affiliates. Our advisor is required to provide information to our board of directors to enable the board of directors, including the independent directors, to determine whether such procedures are being fairly applied.

Certain of our sponsor's and advisor's affiliates, including Moody National REIT I, currently own or manage properties in geographic areas in which we have, and expect to in the future, acquire real properties. Conflicts of interest will exist to the extent that we own or manage real properties in the same geographic areas where real properties owned or managed by other Moody National affiliates are located. In such a case, a conflict could arise in the leasing of real properties in the event that we and another Moody National affiliate were to compete for the same tenants in negotiating leases, or a conflict could arise in connection with the resale of

real properties in the event that we and another Moody National affiliate were to attempt to sell similar real properties at the same time. Conflicts of interest may also exist at such time as we or our affiliates managing real property on our behalf seek to employ developers, contractors or building managers.

### **Affiliated Dealer Manager**

Our dealer manager, Moody Securities, LLC, is one of our affiliates, and this relationship may create conflicts of interest in connection with the performance of its due diligence. Even though our dealer manager has examined the information in this prospectus for accuracy and completeness, the dealer manager has not made an independent due diligence review and investigation of us or this offering of the type normally performed by an unaffiliated, independent underwriter in connection with the offering of securities. Accordingly, you do not have the benefit of such independent review and investigation. Our dealer manager will not be prohibited from acting in any capacity in connection with the offer and sale of securities offered by Moody National affiliates that may have investment objectives similar to ours.

### **Affiliated Property Manager and Affiliated Sub-Property Managers**

Our property manager and affiliate sub-property managers (if applicable) will perform hotel management services for us and our operating partnership. Our property manager and affiliate sub-property managers are affiliated with our sponsor, and in the future there is potential for a number of the members of our sponsor's management team and our property manager to overlap. As a result, we will not have the benefit of independent hotel management to the same extent as if our sponsor and our property manager, as well as any affiliate sub-property managers, were unaffiliated and did not share any employees or managers. In addition, given that our property manager is affiliated with us, our agreements with our property manager will not be at arm's-length. Therefore, we will not have the benefit of arm's-length negotiations of the type normally conducted between unrelated parties.

### **Joint Ventures with Our Affiliates**

Subject to approval of the transaction by a majority of our board of directors (including a majority of our independent directors) not otherwise interested in the transaction as fair and reasonable to us and on substantially the same terms and conditions as those received by the other joint ventures, we may enter into joint ventures or other arrangements with our affiliates to acquire, develop and manage real properties. Our advisor and its affiliates may have conflicts of interest in determining which of such entities should enter into any particular joint venture agreement. Our joint venture partners may have economic or business interests or goals that are or that may become inconsistent with our business interests or goals. In addition, should any joint venture be consummated, our advisor may face a conflict in structuring the terms of the relationship between our interests and the interest of the affiliated joint venture partner and in managing the joint venture. Since our advisor will advise our board of directors with respect to investments, agreements and transactions between our advisor's affiliates and us as joint venture partners with respect to any such joint venture will not have the benefit of arm's-length negotiations of the type normally conducted between unrelated parties.

### **Fees and Other Compensation to Our Advisor and its Affiliates**

A transaction involving the purchase or sale of real estate assets may result in the receipt of commissions, fees and other compensation by our advisor and its affiliates, including acquisition fees, hotel management and leasing fees, disposition fees and participation in non-liquidating net sale proceeds. None of the agreements that provide for fees and other compensation to our advisor and its affiliates is the result of arm's-length negotiations. All such agreements, including our advisory agreement, require approval by a majority of our board of directors, including a majority of the independent directors, not otherwise interested in such transactions, as being fair and reasonable to us and on terms and conditions no less favorable than those that could be obtained from unaffiliated entities. The timing and nature of fees and compensation to our advisor or its affiliates could create a conflict between the interests of our advisor or its affiliates and those of our stockholders.

Subject to oversight by the board of directors, our advisor has considerable discretion with respect to all decisions relating to the terms and timing of all transactions. Therefore, our advisor may have conflicts of interest concerning certain actions taken on our behalf, particularly due to the fact that fees such as the asset management fees, acquisition fees payable to our advisor, and the hotel management fees payable to our property manager, are generally payable regardless of the quality of the real properties, real estate securities and debt-related investments acquired or the services provided to us. In addition, other compensation arrangements, such as whether and when we seek to list our common stock on a national securities exchange, which listing could entitle Moody National LPOP II, LLC, as the holder of special limited partnership interests, to receive a one-time payment in connection with the redemption of its special limited partnership interests.

Each transaction we enter into with our advisor or its affiliates is subject to an inherent conflict of interest. The board of directors may encounter conflicts of interest in enforcing our rights against any affiliate in the event of a default by or disagreement with an affiliate or in invoking powers, rights or options pursuant to any agreement between us and any affiliate. The independent directors who are also otherwise disinterested in the transaction must approve each transaction between us and our advisor or any of its affiliates as being fair and reasonable to us and on terms and conditions no less favorable to us than those available from unaffiliated third parties.

## **Conflict Resolution Procedures**

As discussed above, we are subject to potential conflicts of interest arising out of our relationship with our advisor and its affiliates. These conflicts may relate to compensation arrangements, the allocation of investment opportunities, the terms and conditions on which various transactions might be entered into by us and our advisor or its affiliates and other situations in which our interests may differ from those of our advisor or its affiliates. We have adopted the procedures set forth below to address these potential conflicts of interest.

### ***Allocation of Investment Opportunities***

Many investment opportunities that are suitable for us may also be suitable for our sponsor or its affiliates, including Moody National REIT I. Additionally, our investment strategy is similar to the investment strategy of Moody National REIT I. We, our sponsor, our advisor and other affiliates, including Moody National REIT I, share certain of the same executive officers and key employees. In the event that we, or any other investment vehicle formed or managed by these real estate professionals, or any other investment vehicle sponsored by our sponsor and its affiliates, including Moody National REIT I, are in the market and seeking investments similar to those we intend to make, these real estate professionals will review the investment objectives, portfolio and investment criteria of each such investment vehicle to determine the suitability of the investment opportunity.

In connection with determining whether an investment opportunity is suitable for one or more investment vehicles sponsored by our sponsor and its affiliates, these real estate professionals may take into account such factors as they, in their discretion, deem relevant, including, amongst others, the following:

- the investment objectives and criteria of our sponsor and other affiliates;
- the cash requirements of our sponsor and its affiliates;
- the portfolio of our sponsor and its affiliates by type of investment and risk of investment;
- the policies of our sponsor and its affiliates relating to leverage;
- the anticipated cash flow of the asset to be acquired;
- the income tax effects of the purchase;
- the size of the investment; and
- the amount of funds available to our sponsor and its affiliates and the length of time such funds have been available for investment.

Following the completion of suitability determinations, these real estate professionals shall have the authority, in their sole discretion, to direct the investment opportunity to the entity for which such investment opportunity would be the most suitable. The advisory agreement requires that this determination be made in a manner that is fair without favoring our sponsor or any other affiliate. Notwithstanding the foregoing, in the event that an investment opportunity becomes available that is equally suitable, under all of the factors considered by these real estate professionals, for both us and one or more other public or private entities sponsored by our sponsor and its affiliates, or managed by these real estate professionals, including Moody National REIT I, then the entity that has had the longest period of time elapse since it was offered an investment opportunity will first be offered such investment opportunity.

If a subsequent event or development causes any investment, in the opinion of these real estate professionals, to be more appropriate for another affiliated entity, they may offer the investment to such entity. In making an allocation determination, these real estate professionals have no obligation to make any investment opportunity available to us.

### ***Independent Directors***

Our independent directors, acting as a group, will resolve potential conflicts of interest whenever they determine that the exercise of independent judgment by the board of directors or our advisor or its affiliates could reasonably be compromised. However, the independent directors may not take any action which, under Maryland law, must be taken by the entire board of directors or which is otherwise not within their authority. The independent directors, as a group, are authorized to retain their own legal and financial advisors. Among the matters the independent directors review and act upon are:

- the continuation, renewal or enforcement of our agreements with our advisor and its affiliates, including the advisory agreement with our advisor and the dealer manager agreement with our dealer manager;
- transactions with affiliates, including our directors and officers;
- awards under our long-term incentive plan; and
- pursuit of a potential liquidity event.

### ***Compensation Involving Our Advisor and its Affiliates***

The independent directors will evaluate at least annually whether the compensation that we contract to pay to our advisor and its affiliates is reasonable in relation to the nature and quality of services performed and whether such compensation is within the limits prescribed by our charter. The independent directors will supervise the performance of our advisor and its affiliates and the compensation we pay to them to determine whether the provisions of our advisory agreement are being carried out. The independent directors record their findings on the factors they deem relevant in the minutes of the meetings of our board of directors.

### ***Term of Advisory Agreement***

Each contract for the services of our advisor may not exceed one year, although there is no limit on the number of times that we may retain a particular advisor. Our charter provides that a majority of the independent directors may terminate our advisory agreement with our advisor without cause or penalty on 60 days' written notice and that we may terminate the advisory agreement immediately for fraud, criminal conduct, misconduct or negligent breach of fiduciary duty by our advisor, a material breach of the advisory agreement by our advisor or upon the bankruptcy of our advisor.

### ***Acquisition, Leases and Sales Involving Affiliates***

We will not purchase assets in which our sponsor, our advisor, any of our directors or any of their affiliates has an interest without a determination by a majority of our board of directors, including a majority of the independent directors, not otherwise interested in the transaction that such transaction is fair and reasonable to us and at a price to us no greater than the cost of the asset to the affiliated party from which we are purchasing the asset, or, if the price to us is in excess of such cost, that substantial justification for such excess exists and such excess is reasonable. In no event may we acquire or lease any such asset at an amount in excess of its current appraised value.

We will not sell or lease assets to our advisor, our sponsor, any of our directors or any of their respective affiliates without a determination by a majority of our board of directors, including a majority of the independent directors, not otherwise interested in the transaction that such transaction is fair and reasonable to us.

Our charter provides that the consideration we pay for real property will ordinarily be based on the fair market value of the property as determined by a majority of our board of directors or the members of a duly authorized committee of the board. In cases in which a majority of our independent directors so determine, and in all cases in which real property is acquired from our sponsor, our advisor, any of our directors or any of their affiliates, the fair market value shall be determined by an independent expert selected by our independent directors not otherwise interested in the transaction.

### ***Mortgage Loans Involving Affiliates***

We are prohibited from investing in or making mortgage loans unless an appraisal of the underlying property is obtained. In all cases in which the transaction is with our advisor, our sponsor, our directors or any of their respective affiliates, the appraisal must be obtained by an independent expert, and we must keep the appraisal for at least five years and make it available for inspection and duplication by any of our common stockholders. In addition, we must obtain a mortgagee's or owner's title insurance policy or commitment as to the priority of the mortgage or the condition of the title. In addition, our charter prohibits us from investing in indebtedness secured by a mortgage that is subordinate to any lien or other indebtedness of our sponsor, our advisor, any of our directors or any of our affiliates.

### ***Loans Involving Affiliates***

We will not make any loans to our advisor, our sponsor, any of our directors or any of their respective affiliates except mortgage loans for which an appraisal of the underlying property is obtained from an independent appraiser or loans to wholly owned subsidiaries. In addition, we will not borrow from our advisor, our sponsor, any of our directors or any of their respective affiliates unless a majority of our board of directors, including a majority of the independent directors, not otherwise interested in the transaction approve the transaction as being fair, competitive and commercially reasonable and no less favorable to us than comparable loans between unaffiliated parties. These restrictions on loans will only apply to advances of cash that are commonly viewed as loans, as determined by our board of directors. By way of example only, the prohibition on loans would not restrict advances of cash for legal expenses or other costs incurred as a result of any legal action for which indemnification is being sought, nor would the prohibition limit our ability to advance reimbursable expenses incurred by our directors or officers, our sponsor, our advisor or any of their respective affiliates.

### ***Other Transactions Involving Affiliates***

We will not engage in any other transaction with our sponsor, our advisor, any of our directors or any of their respective affiliates unless a majority of our board of directors, including a majority of the independent directors, not otherwise interested in such transaction approve such transaction as fair and reasonable to us and on terms and conditions no less favorable to us than those available from unaffiliated third parties.

## PRIOR PERFORMANCE SUMMARY

*The information presented in this section represents the historical experience of real estate programs, which we refer to as “prior real estate programs,” sponsored or advised by our sponsor and its affiliates. The following summary is qualified in its entirety by reference to the Prior Performance Tables, which may be found in Appendix A of this prospectus. Investors in our shares of common stock should not assume that they will experience returns, if any, comparable to those experienced by investors in such prior real estate programs. Investors who purchase our shares of common stock will not thereby acquire any ownership interest in any of the entities to which the following information relates.*

*The returns to our stockholders will depend in part on the mix of product in which we invest, the stage of investment and our place in the capital structure for our investments. Other than Moody National REIT I, the prior real estate programs discussed below were conducted through privately-held entities that were not subject to either the up-front commissions, fees and expenses associated with this offering or many of the laws and regulations to which we are subject. Other than our sponsor’s experience operating Moody National REIT I, neither our sponsor nor any of its affiliates has significant experience in operating a REIT or a publicly offered investment program. As a result, you should not assume the past performance of the prior real estate programs will be indicative of our future performance. See the Prior Performance Tables located in Appendix A.*

### Prior Investment Programs

Our sponsor, Moody National REIT Sponsor, LLC, which is solely owned and managed by Mr. Brett C. Moody, is one of the companies owned by Mr. Moody that collectively make up the Moody National Companies, a group of integrated real estate investment, management and development companies, including Moody Realty Corporation, Moody National Realty Company, L.P., Moody National Mortgage Corporation, Moody Management Corporation, Moody National Development Company, L.P., Moody National Construction, LLC, and Moody National Exchange, LLC.

Since 1996, the Moody National Companies organization has become a full service real estate firm. Moody National Mortgage Corporation has completed over 150 transactions providing its customers with over \$1 billion of debt, equity and structured financings. Moody National Realty Company has provided a complete spectrum of commercial real estate brokerage services including leasing, acquisition, disposition, marketing and consulting services. Moody National Management, L.P. specializes in managing Class A, Class B and Class C multifamily properties, as well as hospitality assets. Moody National Hospitality Management, LLC specializes in managing hospitality properties.

Between January 1, 2005 and December 31, 2013, Moody National Companies, has, directly or indirectly, sponsored 46 privately offered prior real estate programs which raised approximately \$427.9 million from more than 1,308 investors and one public, non-listed REIT, Moody National REIT I, which is still engaged in a continuous public offering that is expected to terminate on January 31, 2015.

Moody National Realty Company, L.P., or Moody National Realty Company, was formed in Texas in 1998 to sponsor public and private real estate programs and has sponsored 46 prior privately offered real estate programs. The general partner of Moody National Realty Company is Moody Realty Corporation. Our sponsor, Moody National REIT Sponsor, LLC, is the sponsor of Moody National REIT I.

As of September 30, 2014, Moody National REIT I had raised approximately \$72.7 million combined from its initial and follow-on primary offerings and invested primarily in hospitality properties. We will provide upon request to us, for no fee, a copy of the most recent Annual Report on Form 10-K filed with the SEC by Moody National REIT I and for a reasonable fee, the exhibits to such Form 10-K.

The following table sets forth information on the 46 prior privately offered real estate programs sponsored by Moody National Realty Company and the one prior publicly offered program sponsored by Moody National REIT Sponsor, LLC.

<b><u>Name of Program</u></b>	<b><u>Type of Program</u></b>	<b><u>Launch Year</u></b>	<b><u>Program Status</u></b>
Philadelphia Airport Hampton Inn	Tenant-in-Common	2005	Operating
Lansdale Homewood Suites	Tenant-in-Common	2005	Operating
Plymouth Meeting Hampton Inn	Tenant-in-Common	2005	Operating
Great Valley Hampton Inn	Tenant-in-Common	2005	Operating
Newtown Hampton Inn & Suites	Tenant-in-Common	2005	Operating
Westchase Technology Center	Tenant-in-Common	2005	Foreclosure <sup>(1)</sup>
Buffalo Speedway	Tenant-in-Common	2005	Operating
Nashville Embassy Suites	Tenant-in-Common	2005	Operating
Grapevine Hampton Inn & Suites	Tenant-in-Common	2005	Operating
Nashville Courtyard Marriott	Tenant-in-Common	2005	Closed
Orlando Radisson Inn	Tenant-in-Common	2006	Closed
Holiday Inn Memphis	Tenant-in-Common	2006	Operating

<b><u>Name of Program</u></b>	<b><u>Type of Program</u></b>	<b><u>Launch Year</u></b>	<b><u>Program Status</u></b>
Memphis Residence Inn	Tenant-in-Common	2006	Foreclosure <sup>(2)</sup>
Northbelt Office Center II	Tenant-in-Common	2006	Foreclosure <sup>(3)</sup>
Macon Fairfield Inn & Suites, Alpharetta Fairfield Inn & Suites and Kennesaw TownePlace Suites	Tenant-in-Common	2006	Operating
Atlanta Perimeter Center Fairfield Inn & Suites and Alpharetta TownePlace Suites	Tenant-in-Common	2006	Operating
Buckhead Fairfield Inn & Suites and Alpharetta Springhill Suites	Tenant-in-Common	2006	Operating
Homewood Suites Bedford, Hampton Inn Energy Corridor and TownePlace Suites Plano	Tenant-in-Common	2006	Operating
Springhill Suites Seattle	Tenant-in-Common	2006	Operating
Residence Inn Houston Medical Center and Comfort Suites Grapevine	Tenant-in-Common	2006	Operating
Springhill Suites Altamonte and Holiday Inn Express Orlando	Tenant-in-Common	2006	Foreclosure <sup>(4)</sup>
Residence Inn Lebanon	Tenant-in-Common	2006	Operating
200 Franklin Trust/Philips Corporate Headquarters	Delaware Statutory Trust	2006	Operating
Weatherford Plaza	Tenant-in-Common	2007	Operating
TownePlace Suites Miami Airport and TownePlace Suites Miami Lakes	Tenant-in-Common	2007	Foreclosure <sup>(5)</sup>
TownePlace Suites Mount Laurel	Tenant-in-Common	2007	Foreclosure <sup>(6)</sup>
TownePlace Suites Fort Worth	Tenant-in-Common	2007	Operating
Fairfield Inn Denver South, Fairfield Inn Aurora and Fairfield Inn Westminster	Tenant-in-Common	2007	Closed <sup>(7)</sup>
Renaissance Meadowlands	Tenant-in-Common	2007	Closed <sup>(7)</sup>
Courtyard Columbus Downtown	Tenant-in-Common	2007	Closed
Courtyard Columbus Airport	Tenant-in-Common	2007	Foreclosure <sup>(8)</sup>
Courtyard Willoughby	Tenant-in-Common	2007	Closed <sup>(7)</sup>
Newark TownePlace Suites	Tenant-in-Common	2007	Operating
Courtyard Lyndhurst New Jersey	Tenant-in-Common	2007	Closed
Springhill Suites Bothell	Tenant-in-Common	2007	Operating
Fairfield Inn Meadowlands	Tenant-in-Common	2007	Closed <sup>(7)</sup>
Springhill Suites Des Moines	Tenant-in-Common	2008	Closed <sup>(7)</sup>
Fairfield Inn & Suites West Des Moines	Tenant-in-Common	2008	Closed <sup>(7)</sup>
Residence Inn Torrance	Tenant-in-Common	2008	Closed <sup>(7)</sup>
Residence Inn Perimeter	Tenant-in-Common	2008	Closed <sup>(9)</sup>
Residence Inn Midtown Atlanta	Tenant-in-Common	2008	Foreclosure <sup>(10)</sup>
Springhill Suites Houston Medical Center/Reliant Park	Tenant-in-Common	2008	Operating
TownePlace Suites Portland Scarborough	Tenant-in-Common	2008	Operating
Moody National HP Grapevine Trust	Delaware Statutory Trust	2008	Operating
Springhill Suites Pittsburgh	Tenant-in-Common	2008	Operating
Moody National Financial Fund I, LLC	Private Fund	2008	Closed
Moody National REIT I, Inc.	Public Fund	2010	Operating <sup>(11)</sup>

- (1) The tenant-in-common owners of the Westchase Technology Center property declined to proceed with a lender's proposed loan modifications and allowed the lender to foreclose on the Westchase Technology Center property in July 2010.
- (2) The lender of the Residence Inn Memphis filed a foreclosure proceedings and one unaffiliated tenant-in-common owner of the Residence Inn Memphis filed for bankruptcy protection, which resulted in a court-ordered auction sale of the Residence Inn Memphis.
- (3) The 31 tenant-in-common owners of the Northbelt II Office Building, which originally acquired the property with a \$9.3 million equity investment, allowed the lender to acquire the property in an uncontested foreclosure.
- (4) The tenant-in-common owners of the Springhill Suites Altamonte property and the Holiday Inn Express Orlando property declined to proceed with a lender's proposed loan modifications and allowed the lender to foreclose on the Springhill Suites Altamonte property and the Holiday Inn Express Orlando property in December 2010 and November 2010, respectively.
- (5) The tenant-in-common owners of the TownePlace Suites Miami Airport and the TownePlace Suites Miami Lakes declined to proceed with a lender's loan modification and allowed the lender to foreclose on the TownePlace Suites Miami Airport and the TownePlace Suites Miami Lakes in July 2011.
- (6) The tenant-in-common owners of the TownePlace Suites Mount Laurel declined to proceed with a lender's loan modification and allowed the lender to foreclose on the TownePlace Suites Mount Laurel in April 2012.
- (7) This tenant-in-common program, together with six other programs, has been restructured into a limited liability company owned by the former tenant-in-common owners and a lender affiliate.

- (8) The tenant-in-common owners of the Courtyard Columbus Airport entered into a deed in lieu of foreclosure agreement with the lender in May 2012.
- (9) On May 27, 2010, a joint venture in which we indirectly owned a 75% membership interest and Brett C. Moody, our Chairman and Chief Executive Officer, indirectly owned a 25% membership interest, acquired fee simple title to the Residence Inn Perimeter property by purchasing the interests in the Residence Inn Perimeter property held by twenty-seven tenant-in-common owners. The Residence Inn property was subsequently sold to a third-party buyer on August 23, 2012.
- (10) The tenant-in-common owners of the Residence Inn Midtown Atlanta declined to infuse additional equity into the property and allowed the lender to foreclose on the property in August 2013.
- (11) Moody National REIT I's portfolio, as of September 30, 2014, is comprised of seven hotel properties located in five states with an aggregate of 941 rooms and a 74.5% joint venture interest in a mortgage note in the original principal amount of \$13,000,000 secured by a hotel property.

We intend to conduct this offering in conjunction with existing and future offerings by other public and private real estate entities sponsored by Moody National Companies. To the extent that such entities have the same or similar objectives as ours or involve similar or nearby properties, such entities may be in competition with the properties we acquire or seek to acquire.

The Prior Performance Tables included in Appendix A to this prospectus set forth information as of the dates indicated regarding certain prior real estate programs regarding: annual operating results of the prior real estate programs (Table III); the operating results of prior real estate programs which have completed their operations (no longer hold properties) (Table IV); and the sale or disposition of properties in connection with the prior real estate programs (Table V).

## Liquidity Track Record

In order to assist FINRA members in complying with FINRA Rule 2310(b)(3)(D), in this section we disclose the liquidity of prior public programs sponsored by our sponsor, Moody National REIT Sponsor, LLC. Moody National REIT I, the other publicly offered program sponsored by our sponsor, is currently in its offering and acquisition stages and has not yet reached the stated date or time period by which it may engage in a liquidity event.

## Summary Information

### Capital Raising

The total amount of funds raised from investors in the 46 prior privately offered real estate programs as of December 31, 2013 was approximately \$427.9 million. These funds were invested in real estate with an aggregate cost, including debt and investments of joint venture partners, of approximately \$1.10 billion. In addition, one of these prior real estate programs originated a loan in the amount of \$3.1 million. The total number of investors in these prior privately offered real estate programs, collectively, is more than 1,308. As of December 4, 2014, Moody National REIT I had raised approximately \$87.7 million, has invested approximately \$44.0 million of such offering proceeds in its current portfolio comprised of seven hotel properties, a joint venture interest in a hotel property and a joint venture interest in a mortgage note secured by a hotel property and has approximately \$13.0 million available for future investments. As of December 4, 2014, approximately \$923.2 million in shares of common stock remained available for sale in Moody National REIT I's follow-on public offering. Moody National REIT I expects to terminate its follow-on public offering on January 31, 2015.

### Investments

The prior privately offered real estate programs had acquired 46 properties as of December 31, 2013. Moody National REIT I owned seven hospitality real estate properties located in five states as of September 30, 2014. The tables below give further information about these properties:

## Properties Purchased - Privately Offered Prior Real Estate Programs

Location	Property Count	Properties Purchased (as a Percentage of Aggregate Purchase Price)
United States . . . . .	4	100.0%
West . . . . .	3	8.9%
Plains States . . . . .	10	6.7%
Southwest . . . . .	12	22.2%
Southeast . . . . .	16	26.7%
Northeast . . . . .		35.5%

## Properties Purchased - Moody National REIT I

Location	Property Count	Properties Purchased (as a Percentage of Aggregate Purchase Price)
United States.....	7	100.0%
West.....	1	14.29 %
Southwest.....	3	42.86 %
Southeast.....	2	28.57 %
Northeast.....	1	14.29%

Moody National REIT I also owns a joint venture interest in a mortgage note secured by a hotel property located in Grapevine, Texas.

The following table gives a percentage breakdown of the aggregate amount of the acquisition and development costs of the properties purchased by the prior privately offered real estate programs, categorized by type of property, as of December 31, 2013, all of which were existing properties.

	Existing
Office Buildings.....	13.0%
Residential.....	—
Hotels.....	87.0%
Total.....	100.0%

These properties were financed with a combination of debt and offering proceeds.

### Dispositions

As of December 31, 2013, the prior privately offered real estate programs had sold the Orlando Radisson Inn, a hotel property located in Orlando, Florida, the Residence Inn Perimeter, a hotel property located in Atlanta, Georgia, the Nashville Courtyard Marriott, a hotel property located in Nashville, Tennessee, and the Courtyard Columbus Downtown, a hotel property located in Columbus, Ohio, for an aggregate purchase price, exclusive of closing costs, of approximately \$5,600,000, \$7,350,000, \$31,000,000, and \$14,350,000, respectively. In addition, as of December 31, 2013, lenders had foreclosed on the properties, or received a deed in lieu of foreclosure on the properties, held by seven prior real estate programs.

On August 23, 2012, Moody REIT I sold its 75% joint venture interest in a hotel property located in Atlanta, Georgia commonly known as the Residence Inn by Marriot Perimeter Center to a third-party buyer for \$9,150,000.

### Three Year Summary of Acquisitions

During the three-year period ended September 30, 2014, the prior privately offered real estate programs did not acquire any properties.

During the three-year period ended September 30, 2014, Moody REIT I acquired seven properties for aggregate purchase prices of approximately \$114.27 million. The following table provides additional information about these acquisitions:

Property Name	Location	Purchase Price
Woodlands Hotel (Homewood Suites by Hilton).....	The Woodlands, TX	\$ 12,000,000
Germantown Hotel (Hyatt Place).....	Germantown, TN	11,300,000
Charleston Hotel (Hyatt Place).....	North Charleston, SC	11,800,000
Austin Hotel (Hampton Inn).....	Austin, TX	15,350,000
Grapevine Hotel (Residence Inn).....	Grapevine, TX	20,500,000
Silicon Valley Hotel (TownePlace Suites by Marriott).....	Newark, CA	10,000,000
Lyndhurst Hotel (Marriott Courtyard).....	Lyndhurst, NJ	33,322,000
<b>Totals.....</b>		<b>\$ 114,272,000</b>

The total acquisition cost for the property acquisitions was approximately \$114.27 million, of which approximately \$94.1 million was financed with mortgage financing during the three years ended September 30, 2014.

As of September 30, 2014, Moody National REIT I had total outstanding indebtedness of \$94,126,517. As of September 30, 2014, its leverage ratio, or the ratio of our total debt to total purchase price plus cash and cash equivalents, was approximately 65%, and its debt-to-net asset ratio, defined as the total debt as a percentage of our total assets (other than intangibles) less total liabilities, was approximately 178%.

## Adverse Business Developments

The recent market downturn has adversely impacted, and could continue to adversely impact, certain prior real estate programs of our sponsor's affiliates, resulting in a decrease or deferral of distributions with respect to such programs. Moody National Management, L.P. continues to seek approval to amend its master lease agreements for certain prior real estate programs to provide for either a deferral or a waiver of a portion of lease payments to program investors, and may continue to seek further amendments in the future depending upon the then-current economic conditions. Certain prior real estate programs have also requested additional cash infusions from investors to fund outstanding debt service payments. Further such requests may be necessary in the future depending upon the then-current economic conditions. These adverse developments have resulted in a reduction in payments to investors for certain prior real estate programs.

Moody National Management, L.P. has commenced negotiations with lenders to restructure loan terms with respect to certain prior real estate programs in default under existing franchise or loan agreements and may continue to do so in the future. With respect to some of these loans, the lender is pursuing various alternatives simultaneously, including initiation of foreclosure and legal proceedings and loan modifications, and the borrowers are actively working toward loan modifications. However, there is no assurance that final loan modifications will be achieved, and with respect to one of these prior real estate programs, it appears likely that the lender will consummate foreclosure proceedings. With respect to another of these prior privately offered real estate programs, the lender has filed for foreclosure and, in connection therewith, initiated a lawsuit. The master tenant and borrowers are working towards a settlement of the lawsuit and it appears likely that the lender will obtain the property in an uncontested foreclosure.

With respect to two tenant-in-common programs sponsored by Moody National Realty, the initial lender sold the loans, and the purchaser of the loans initiated foreclosure proceedings resulting in the filing for protection from these proceedings in the United States Bankruptcy Court by an affiliate of Moody National Realty owning an original equity investment in one property of approximately \$10,000 and approximately \$10,039 in the other property. These affiliates received court approval of a confirmation plan under which an agreement was reached with the lender and the loans were reinstated. With respect to one of these properties, the 28 tenant-in-common owners of the Residence Inn Midtown Atlanta, which originally acquired the project with a \$7.475 million equity investment, recently allowed the lender to foreclose on the hotel which secured the loan.

An affiliate of Moody National Realty and tenant-in-common owners in eight tenant-in-common programs collectively initiated legal proceedings against a lender. Currently, seven of these tenant-in-common programs have been restructured into a limited liability company owned by the former tenant-in-common owners and a lender affiliate, and the legal proceedings have been dismissed with respect to such programs. The lender and borrowers on one of the tenant-in-common programs entered into a settlement and reinstatement of the loan, and the legal proceedings have been dismissed with respect to such program.

The 19 tenant-in-common owners of the Westchase Technology Center property, which originally acquired the property with a \$4 million equity investment, declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on an office building which secured the loan. The 28 tenant-in-common owners of a two-hotel project (consisting of the Springhill Suites Altamonte and the Holiday Inn Express Orlando) which originally acquired the project with a \$10.2 million equity investment declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the two hotels which secured the loan. The 14 tenant-in-common owners of a two-hotel project (consisting of the TownePlace Suite Miami Airport and TownePlace Suites Miami Lakes) which originally acquired the project with a \$5.9 million equity investment declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the two hotels which secured the loan. The 16 tenant-in-common owners of the TownePlace Suites Mount Laurel, which originally acquired the property with a \$5.6 million equity investment, declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the hotel which secured the loan. Additionally, the 35 tenant-in-common owners of the Courtyard Columbus Airport, which originally acquired the property with a \$11.1 million equity investment, entered into a deed in lieu of foreclosure agreement with the lender. Further, the lender for the Residence Inn Memphis filed foreclosure proceedings and one unaffiliated tenant-in-common owner of the Residence Inn Memphis filed for bankruptcy protection, which resulted in a court-ordered auction sale of the property and a loss of the original \$6.93 million equity investment for the 17 tenant-in-common owners. In addition, the 31 tenant-in-common owners of the Northbelt II Office Building, which originally acquired the property with a \$9.3 million equity investment, allowed the lender to acquire the property in an uncontested foreclosure.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Overview

We are a newly formed company and have no operating history. We are dependent upon proceeds received from this offering to conduct our proposed activities. The capital required to purchase our hospitality investments will be obtained from the offering and from any indebtedness that we may incur. We have initially been capitalized with \$200,000, which was contributed by our sponsor in exchange for 8,000 shares of our common stock. We have no commitments to acquire any investments or to make any other material capital expenditures.

Substantially all of our business will be conducted through Moody National Operating Partnership II, LP, our operating partnership. We are the sole general partner of our operating partnership and our subsidiary, Moody Holdings II, and Moody LPOP II, affiliates of our advisor, are the initial limited partners of our operating partnership. As we accept subscriptions for shares, we will transfer substantially all of the net proceeds of the offering to our operating partnership as a capital contribution. The limited partnership agreement of our operating partnership provides that our operating partnership will be operated in a manner that will enable us to (1) satisfy the requirements for being classified as a REIT for federal income tax purposes, (2) avoid any federal income or excise tax liability and (3) ensure that our operating partnership will not be classified as a "publicly traded partnership" for purposes of Section 7704 of the Internal Revenue Code, which classification could result in our operating partnership being taxed as a corporation, rather than as a partnership. In addition to the administrative and operating costs and expenses incurred by our operating partnership in acquiring and operating our investments, our operating partnership pays all of our administrative costs and expenses, and such expenses will be treated as expenses of our operating partnership. We will experience a relative increase in liquidity as additional subscriptions for shares of our common stock are received and a relative decrease in liquidity as offering proceeds are used to acquire and operate our assets.

We do not anticipate establishing a general working capital reserve out of the proceeds of this offering during the initial stages of the offering; however, we may establish capital reserves from offering proceeds with respect to particular investments as required by our lenders or as determined by our advisor. We also may, but are not required to, establish annual cash reserves out of cash flow generated by our investments or out of net cash proceeds from the sale of our investments.

To the extent that any working capital reserve is insufficient to satisfy our cash requirements, additional funds may be provided from cash generated from operations or through short-term borrowing. In addition, subject to the limitations described in this prospectus, we may incur indebtedness in connection with the acquisition of any investment property, refinance the debt thereon, arrange for the leveraging of any previously unfinanced property or reinvest the proceeds of financing or refinancing in additional properties.

If we qualify as a REIT for federal income tax purposes, we generally will not be subject to federal income tax on income that we distribute to our stockholders. If we fail to qualify as a REIT in any taxable year after the taxable year in which we initially elect to be taxed as a REIT, we will be subject to federal income tax on our taxable income at regular corporate rates and will not be permitted to qualify for treatment as a REIT for federal income tax purposes for four years following the year in which qualification is denied. Failing to qualify as a REIT could materially and adversely affect our net income.

### Factors Which May Influence Results of Operations

#### *Economic Conditions Affecting Our Targeted Portfolio*

Adverse economic conditions affecting the hospitality sector, the geographic regions in which we plan to invest or real estate generally may have a material impact on our capital resources and the revenue or income to be derived from the operation of our hospitality investments.

#### *Offering Proceeds*

Our ability to make investments will depend upon the net proceeds raised in the offering and our ability to finance the acquisition of such hospitality assets. If we raise substantially less than the maximum offering amount, we will make fewer investments resulting in less diversification in terms of the number of investments owned, resulting in fewer sources of income. In such event, the likelihood of our profitability being affected by the performance of any one of our investments will increase. In addition, if we are unable to raise substantial funds, our fixed operating expenses, as a percentage of gross income, would be higher, which could affect our net income and results of operations.

#### *Sarbanes-Oxley Act*

The Sarbanes-Oxley Act of 2002, as amended, and related laws, regulations and standards relating to corporate governance and disclosure requirements applicable to public companies, have increased the costs of compliance with corporate governance, reporting and disclosure practices which are now required of us. These costs may have a material impact on our results of operations and could

impact our ability to pay distributions to our stockholders. Furthermore, we expect that these costs will increase in the future due to our continuing implementation of compliance programs mandated by these requirements. Any increased costs may affect our ability to pay distributions to our stockholders.

In addition, these laws, rules and regulations create new legal grounds and theories for potential administrative enforcement, civil and criminal proceedings against us in case of non-compliance, thereby increasing the risks of liability and potential sanctions against us. We expect that our efforts to comply with these laws and regulations will continue to involve significant and potentially increasing costs, and our failure to comply could result in fees, fines, penalties or administrative remedies against us.

**Critical Accounting Policies**

***General***

Below is a discussion of the accounting policies that we believe will be critical once we commence operations. We consider these policies critical because they involve significant judgments and assumptions, require estimates about matters that are inherently uncertain and because they are important for understanding and evaluating our reported financial results. These judgments affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. If management’s judgment or interpretation of the facts and circumstances relating to various transactions is different, it is possible that different accounting policies will be applied or different amounts of assets, liabilities, revenues and expenses will be recorded, resulting in a different presentation of the financial statements or different amounts reported in the financial statements. Additionally, other companies may utilize different estimates that may impact the comparability of our results of operations to those of companies in similar businesses.

***Valuation and Allocation of Real Property — Acquisition***

Upon acquisition, the purchase price of real property is allocated to the tangible assets acquired, consisting of land, buildings and tenant improvements, any assumed debt, identified intangible assets and asset retirement obligations based on their fair values. Identified intangible assets consist of above-market and below-market leases, in-place leases, in-place contracts, tenant relationships and any goodwill or gain on purchase. Acquisition costs are charged to expense as incurred. Initial valuations are subject to change during the measurement period, but the measurement period ends as soon as the information is available. The measurement period shall not exceed one year from the acquisition date.

The fair value of the tangible assets acquired consists of land, buildings, furniture, fixtures and equipment. Land values are derived from appraisals, and building values are calculated as replacement cost less depreciation or our estimates of the relative fair value of these assets using discounted cash flow analyses or similar methods. The value of the building is depreciated over the estimated useful life of thirty-nine years using the straight-line method. The value of furniture, fixtures and equipment is based on their fair value using replacement costs less depreciation.

We determine the fair value of assumed debt by calculating the net present value of the scheduled mortgage payments using interest rates for debt with similar terms and remaining maturities that we believe we could obtain. Any difference between the fair value and stated value of the assumed debt is recorded as a discount or premium and amortized over the remaining life of the loan.

In allocating the purchase price of each of our properties, our advisor makes assumptions and uses various estimates, including, but not limited to, the estimated useful lives of the assets, the cost of replacing certain assets, discount rates used to determine present values, market rental rates per square foot and the period required to lease the property up to its occupancy at acquisition as if it were vacant. Many of these estimates are obtained from independent third-party appraisals. However, we are responsible for the source and use of these estimates. These estimates are judgmental and subject to being imprecise; accordingly, if different estimates and assumptions were derived, the valuation of the various categories of our real estate assets or related intangibles could in turn result in a difference in the depreciation or amortization expense recorded in our financial statements. These variances could be material to our results of operations and financial condition.

***Valuation and Allocation of Real Property — Ownership***

Depreciation or amortization expense will be computed using the straight-line and accelerated methods based upon the following estimated useful lives:

	<b>Years</b>
Buildings and improvements .....	39
Exterior improvements .....	10-20
Equipment and fixtures .....	5-10

## ***Investment Impairments***

For real estate we may wholly own, our management will monitor events and changes in circumstances indicating that the carrying amounts of the real estate assets may not be recoverable. When such events or changes in circumstances are present, we will assess potential impairment by comparing estimated future undiscounted cash flows expected to be generated over the life of the asset and from its eventual disposition, to the carrying amount of the asset. In the event that the carrying amount exceeds the estimated future undiscounted cash flows, we will recognize an impairment loss to adjust the carrying amount of the asset to estimated fair value.

For real estate we may own through an investment in a joint venture or other similar investment structure, at each reporting date we will compare the estimated fair value of our investment to the carrying value. An impairment charge will be recorded to the extent the fair value of our investment is less than the carrying amount and the decline in value is determined to be other than a temporary decline.

In evaluating our investments for impairment, our advisor will make several estimates and assumptions, including, but not limited to, the projected date of disposition of the properties, the estimated future cash flows of the properties during our ownership and the projected sales price of each of the properties. A change in these estimates and assumptions could result in understating or overstating the book value of our investments which could be material to our financial statements.

## **Results of Operations**

As of the date of this prospectus, we are in our organizational and development stage and have not commenced operations.

## **Liquidity and Capital Resources**

Our principal demand for funds will be to acquire investments in accordance with our investment strategy, to pay operating expenses and interest on our outstanding indebtedness and to make distributions to our stockholders. Over time, we intend to generally fund our cash needs for items, other than asset acquisitions, from operations. Otherwise, we expect that our principal sources of working capital will include:

- current cash balances;
- public offerings;
- various forms of secured financing;
- equity capital from joint venture partners;
- proceeds from our distribution reinvestment plan; and
- cash from operations.

Over the short term, we believe that our sources of capital, specifically our cash balances, cash flow from operations, our ability to raise equity capital from joint venture partners and our ability to obtain various forms of secured financing will be adequate to meet our liquidity requirements and capital commitments.

Over the longer term, in addition to the same sources of capital we will rely on to meet our short-term liquidity requirements, we may also utilize additional secured and unsecured financings and equity capital from joint venture partners. We may also conduct additional public offerings. We expect these resources will be adequate to fund our operating activities, debt service and distributions, and will be sufficient to fund our ongoing acquisition activities as well as providing capital for investment in future development and other joint ventures along with potential forward purchase commitments.

If we raise substantially less funds in the offering than the maximum offering amount, we will make fewer investments resulting in less diversification and the value of an investment in us will fluctuate with the performance of the specific assets we acquire. Further, we will have certain fixed operating expenses, including certain expenses as a public REIT, regardless of whether we are able to raise substantial funds in this offering. Our inability to raise substantial funds would increase our fixed operating expenses as a percentage of gross income, reducing our net income and limiting our ability to make distributions.

We currently have no outstanding debt. Under our charter, we are prohibited from borrowing in excess of 300% of the value of our net assets, which generally approximates to 75% of the aggregate cost of our assets, though we may exceed this limit under certain circumstances.

In addition to making investments in accordance with our investment objectives, we expect to use our capital resources to make certain payments to our advisor and dealer manager. During our organization and offering stage, these payments will include payments to the dealer manager for sales commissions and the dealer manager fee and payments to our advisor for reimbursement of certain organization and offering expenses. However, our advisor has agreed to reimburse us to the extent that sales commissions, the dealer manager fee and other organization and offering expenses incurred by us exceed 15% of our gross offering proceeds. During our operating stage, we expect to make payments to our advisor in connection with the acquisition of investments, the management of our assets and costs incurred by our advisor in providing services to us.

## **Quantitative and Qualitative Disclosures about Market Risk**

We may be exposed to interest rate changes. Market fluctuations in real estate financing may affect the availability and cost of funds needed to expand our investment portfolio. In addition, restrictions upon the availability of real estate financing or high interest rates for real estate loans could adversely affect our ability to dispose of our real estate assets in the future. We will seek to limit the impact of interest rate changes on earnings and cash flows and to lower our overall borrowing costs. We may use derivative financial instruments to hedge exposures to changes in interest rates on loans secured by our real estate assets. Also, we will be exposed to both credit risk and market risk. Credit risk is the failure of the counterparty to perform under the terms of the derivative contract. If the fair value of a derivative contract is positive, the counterparty will owe us, which creates credit risk for us. If the fair value of a derivative contract is negative, we will owe the counterparty and, therefore, do not have credit risk. We will seek to minimize the credit risk in derivative instruments by entering into transactions with high-quality counterparties. Market risk is the adverse effect on the value of a financial instrument that results from a change in interest rates. The market risk associated with interest-rate contracts is managed by establishing and monitoring parameters that limit the types and degree of market risk that may be undertaken. With regard to variable rate financing, our advisor will assess our interest rate cash flow risk by continually identifying and monitoring changes in interest rate exposures that may adversely impact expected future cash flows and by evaluating hedging opportunities. Our advisor will maintain risk management control systems to monitor interest rate cash flow risk attributable to both our outstanding and forecasted debt obligations as well as our potential offsetting hedge positions. While this hedging strategy will be designed to minimize the impact on our net income and funds from operations from changes in interest rates, the overall returns on your investment may be reduced. Our board of directors has not yet established formal policies and procedures regarding our use of derivative financial instruments for hedging or other purposes.

## THE OPERATING PARTNERSHIP AGREEMENT

### General

Our operating partnership was formed on July 29, 2014 to own real property, real estate securities and debt-related investments that will be acquired and actively managed by our advisor on our behalf. We utilize an UPREIT structure generally to enable us to acquire real property in exchange for limited partnership interests from owners who desire to defer taxable gain that would otherwise normally be recognized by them upon the disposition of their real property or transfer of their real property to us in exchange for shares of our common stock or cash. In such a transaction, the property owner's goals are accomplished because the owner may contribute property to our operating partnership in exchange for limited partnership interests on a tax-free basis. These owners may also desire to achieve diversity in their investment and other benefits afforded to owners of shares of our common stock in a REIT.

We hold substantially all of our assets in our operating partnership or in subsidiary entities in which our operating partnership owns an interest, and we may make future acquisitions of real properties for limited partnership interests. If our operating partnership were to issue limited partnership interests to any person other than us or one of our subsidiaries, we likely would amend the partnership agreement to create limited partnership interests that are economically equivalent to shares and which could be submitted for redemption, payable, at our option, in cash or shares. For purposes of satisfying the asset and income tests for qualification as a REIT for federal income tax purposes, our proportionate share of the assets and income of our operating partnership will be deemed to be assets and income. We are the sole general partner of our operating partnership. Our subsidiary, Moody OP Holdings II, LLC, has contributed \$1,000 to our operating partnership in exchange for limited partnership interests and Moody National LPOP II, LLC has invested \$1,000 in exchange for special limited partnership interests. Moody OP Holdings and Moody National LPOP II, LLC are currently the only limited partners of our operating partnership. As the sole general partner of our operating partnership, we have the exclusive power to manage and conduct the business of our operating partnership.

The following is a summary of certain provisions of the limited partnership agreement of our operating partnership, or the operating partnership agreement. For more detail, you should refer to the operating partnership agreement itself, which is filed as an exhibit to the registration statement of which this prospectus is a part.

### Capital Contributions

As we accept subscriptions for shares of our common stock, we will transfer substantially all of the net offering proceeds to our operating partnership.

If our operating partnership requires additional funds at any time in excess of capital contributions made by us and our advisor, we may borrow funds from a financial institution or other lender and lend such funds to our operating partnership on the same terms and conditions as are applicable to our borrowing of such funds. In addition, we are authorized to cause our operating partnership to issue limited partnership interests for less than fair market value if we conclude in good faith that such issuance is in the best interest of our operating partnership and us. The operating partnership would also be able to issue preferred partnership interests in connection with our issuance of preferred stock or otherwise. These preferred partnership interests could have priority over common partnership interests with respect to distributions from the operating partnership, including priority over the partnership interests that we would own as a general partner.

### Operations

The operating partnership agreement requires that our operating partnership be operated in a manner that will enable us to (1) satisfy the requirements for being classified as a REIT for federal income tax purposes, unless we otherwise cease to qualify as a REIT, (2) avoid any federal income or excise tax liability, and (3) ensure that our operating partnership will not be classified as a "publicly traded partnership" for purposes of Section 7704 of the Internal Revenue Code, which classification could result in our operating partnership being taxed as a corporation, rather than as a partnership.

### Distributions and Allocations of Profits and Losses

The operating partnership agreement generally provides that, except as provided below with respect to the special limited partnership interests and except upon liquidation of our operating partnership, our operating partnership will make quarterly or more frequent distributions of cash to the partners of our operating partnership in accordance with their relative percentage interests in amounts determined by us as general partner. Upon the liquidation of our operating partnership, after payment of debts and obligations and any redemption of special limited partnership interests, any remaining assets of our operating partnership will be distributed in accordance with each partner's positive capital account balance.

The special limited partnership interest holder will be entitled to distributions from our operating partnership equal to 15.0% of distributions after the other partners, including us, have received, in the aggregate, cumulative distributions equal to their capital contributions plus a 6.0% cumulative non-compounded annual pre-tax return thereon. Depending on various factors, including the date on which shares of our common stock are purchased and the price paid for such shares of common stock, a stockholder may receive more or less than the 6.0% cumulative non-compounded annual pre-tax return on their net contributions described above prior to the commencement of distributions to the owner of the special limited partnership interests.

In addition to the administrative and operating costs and expenses incurred by our operating partnership in acquiring and operating real properties, real estate securities and debt-related investments, our operating partnership pays all our administrative costs and expenses and such expenses will be treated as expenses of our operating partnership. Such expenses include, but are not limited to:

- expenses relating to the formation and continuity of our existence;
- expenses relating to our public offering and registration of securities;
- expenses associated with the preparation and filing of any periodic reports by us under federal, state or local laws or regulations;
- expenses associated with compliance by us with applicable laws, rules and regulations; and
- our other operating or administrative costs incurred in the ordinary course of our business on behalf of our operating partnership.

### **Redemption Rights of Special Limited Partnership Interests**

The special limited partnership interests will be redeemed for a specified amount upon the earliest of: (1) the occurrence of certain events that result in the termination or non-renewal of our advisory agreement; or (2) a listing of our shares. If the triggering event is a listing of our shares, the amount of the payment will be: (1) in the event of a listing on a national securities exchange only, based on the market value of the listed shares based upon the average closing price or, if the average closing price is not available, the average of bid and ask prices, for the 30-day period beginning 120 days after such listing event; or (2) in the event of an underwritten public offering, the value of the shares based upon the initial public offering price in such offering. If the triggering event is the termination of our advisory agreement other than for cause, the amount of the payment will be based on the estimated value of our assets as determined by an independent valuation. According to the terms of the operating partnership agreement, internalization of our advisor would result in the redemption of the special limited partnership interests because our advisory agreement would be terminated upon internalization of our advisory agreement. However, as part of the negotiated consideration for the internalization, the special limited partnership interest holder might agree to amend or waive the redemption feature. Payment to the special limited partnership interest holder upon a triggering event may be paid, at such holder's discretion, in the form of: (1) shares of our common stock; or (2) a non-interest bearing promissory note. In connection with the exercise of these redemption rights, the special limited partner must make certain representations, including that the delivery of shares of our common stock upon redemption would not result in such special limited partner owning shares in excess of the ownership limits in our charter.

### **Restrictions on Transferability of Operating Partnership Interests, General Partner Withdrawal and Business Combinations**

We generally may not (1) voluntarily withdraw as the general partner of our operating partnership, (2) engage in any merger, consolidation or other business combination, except with the consent of limited partners holding more than 50% of the ownership percentage interests of the limited partners or (3) transfer our general partnership interest in our operating partnership (except to a wholly owned subsidiary). With certain exceptions, the holders of limited partnership interests may not transfer their interests in our operating partnership, in whole or in part, without our written consent, as general partner.

## STOCK OWNERSHIP

The following table sets forth the beneficial ownership of our common stock as of January 12, 2015 for each person or group that holds more than 5.0% of our common stock, for each director and executive officer and for our directors and executive officers as a group. To our knowledge, each person that beneficially owns our shares has sole voting and disposition power with regard to such shares.

Unless otherwise indicated below, each person or entity has an address in care of our principal executive offices at 6363 Woodway Drive, Suite 110, Houston, Texas 77057.

Name of Beneficial Owner <sup>(1)</sup>	Number of Shares Beneficially Owned	Percent of All Shares
Moody National REIT Sponsor, LLC .....	8,000	100%
Brett C. Moody <sup>(2)</sup> .....	8,000	100%
Robert W. Engel. ....	—	—
Douglas Y. Bech .....	—	—
Charles L. Horn .....	—	—
All Directors and Executive Officers as a group (4 persons). ....	8,000	100%

(1) Under SEC rules, a person is deemed to be a “beneficial owner” of a security if that person has or shares “voting power,” which includes the power to dispose of or to direct the disposition of such security. A person also is deemed to be a beneficial owner of any securities which that person has a right to acquire within 60 days. Under these rules, more than one person may be deemed to be a beneficial owner of the same securities and a person may be deemed to be a beneficial owner of securities as to which he or she has no economic or pecuniary interest.

(2) Includes 8,000 shares owned by Moody National REIT Sponsor, LLC, which is indirectly owned and controlled by Mr. Moody.

## DESCRIPTION OF CAPITAL STOCK

The following is a summary of the material terms of shares of our common stock as set forth in our charter and is qualified in its entirety by reference to our charter. Under our charter, we have authority to issue a total of 1,100,000,000 shares of capital stock. Of the total number of shares of capital stock authorized, 999,999,000 shares are classified as common stock with a par value of \$0.01 per share, 1,000 shares are classified as convertible stock with par value of \$0.01 per share, and 100,000,000 shares are classified as preferred stock with a par value of \$0.01 per share. Our board of directors, with the approval of a majority of the entire board of directors and without any action by our stockholders, may amend our charter from time to time to increase or decrease the aggregate number of shares of capital stock or the number of shares of capital stock of any class or series that we have authority to issue.

### Common Stock

The holders of shares of our common stock are entitled to one vote per share on all matters voted on by stockholders, including the election of our directors. Our charter does not provide for cumulative voting in the election of directors. Therefore, the holders of a majority of the outstanding shares of our common stock can elect our entire board of directors. Subject to any preferential rights of any outstanding class or series of preferred stock, the holders of shares of our common stock are entitled to such distributions as may be authorized from time to time by our board of directors out of legally available funds and declared by us and, upon liquidation, are entitled to receive all assets available for distribution to stockholders. All shares of our common stock issued in the offering will be fully paid and non-assessable shares of common stock. Holders of shares of our common stock will not have preemptive rights, which means that you will not have an automatic option to purchase any new shares of common stock that we issue, or have appraisal rights, unless our board of directors determines that appraisal rights apply, with respect to all or any classes or series of our stock, to one or more transactions occurring after the date of such determination in connection with which stockholders would otherwise be entitled to exercise such rights. Stockholders are not liable for our acts or obligations due to their status as stockholders.

Our board of directors has authorized the issuance of shares of our capital stock without certificates; therefore, we will not issue certificates for shares of our common stock. Shares of our common stock will be held in “uncertificated” form which will eliminate the physical handling and safekeeping responsibilities inherent in owning transferable share certificates and eliminate the need to return a duly executed share certificate to effect a transfer. DST Systems, Inc. acts as our registrar and as the transfer agent for shares of our common stock. Transfers can be effected simply by mailing a transfer and assignment form, which we will provide to you at no charge, to:

DST Systems, Inc.  
333 West 11th Street, 5th Floor  
Kansas City, Missouri 64105

### Preferred Stock

Our charter authorizes our board of directors to classify and reclassify any unissued shares of our common stock and preferred stock into other classes or series of stock. Prior to issuance of shares of each class or series, our board of directors is required by the MGCL and by our charter to set, subject to our charter restrictions on ownership and transfer of our stock, the terms, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of repurchase for each class or series. Thus, our board of directors could authorize the issuance of shares of common stock or preferred stock with terms or conditions which could have the effect of delaying, deferring or preventing a transaction or change in control that might involve a premium price for holders of our common stock or otherwise be in their best interest. Our board of directors has no present plans to issue preferred stock, but may do so at any time in the future without stockholder approval. The issuance of preferred stock must be approved by a majority of our independent directors not otherwise interested in the transaction, who will have access, at our expense, to our legal counsel or to independent legal counsel.

### Convertible Stock

Our authorized capital stock includes 1,000 shares of convertible stock, par value \$0.01 per share. As noted above, prior to issuance of shares of each class or series, our board of directors is required by the MGCL and by our charter to set, subject to our charter restrictions on ownership and transfer of our stock, the terms, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of repurchase for each class or series, including shares of our convertible stock. Our board of directors has no present plans to issue convertible stock, but may do so at any time in the future without stockholder approval. The issuance of convertible stock must be approved by a majority of our independent directors not otherwise interested in the transaction, who will have access, at our expense, to our legal counsel or to independent legal counsel.

## **Meetings, Special Voting Requirements and Access To Records**

An annual meeting of the stockholders will be held each year, beginning in 2016, on a specific date and time set by our board of directors. Special meetings of stockholders may be called only upon the request of a majority of the directors, a majority of the independent directors, the chairman, the chief executive officer, or the president and will be called by our secretary to act upon any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast at least 10% of the votes entitled to be cast on such matter at the meeting. Upon receipt of a written request of eligible stockholders, either in person or by mail, stating the purpose of the meeting, we will provide all stockholders, within ten days after receipt of such request, written notice either in person or by mail, of such meeting and the purpose thereof. Such meeting will be held on a date not less than 15 nor more than 60 days after the distribution of such notice, at a time and place specified in the request, or if none is specified, at a time and place convenient to stockholders. The presence either in person or by proxy of stockholders entitled to cast at least 50% of all the votes entitled to be cast at the meeting on any matter will constitute a quorum. Generally, the affirmative vote of a majority of all votes cast is necessary to take stockholder action, except as provided in the following paragraph and except that the affirmative vote of a majority of the shares represented in person or by proxy at a meeting at which a quorum is present is required to elect a director.

Under the MGCL and our charter, stockholders are generally entitled to vote at a duly held meeting at which a quorum is present on (1) the amendment of our charter, (2) our dissolution, (3) our merger or consolidation, a statutory share exchange or the sale or other disposition of all or substantially all of our assets. These matters require the affirmative vote of stockholders entitled to cast at least a majority of the votes entitled to be cast on the matter. With respect to stock owned by our advisor, directors, or any of their affiliates, neither the advisor nor such directors, nor any of their affiliates may vote or consent on matters submitted to stockholders regarding the removal of the advisor, such directors or any of their affiliates or any transaction between us and any of them. In determining the requisite percentage in interest of shares necessary to approve a matter on which our advisor, our directors or their affiliates may not vote or consent, any shares owned by any of them shall not be included.

The advisory agreement, including the selection of our advisor, is approved annually by our directors, including a majority of the independent directors. While the stockholders do not have the ability to vote to replace our advisor or to select a new advisor, stockholders do have the ability, by the affirmative vote of a majority of all the votes entitled to be cast generally in the election of directors, to remove a director from our board of directors. Any stockholder will be permitted access to all of our corporate records at all reasonable times and may inspect and copy any of them for a reasonable copying charge. Inspection of our records by the office or agency administering the securities laws of a jurisdiction will be provided upon reasonable notice and during normal business hours. An alphabetical list of the names, addresses and telephone numbers of our stockholders, along with the number of shares of our common stock held by each of them, will be maintained as part of our books and records and will be available for inspection by any stockholder or the stockholder's designated agent at our office. The stockholder list will be updated at least quarterly to reflect changes in the information contained therein. A copy of the list will be mailed to any stockholder who requests the list within 10 days of the request. A stockholder may request a copy of the stockholder list in connection with matters relating to voting rights and the exercise of stockholder rights under federal proxy laws. A stockholder requesting a list will be required to pay the reasonable costs of postage and duplication. We have the right to request that a requesting stockholder represent to us that the list will not be used to pursue commercial interests. In addition to the foregoing, stockholders have rights under Rule 14a-7 under the Exchange Act, which provides that, upon the request of investors and the payment of the expenses of the distribution, we are required to distribute specific materials to stockholders in the context of the solicitation of proxies for voting on matters presented to stockholders or, at our option, provide requesting stockholders with a copy of the list of stockholders so that the requesting stockholders may make the distribution of proxies themselves. If a proper request for the stockholder list is not honored, then the requesting stockholder will be entitled to recover certain costs incurred in compelling the production of the list as well as actual damages suffered by reason of the refusal or failure to produce the list. However, a stockholder will not have the right to, and we may require a requesting stockholder to represent that it will not, secure the stockholder list or other information for the purpose of selling or using the list for a commercial purpose not related to the requesting stockholder's interest in our affairs.

## **Tender Offers**

Our charter provides that any tender offer made by any person, including any "mini-tender" offer, must comply with most of the provisions of Regulation 14D of the Exchange Act, including the notice and disclosure requirements. Among other things, the offeror must provide us notice of such tender offer at least ten business days before initiating the tender offer. If the offeror does not comply with the provisions set forth above, the non-complying offeror will be responsible for all of our expenses in connection with that offeror's noncompliance. Our charter also prohibits any stockholder from transferring shares of stock to a person who makes a tender offer which does not comply with such provisions unless such stockholder has first offered such shares of stock to us at the tender offer price in the non-compliant tender offer.

## Restriction on Ownership of Shares of Capital Stock

For us to qualify as a REIT, no more than 50% in value of the outstanding shares of our stock may be owned, directly or indirectly through the application of certain attribution rules under the Internal Revenue Code, by any five or fewer individuals, as defined in the Internal Revenue Code to include specified entities, during the last half of any taxable year. In addition, the outstanding shares of our stock must be owned by 100 or more persons independent of us and each other during at least 335 days of a 12-month taxable year or during a proportionate part of a shorter taxable year, excluding our first taxable year for which we elect to be taxed as a REIT. In addition, we must meet requirements regarding the nature of our gross income to qualify as a REIT. One of these requirements is that at least 75% of our gross income for each calendar year must consist of rents from real property and income from other real property investments. Subject to special rules for leases to our TRS-lessees, the aggregate of the rents received by our operating partnership from any tenant will not qualify as rents from real property, which could result in our loss of REIT status, if we own, actually or constructively within the meaning of certain provisions of the Internal Revenue Code, 10% or more of the ownership interests in that tenant. To assist us in preserving our status as a REIT, among other purposes, our charter contains limitations on the ownership and transfer of shares of our stock which prohibit: (1) any person or entity from owning or acquiring, directly or indirectly, more than 9.8% of the value of the aggregate of our then outstanding capital stock or more than 9.8% of the value or number of shares, whichever is more restrictive, of the aggregate of our then outstanding common stock and (2) any transfer of or other event or transaction with respect to shares of capital stock that would result in the beneficial ownership of our outstanding shares of capital stock by fewer than 100 persons. In addition, our charter prohibits any transfer of, or other event with respect to, shares of our capital stock that (1) would result in us being “closely held” within the meaning of Section 856(h) of the Internal Revenue Code, (2) would cause us to own, actually or constructively, 9.8% or more of the ownership interests in a tenant of our real property or the real property of our operating partnership or any direct or indirect subsidiary of our operating partnership or (3) would otherwise cause us to fail to qualify as a REIT.

Our charter provides that the shares of our capital stock that, if transferred, would: (1) result in a violation of the 9.8% ownership limits; (2) result in us being “closely held” within the meaning of Section 856(h) of the Internal Revenue Code; (3) cause us to own 9.9% or more of the ownership interests in a tenant of our real property or the real property of our operating partnership or any direct or indirect subsidiary of our operating partnership; or (4) otherwise cause us to fail to qualify as a REIT, will be transferred automatically to a trust effective on the day before the purported transfer of such shares of our capital stock. We will designate a trustee of the trust that will not be affiliated with us or the purported transferee or record holder. We will also name a charitable organization as beneficiary of the trust. The trustee will receive all distributions on the shares of our capital stock in the trust and will hold such distributions in trust for the benefit of the beneficiary. The trustee also will vote the shares of capital stock in the trust and, subject to Maryland law, will have the authority to rescind as void any vote cast by the intended transferee prior to our discovery that the shares have been transferred to the trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary. However, if we have already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast the vote. The intended transferee will acquire no rights in such shares of capital stock, unless, in the case of a transfer that would cause a violation of the 9.8% ownership limits the transfer is exempted (prospectively or retroactively) by our board of directors from the ownership limits based upon receipt of information (including certain representations and undertakings from the intended transferee) that such transfer would not violate the provisions of the Internal Revenue Code for our qualification as a REIT. If the transfer to the trust would not be effective for any reason to prevent a violation of the foregoing limitations on ownership and transfer, then the transfer of that number of shares that otherwise would cause the violation will be null and void, with the intended transferee acquiring no rights in such shares. In addition, our charter provides that any transfer of shares of our capital stock that would result in shares of our capital stock being beneficially owned by fewer than 100 persons will be null and void and the intended transferee will acquire no rights in such shares of our capital stock.

Within 20 days of receiving notice from us that shares of our stock have been transferred to the trust, the trustee will sell the shares to a person designated by the trustee, whose ownership of the shares will not violate the above ownership limitations. Upon the sale, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the intended transferee and to the charitable beneficiary as follows. The intended transferee will receive an amount equal to the lesser of (1) the price paid by the intended transferee for the shares or, if the intended transferee did not give value for the shares in connection with the event causing the shares to be held in the trust (e.g., a gift, devise or other similar transaction), the “market price” (as defined in our charter) of the shares on the day of the event causing the shares to be held in the trust and (2) the price received by the trustee from the sale or other disposition of the shares. The trustee may reduce the amount payable to the intended transferee by the amount of dividends and other distributions which have been paid to the intended transferee and are owed by the intended transferee to the trustee. Any net sale proceeds in excess of the amount payable to the intended transferee will be paid immediately to the charitable beneficiary. If, prior to our discovery that shares have been transferred to the trust, the shares are sold by the intended transferee, then (1) the shares will be deemed to have been sold on behalf of the trust and (2) to the extent that the intended transferee received an amount for the shares that exceeds the amount described above that such intended transferee was entitled to receive, such excess will be paid to the trustee upon demand.

In addition, shares of our stock held in the trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer to the trust (or, in the case of a devise or gift, the market price at the time of the devise or gift) and (2) the market price on the date we, or our designee, accept the offer. We will have the right to accept the offer until the trustee has sold the shares. Upon a sale to us, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the intended transferee. We may reduce the amount payable to the intended transferee by the amount of dividends and other distributions which have been paid to the intended transferee and are owed by the intended transferee to the trustee. We may pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary.

Any person who acquires or attempts or intends to acquire shares of our capital stock in violation of the foregoing restrictions or who owns shares of our capital stock that were transferred to any such trust is required to give immediate written notice to us or, in the case of a proposed or attempted transaction, at least 15 days' prior written notice. In both cases, such persons must provide to us such other information as we may request to determine the effect, if any, of such event on our status as a REIT. The foregoing restrictions will continue to apply until our board of directors determines it is no longer in our best interest to attempt to, or to continue to qualify as a REIT or that compliance is no longer required in order for REIT qualification.

The ownership limits do not apply to a person or persons that our board of directors exempts (prospectively or retroactively) from the ownership limits upon appropriate assurances that our qualification as a REIT is not jeopardized. Any person who owns more than 5.0% (or such lower percentage applicable under Treasury Regulations) of the outstanding shares of our capital stock during any taxable year will be asked to deliver a statement or affidavit setting forth the number of shares of our capital stock beneficially owned.

## **Distributions**

We intend to make distributions on a monthly basis beginning no later than the first calendar month after the month in which the minimum offering requirements are met, and we expect to continue to make monthly distribution payments following the end of each calendar month. Once we commence paying distributions, we expect to continue paying monthly distributions unless our results of operations, our general financial condition, the general economic condition or other factors prohibit us from doing so. The timing and amount of distributions will be determined by our board of directors in its discretion and may vary from time to time. In connection with a distribution to our stockholders, our board of directors will authorize a monthly distribution for a certain dollar amount per share of our common stock. We will then calculate each stockholder's specific distribution amount for the month using daily record and declaration dates. Each stockholder's distributions will begin to accrue on the date we accept such stockholder's subscription for shares of our common stock.

We are required to make distributions sufficient to satisfy the requirements for qualification as a REIT for federal income tax purposes. Generally, income distributed will not be taxable to us under the Internal Revenue Code if we distribute at least 90% of our taxable income each year (computed without regard to the distributions paid deduction and our net capital gain). Distributions will be authorized at the discretion of our board of directors and declared by us, in accordance with our earnings, cash flow and general financial condition. Our board of directors' discretion will be directed, in substantial part, by its obligation to cause us to comply with the REIT requirements. Because we may receive income from interest or rents at various times during our fiscal year, distributions may not reflect our income earned in that particular distribution period and may be made in advance of actual receipt of funds in an attempt to make distributions relatively uniform. We are authorized to borrow money, issue new securities or sell assets to make distributions. There are no restrictions on the ability of our operating partnership to transfer funds to us.

Distributions in kind shall not be permitted, except for (1) distributions of readily marketable securities, (2) distributions of beneficial interests in a liquidating trust established for our dissolution and the liquidation of our assets in accordance with the terms of our charter or (3) distributions for which our board of directors advises each stockholder of the risks associated with direct ownership of the property, our board of directors offers each stockholder the election of receiving such in-kind distributions and in-kind distributions are made only to those stockholders that accept such offer. The receipt of marketable securities in lieu of cash distributions may cause stockholders to incur transaction expenses in liquidating the securities. We do not have any current intention to list our shares of our common stock on a national securities exchange, nor is it expected that a public market for our shares of common stock will develop.

We can give no assurance that we will pay distributions solely from our cash flow from operations in the future, especially during the period when we are raising capital and have not yet acquired a substantial portfolio of income-producing investments. Our long-term policy will be to pay distributions from cash flow from operations. However, because this is a blind pool offering, it is likely that distributions paid during the early stages of our offering and before we have acquired a substantial portfolio of real estate assets will be funded primarily from offering proceeds. Our organizational documents permit us to pay distributions from any source, including loans, our advisor's deferral of fees and expense reimbursements and offering proceeds. We have not established a limit on the amount of proceeds we may use from this offering to fund distributions. If we pay distributions from sources other than cash flow from operations, we will have fewer funds available for investments and your overall return on your investment in us will be reduced.

## Distribution Reinvestment Plan

Pursuant to our distribution reinvestment plan you may elect to have the cash distributions you receive reinvested in shares of our common stock at an initial price of \$23.75 per share; provided, however, that our board of directors may, in its sole discretion, change this price based upon changes in our estimated value per share, the then-current public offering price of shares of our common stock and other factors that our board of directors deems relevant. If we determine to change the price at which we offer shares pursuant to our distribution reinvestment plan, we do not anticipate that we will do so more frequently than quarterly. A copy of our distribution reinvestment plan is included as Appendix C to this prospectus. You may elect to participate in the distribution reinvestment plan by completing the subscription agreement, the enrollment form or by other written notice to the plan administrator. Participation in the plan will begin with the next distribution made after acceptance of your written notice. We may terminate, amend or suspend the distribution reinvestment plan for any reason at any time upon ten days' prior written notice to participants. Participation in the plan may also be terminated with respect to any person to the extent that a reinvestment of distributions in shares of our common stock would cause the share ownership limitations contained in our charter to be violated. Following any termination of our distribution reinvestment plan, all subsequent distributions to stockholders would be made in cash. No sales commissions or dealer manager fees are payable on shares sold through our distribution reinvestment plan.

Participants may acquire shares of our common stock pursuant to our distribution reinvestment plan until the earliest date upon which (1) all the common stock registered in this or future offerings to be offered under our distribution reinvestment plan is issued, (2) this offering and any future offering pursuant to our distribution reinvestment plan terminates, and we elect to deregister with the SEC the unsold amount of our common stock registered to be offered under our distribution reinvestment plan or (3) there is more than a *de minimis* amount of trading in shares of our common stock, at which time any registered shares of our common stock then available under our distribution reinvestment plan will be sold at a price equal to the fair market value of the shares of our common stock, as determined by our board of directors by reference to the applicable sales price with respect to the most recent trades occurring on or prior to the relevant distribution date. In any case, the price per share will be equal to the then-prevailing market price, which will equal the price on the national securities exchange on which such shares of common stock are listed at the date of purchase.

Stockholders who elect to participate in the distribution reinvestment plan, and who are subject to United States federal income taxation laws, will incur a tax liability on an amount equal to the fair value on the relevant distribution date of the shares of our common stock purchased with reinvested distributions, even though such stockholders have elected not to receive the distributions used to purchase those shares of common stock in cash. Under present law, the United States federal income tax treatment of that amount will be as described with respect to distributions under "Federal Income Tax Considerations—Taxation of Taxable U.S. Stockholders" in the case of a taxable U.S. stockholder (as defined therein) and as described under "Federal Income Tax Considerations—Special Tax Considerations for Non-U.S. Stockholders" in the case of a Non-U.S. Stockholder (as defined therein). However, the tax consequences of participating in our distribution reinvestment plan will vary depending upon each participant's particular circumstances, and you are urged to consult your own tax advisor regarding the specific tax consequences to you of participation in the distribution reinvestment plan.

All material information regarding the distributions to stockholders and the effect of reinvesting the distributions, including tax consequences, will be provided to our stockholders at least annually. Each stockholder participating in the distribution reinvestment plan will have an opportunity to withdraw from the plan at least annually after receiving this information.

## Share Repurchase Program

Our share repurchase program may provide an opportunity for our stockholders to have shares of our common stock repurchased, subject to certain restrictions and limitations, at a price equal to or at a discount from the current offering price per share for the shares being repurchased. No shares can be repurchased under our share repurchase program until after the first anniversary of the date of purchase of such shares; provided, however, that this holding period shall not apply to repurchases requested within two years after the death or qualifying disability of a stockholder.

Prior to the date we publish an estimated value per share of our common stock, the purchase price for shares repurchased under our share repurchase program will be at a price equal to, or at a discount from, the purchase price paid for the shares being repurchased. The discount will vary based upon the length of time that a stockholder has held the shares of our common stock subject to repurchase, as described in the following table:

Share Purchase Anniversary	Repurchase Price as a Percentage of Purchase Price
Less than One year	No Repurchase Allowed
One year	92.5%
Two years	95.0%
Three years	97.5%
Four years and longer	100.0%

After we begin providing an estimated per share value, we will repurchase shares under our share repurchase program for the lesser of the price paid for the shares by the stockholders where shares are being repurchased or 95% of the estimated per share value as determined by our board of directors. From and after the valuation date, our board of directors will determine an estimated value per share of our common stock.

Unless the shares are being repurchased in connection with a stockholder's death or qualifying disability, we may not repurchase shares unless you have held the shares for one year. Repurchase requests made within two years of death or "qualifying disability" of a stockholder will be repurchased at a price equal to the then-current public offering price or, in the case of repurchases following the conclusion of our public offering, at a price based upon our current per-share estimated value and other factors that our board of directors deems relevant. The board of directors, in its sole discretion, shall make the determination of whether a stockholder has a qualifying disability after receiving written notice from the stockholder. Generally, the board of directors will consider a stockholder to have a qualifying disability if the stockholder is (1) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (2) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the stockholder's employees. We must receive written notice within 180 days after such stockholder's qualifying disability.

We are not obligated to repurchase shares of our common stock under the share repurchase program. Notwithstanding the procedures discussed below, our board of directors may, in its sole discretion, accept or reject any share repurchase request made by any stockholder at any time.

To the extent we determine to accept share repurchase requests from our stockholders, repurchase of shares of our common stock will be made quarterly upon written request to us at least 15 days prior to the end of the applicable quarter. Repurchase requests will be honored approximately 30 days following the end of the applicable quarter. We refer to the last day of the applicable quarter as the "repurchase date." Stockholders may withdraw their repurchase request at any time up to three business days prior to the repurchase date.

We cannot guarantee that the funds set aside for the share repurchase program will be sufficient to accommodate all requests made in any quarter. In the event that we do not have sufficient funds available to repurchase all of the shares of our common stock for which repurchase requests have been submitted in any quarter, we plan to repurchase the shares of our common stock on a pro rata basis on the repurchase date. In addition, if we repurchase less than all of the shares subject to a repurchase request in any quarter, with respect to any unrepurchased shares, you can (1) withdraw your request for repurchase or (2) ask that we honor your request in a future quarter, if any, when such repurchases can be made pursuant to the limitations of the share repurchase when sufficient funds are available. Such pending requests will be honored on a pro rata basis.

To the extent our board of directors determines to accept share repurchase requests from our stockholders, we presently intend to limit the number of shares to be repurchased during any calendar year to the lesser of (1) 5.0% of the weighted average number of shares of our common stock outstanding during the prior calendar year and (2) the number of shares of our common stock that could be repurchased with the net proceeds from the sale of shares under the distribution reinvestment plan in the prior calendar year plus such additional funds as may be reserved for share repurchase by our board of directors. Shares subject to a repurchase request upon the death of a stockholder will be included in calculating the maximum number of shares that may be repurchased; however, the volume limitation will not apply to repurchases upon the death of a stockholder. There is no fee in connection with a repurchase of shares of our common stock.

The aggregate amount of repurchases under our share repurchase program is not expected to exceed the aggregate proceeds received from the sale of shares pursuant to our distribution reinvestment plan. However, to the extent that the aggregate proceeds received from the sale of shares pursuant to our distribution reinvestment plan are not sufficient to fund repurchase requests pursuant to the limitations outlined above, the board of directors may, in its sole discretion, choose to use other sources of funds to repurchase shares of our common stock. Such sources of funds could include cash on hand, cash available from borrowings and cash from liquidations of securities investments as of the end of the applicable month, to the extent that such funds are not otherwise dedicated to a particular use, such as working capital, cash distributions to stockholders or purchases of real estate assets. If funds available for our share repurchase program are not sufficient to accommodate all requests, shares will be repurchased as follows: first, pro rata as to repurchases upon the death or disability of a stockholder; next pro rata as to repurchases to stockholders subject to a mandatory distribution requirement under such stockholder's IRA; and, finally, pro rata as to all other repurchase requests.

In addition, the board of directors may, in its sole discretion, amend, suspend, or terminate the share repurchase program at any time if it determines that the funds available to fund the share repurchase program are needed for other business or operational purposes or that amendment, suspension or termination of the share repurchase program is in the best interest of our stockholders. If the board of directors decides to amend, suspend or terminate the share repurchase program, we will provide stockholders with no less than 30 days' prior written notice. Therefore, you may not have the opportunity to make a repurchase request prior to any potential termination of our share repurchase program.

## **Business Combinations**

Under the MGCL, business combinations between a Maryland corporation and an interested stockholder or the interested stockholder's affiliate are prohibited for five years after the most recent date on which the stockholder becomes an interested stockholder. For this purpose, the term "business combinations" includes mergers, consolidations, share exchanges or, in circumstances specified in the MGCL, asset transfers and issuances or reclassifications of equity securities. An "interested stockholder" is defined for this purpose as: (1) any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation's outstanding voting stock; or (2) an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding stock of the corporation. A person is not an interested stockholder under the MGCL if the board of directors approved in advance the transaction by which the person otherwise would become an interested stockholder. However, in approving the transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by the board of directors.

After the five-year prohibition, any such business combination between the corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least: (1) 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation and (2) two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares of stock held by the interested stockholder or its affiliate with whom the business combination is to be effected, or held by an affiliate or associate of the interested stockholder, voting together as a single voting group.

These super majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under the MGCL, for their shares of common stock in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares of common stock.

None of these provisions of the MGCL will apply, however, to business combinations that are approved or exempted by the board of directors of the corporation prior to the time that the interested stockholder becomes an interested stockholder. Pursuant to the business combination statute, our board of directors has exempted any business combination involving us and any person. Consequently, the five-year prohibition and the super majority vote requirements will not apply to business combinations between us and any person. As a result, any person may be able to enter into business combinations with us that may not be in the best interest of our stockholders, without compliance with the super majority vote requirements and other provisions of the statute.

Should our board of directors opt into the business combination statute in the future, it may discourage others from trying to acquire control of us and increase the difficulty of consummating any offer.

### **Business Combination with Our Advisor**

Many REITs that are listed on a national securities exchange or included for quotation on an over-the-counter market are self-administered, which means that they employ persons or agents to perform all significant management functions. The costs to perform these management functions are internal, rather than external, and no third-party fees, such as advisory fees, are paid by the REIT. We will consider becoming a self-administered REIT once our assets and income are, in our board of directors' view, of sufficient size such that internalizing some or all of the management functions performed by our advisor is in our best interests and in the best interests of our stockholders.

If our board of directors should make this determination in the future and seeks to pursue internalizing our management functions through a business combination with our advisor, or by hiring our advisor's personnel, our board of directors will form a special committee comprised entirely of our independent directors to consider and evaluate any such transaction. Unless and until definitive documentation is executed, we will not be obligated to complete a business combination with our advisor. Pursuant to the advisory agreement, we are not allowed to solicit or hire any of our advisor's personnel without our advisor's prior written consent for a one-year period following the termination of the advisory agreement.

We do not intend to pay any compensation or other remuneration to our advisor or its affiliates in connection with any internalization transaction. Subject to the approval of our board of directors, to the extent our advisor or our sponsor performs substantial services or incurs costs in connection with the internalization, we intend to pay our advisor or our sponsor for such services and reimburse our sponsor and its affiliates for any and all costs and expenses reasonably associated with the internalization.

### **Control Share Acquisitions**

The MGCL provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by a vote of at least two-thirds of the votes entitled to be cast on the matter. Shares of common stock owned by the acquiror, by officers or by employees who are directors of the corporation are not entitled to vote on the matter. "Control shares" are voting shares of stock that, if aggregated with all other shares of stock owned by the acquiror or with respect to which the acquiror has the right to vote or to direct the voting of, other than solely by virtue of a revocable proxy, would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting powers:

- one-tenth or more but less than one-third;

- one-third or more but less than a majority; or
- a majority or more of all voting power.

Control shares do not include shares of stock the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval or shares acquired directly from the corporation. Except as otherwise specified in the statute, a “control share acquisition” means the acquisition of issued and outstanding control shares. Once a person who has made or proposes to make a control share acquisition has undertaken to pay expenses and has satisfied other required conditions, the person may compel the board of directors to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares of stock. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting. If voting rights are not approved for the control shares at the meeting or if the acquiring person does not deliver an “acquiring person statement” for the control shares as required by the statute, the corporation may repurchase any or all of the control shares for their fair value, except for control shares for which voting rights have previously been approved. Fair value is to be determined for this purpose without regard to the absence of voting rights for the control shares, and is to be determined as of the date of the last control share acquisition or of any meeting of stockholders at which the voting rights for control shares are considered and not approved.

If voting rights for control shares are approved at a stockholders’ meeting and the acquiror becomes entitled to vote a majority of the shares of stock entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares of stock as determined for purposes of these appraisal rights may not be less than the highest price per share paid in the control share acquisition. Some of the limitations and restrictions otherwise applicable to the exercise of dissenters’ rights do not apply in the context of a control share acquisition.

The control share acquisition statute does not apply to shares of stock acquired in a merger or consolidation or on a stock exchange if the corporation is a party to the transaction or to acquisitions approved or exempted by the charter or bylaws of the corporation. As permitted by the MGCL, we have provided in our bylaws that the control share provisions of the MGCL will not apply to any acquisition by any person of shares of our stock, but our board of directors retains the discretion to opt into these provisions in the future.

#### **Advance Notice of Director Nominations and New Business**

Our bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to our board of directors and the proposal of business to be considered by a stockholder may be made only (1) pursuant to our notice of the meeting, (2) by or at the direction of our board of directors or (3) by a stockholder who is a stockholder of record both at the time of giving the advance notice required by our bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business and who has complied with the advance notice procedures of our bylaws. With respect to special meetings of stockholders, only the business specified in our notice of the meeting may be brought before the meeting. Nominations of individuals for election to our board of directors at a special meeting may be made only (1) by or at the direction of our board of directors or (2) provided that the special meeting has been called in accordance with our bylaws for the purpose of electing directors, by a stockholder who is a stockholder of record both at the time of giving the advance notice required by our bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice provisions of our bylaws.

#### **Subtitle 8**

Subtitle 8 of Title 3 of the MGCL, or Subtitle 8, permits the board of directors of a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in its charter or bylaws, to any or all of five provisions:

- a classified board of directors;
- a two-thirds vote requirement for removing a director;
- a requirement that the number of directors be fixed only by vote of the directors;
- a requirement that vacancies on the board of directors be filled only by the remaining directors and (if the board is classified) for the remainder of the full term of the class of directors in which the vacancy occurred; and
- a majority requirement for the calling of a stockholder-requested special meeting of stockholders.

We have elected to provide that, at such time as we are eligible to make a Subtitle 8 election, vacancies on our board of directors may be filled only by the remaining directors and for the remainder of the full term of the directorship in which the vacancy occurred. Through provisions in our charter and bylaws unrelated to Subtitle 8, we vest in our board of directors the exclusive power to fix the number of directorships; provided that the number is not fewer than three. We have not elected to be subject to the other provisions of Subtitle 8.

## Restrictions on Roll-Up Transactions

In connection with any proposed “roll-up transaction” (as defined below) involving us and the issuance of securities of an entity as defined below that would be created or would survive after the successful completion of the roll-up transaction, an appraisal of all of our assets will be obtained from a competent independent appraiser. In order to qualify as an independent appraiser for this purpose, the person or entity must have no material current or prior business or personal relationship with our advisor or directors and must be engaged to a substantial extent in the business of rendering opinions regarding the value of assets of the type held by us. If the appraisal will be included in a prospectus used to offer the securities of a roll-up entity, the appraisal shall be filed with the SEC and, if applicable, the states in which registration of such securities is sought as an exhibit to the registration statement for the offering. Our assets will be appraised on a consistent basis, and the appraisal will be based on the evaluation of all relevant information and will indicate the value of the assets as of a date immediately prior to the announcement of the proposed roll-up transaction. The appraisal will assume an orderly liquidation of our assets over a 12-month period. The terms of the engagement of the independent appraiser will clearly state that the engagement is for our benefit and the benefit of our stockholders. We will include a summary of the appraisal, indicating all material assumptions underlying the appraisal, in a report to the stockholders in connection with any proposed roll-up transaction.

A “roll-up transaction” is a transaction involving the acquisition, merger, conversion or consolidation, directly or indirectly, of us and the issuance of securities of another entity, which we refer to as a “roll-up entity,” that would be created or would survive after the successful completion of such transaction. The term roll-up transaction does not include:

- a transaction involving our securities that have been for at least 12 months listed on a national securities exchange; or
- a transaction involving our conversion to a corporate, trust, or association form if, as a consequence of the transaction, there will be no significant adverse change in any of the following: common stockholder voting rights; the term of our existence; compensation to our advisor; or our investment objectives.

In connection with a proposed roll-up transaction, the person sponsoring the roll-up transaction must offer to stockholders who vote against the proposal the choice of:

- (1) accepting the securities of a roll-up entity offered in the proposed roll-up transaction; or
- (2) one of the following:
  - (a) remaining as stockholders and preserving their interests in us on the same terms and conditions as existed previously; or
  - (b) receiving cash in an amount equal to the stockholder’s pro rata share of the appraised value of our net assets.

We are prohibited from participating in any proposed roll-up transaction:

- that would result in common stockholders having voting rights in a roll-up entity that are less than those provided in our charter, including rights with respect to the election and removal of directors, annual and special meetings, amendment of our charter and our dissolution;
- that includes provisions that would operate as a material impediment to, or frustration of, the accumulation of shares by any purchaser of the securities of the roll-up entity, except to the minimum extent necessary to preserve the tax status of such roll-up entity, or which would limit the ability of an investor to exercise the voting rights of its securities of the roll-up entity on the basis of the number of our shares held by that investor;
- in which our common stockholders’ rights to access the records of the roll-up entity will be less than those provided for in our charter and described above in “—Meetings, Special Voting Requirements and Access to Records;” or
- in which we would bear any of the costs of the roll-up transaction if our common stockholders reject the roll-up transaction.

## Reports to Stockholders

Our charter requires that we prepare an annual report and deliver it to our stockholders within 120 days after the end of each fiscal year. Among the matters that must be included in the annual report are:

- financial statements that are prepared in accordance with GAAP and are audited by our independent registered public accounting firm;
- the ratio of the costs of raising capital during the year to the capital raised;
- the aggregate amount of advisory fees and the aggregate amount of other fees paid to our advisor and any affiliate of our advisor by us or third parties doing business with us during the year;

- our total operating expenses for the year, stated as a percentage of our average invested assets and as a percentage of our net income;
- a report from the independent directors that our policies are in the best interests of our stockholders and the basis for such determination; and
- separately stated, full disclosure of all material terms, factors and circumstances surrounding any and all transactions involving us and our advisor, a director or any affiliate thereof during the year; and the independent directors are specifically charged with a duty to examine and comment in the report on the fairness of the transactions.

Under the Securities Act, we must update this prospectus upon the occurrence of certain events, such as property acquisitions. We will file updated prospectuses and prospectus supplements with the SEC. We are also subject to the informational reporting requirements of the Exchange Act, and accordingly, we will file annual reports, quarterly reports, proxy statements, when applicable, and other information with the SEC. In addition, we will provide you directly with periodic updates, including prospectuses, prospectus supplements, and annual and quarterly reports.

You may authorize us to provide such periodic updates, electronically by so indicating on your subscription agreement, or by sending us instructions in writing in a form acceptable to us to receive such periodic updates electronically. Unless you elect in writing to receive such periodic updates electronically, all documents will be provided in paper form by mail. You must have internet access to use electronic delivery. While we impose no additional charge for this service, there may be potential costs associated with electronic delivery, such as online charges. The periodic updates will be available on our website. You may access and print all periodic updates provided through this service. As periodic updates become available, we will notify you by sending you an e-mail message that will include instructions on how to retrieve the periodic updates. If our e-mail notification is returned to us as “undeliverable,” we will contact you to obtain your updated e-mail address. If we are unable to obtain a valid e-mail address for you, we will resume sending a paper copy by regular U.S. mail to your address of record. You may revoke your consent for electronic delivery at any time and we will resume sending you a paper copy of all periodic updates. However, in order for us to be properly notified, your revocation must be given to us a reasonable time before electronic delivery has commenced. We will provide you with paper copies at any time upon request. Such request will not constitute revocation of your consent to receive periodic updates electronically.

### **Estimated Value Per Share**

In addition to the information described under “— Reports to Stockholders” above, from and after 150 days following the second anniversary of breaking escrow in this offering, our advisor or another firm we choose for that purpose will establish an estimated value per share of our common stock that we will disclose in a report under the Exchange Act and in each annual report thereafter. Our estimated value per share may not be indicative of the price our stockholders would receive if they sold our shares in an arm’s-length transaction, if our shares were actively traded or if we were liquidated. In addition, the proceeds received from a liquidation of our assets may be substantially less than the offering price of our shares because certain fees and costs associated with this offering may be added to our estimated value per share in connection with changing the offering price of our shares.

### **Changes to Offering Price**

Our board of directors may, in its sole discretion, from time to time, change the price at which we offer shares to the public in the primary offering or pursuant to our distribution reinvestment plan based upon changes in our estimated value per share, as calculated by our advisor, and other factors that our board of directors deems relevant. In the event that we revise the offering price in the primary offering or pursuant to our distribution reinvestment plan, we will disclose the factors considered by our board of directors in determining such revised offering price in a supplement to this prospectus. The factors considered by our board of directors in determining to revise the offering price may include, in addition to changes in the value of the assets held in our portfolio, changes to our estimated value per share, our historical and anticipated results of operations and financial condition, our current and anticipated distribution payments, yields and offering prices of other real estate companies we deem to be substantially similar to us, our current and anticipated capital and debt structure, the recommendations and assessment of our prospective investments made by our advisor and the expected execution of our investment and operating strategies. In connection with revising the offering price, we will disclose the various factors considered by our board of directors in making such determination and the general trends or circumstances relating to the factors considered by our board of directors in making their determination.

### **Exclusive Jurisdiction for Certain Claims**

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that Court does not have jurisdiction, the United States District Court for the District of Maryland, Baltimore Division, will be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of our company, (b) any action asserting a claim of breach of any duty owed by any of our directors or officers or employees to us or to our stockholders, (c) any action asserting a claim against us or any of our directors or officers or employees arising pursuant to any provision of the MGCL or our charter or bylaws or (d) any action asserting a claim against us or any of our directors or officers or employees that is governed by the internal affairs doctrine.

## FEDERAL INCOME TAX CONSIDERATIONS

### General

The following is a summary of the material United States federal income tax considerations associated with an investment in our common stock that may be relevant to a potential stockholder. The statements made in this section of the prospectus are based upon the Internal Revenue Code and Treasury Regulations promulgated thereunder, as currently applicable, currently published administrative positions of the Internal Revenue Service and judicial decisions, all of which are subject to change, either prospectively or retroactively. We cannot assure you that any changes will not modify the conclusions expressed in counsel's opinions described herein. This summary does not constitute legal or tax advice. Moreover, this summary does not deal with all tax aspects that might be relevant to you, as a prospective stockholder, in light of your personal circumstances, nor does it deal with particular types of stockholders that are subject to special treatment under the federal income tax laws, such as insurance companies, holders whose shares are acquired through the exercise of share options or otherwise as compensation, holders whose shares are acquired through the distribution reinvestment plan or who intend to sell their shares under the share repurchase program, tax-exempt organizations (except as provided below), financial institutions or broker-dealers, or non-U.S. corporations or persons who are not citizens or residents of the United States (except as provided below). The Internal Revenue Code provisions governing the federal income tax treatment of REITs and their stockholders are highly technical and complex, and this summary is qualified in its entirety by the express language of applicable Internal Revenue Code provisions, Treasury Regulations and administrative and judicial interpretations thereof.

**We urge you, as a prospective stockholder, to consult your tax advisor regarding the specific tax consequences to you of a purchase of shares of common stock, ownership and sale of shares of common stock and of our election to be taxed as a REIT, including the federal, state, local, non-U.S. and other tax consequences of such purchase, ownership, sale and election and of potential changes in applicable tax laws.**

### REIT Qualification

We intend to elect to be taxable as a REIT commencing with our taxable year ending December 31 of the year in which our escrow period concludes and we issue shares to investors. This section of the prospectus discusses the laws governing the tax treatment of a REIT and its stockholders. These laws are highly technical and complex.

In connection with this offering, we have received an opinion from Alston & Bird LLP that we have been organized in conformity with the requirements for qualification as a REIT under the Internal Revenue Code, and our proposed method of operation will enable us to meet the requirements for qualification and taxation as a REIT.

It must be emphasized that the opinion of Alston & Bird LLP is based on various assumptions relating to our organization and operation and is conditioned upon representations and covenants made by us regarding our organization, assets and the past, present and future conduct of our business operations.

While we intend to operate so that we will qualify to be taxed as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations and the possibility of future changes in our circumstances, no assurance can be given by Alston & Bird LLP or by us that we will so qualify for any particular year. Alston & Bird LLP will have no obligation to advise us or the holders of our common stock of any subsequent change in the matters stated, represented or assumed in the opinion, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the Internal Revenue Service or any court, and no assurance can be given that the Internal Revenue Service will not challenge the conclusions set forth in such opinions.

Qualification and taxation as a REIT depends on our ability to meet on a continuing basis, through actual operating results, distribution levels and diversity of share ownership, various qualification requirements imposed upon REITs by the Internal Revenue Code, the compliance with which will not be reviewed by Alston & Bird LLP. Our ability to qualify as a REIT also requires that we satisfy certain asset tests, some of which depend upon the fair market values of assets directly or indirectly owned by us. Such values may not be susceptible to a precise determination. While we intend to continue to operate in a manner that will allow us to qualify as a REIT, no assurance can be given that the actual results of our operations for any taxable year will satisfy such requirements.

### *Taxation of Moody National REIT II, Inc.*

If we qualify for taxation as a REIT, we generally will not be subject to federal corporate income taxes on that portion of our ordinary income or capital gain that we distribute currently to our stockholders, because the REIT provisions of the Internal Revenue Code generally allow a REIT to deduct dividends paid to its stockholders. This ability substantially eliminates the federal "double taxation" on earnings (taxation at both the corporate level and stockholder level) that usually results from an investment in a corporation. Even if we qualify for taxation as a REIT, however, we will be subject to federal income taxation as follows:

- We will be taxed at regular corporate rates on our undistributed REIT taxable income, including undistributed net capital gains.
- Under some circumstances, we may be subject to "alternative minimum tax."

- If we have net income from prohibited transactions (which are, in general, sales or other dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of a trade or business), the income will be subject to a 100% tax.
- If we elect to treat property that we acquire in connection with a foreclosure of a mortgage loan or certain leasehold terminations as “foreclosure property,” we may avoid the 100% prohibited transaction tax on gain from a resale of that property (if the sale would otherwise constitute a prohibited transaction), but the income from the sale or operation of the property may be subject to corporate income tax at the highest applicable rate (currently 35%).
- If we fail to satisfy either the 75% or 95% gross income tests described below but have nonetheless maintained our qualification as a REIT because certain conditions have been met, we will be subject to a 100% tax on an amount based on the magnitude of the failure adjusted to reflect the profit margin associated with our gross income.
- If we should fail to satisfy the asset or other requirements applicable to REITs (other than failure to satisfy the gross income tests), as described below, yet nonetheless maintain our qualification as a REIT because there is reasonable cause for the failure and other applicable requirements are met, we may be subject to an excise tax. In that case, the amount of the tax will be at least \$50,000 per failure, and, in the case of certain asset test failures, will be determined as the amount of net income generated by the assets in question multiplied by the highest corporate tax rate (currently 35%).
- If we fail to distribute during each year at least the sum of (1) 85% of our REIT ordinary income for the year, (2) 95% of our REIT capital gain net income for such year and (3) any undistributed taxable income from prior periods, we will be subject to a 4% excise tax on the excess of the required distribution over the sum of (a) the amounts actually distributed plus (b) retained amounts on which corporate tax is paid by us.
- We may elect to retain and pay tax on our net long-term capital gain. In that case, a U.S. stockholder would be taxed on its proportionate share of our undistributed long-term capital gain and would receive a credit or refund for its proportionate share of the tax we paid.
- If we acquire an appreciated asset from a C corporation (a corporation generally subject to corporate tax) in a transaction in which we acquire a basis in such asset that is determined by reference to the C corporation’s basis in such asset and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then all or a portion of the gain may be subject to tax at the highest regular corporate rate, unless the C corporation made an election to treat the asset as if it were sold for its fair market value at the time of our acquisition.
- Income earned by any of our domestic TRSs will be subject to tax at regular corporate rates.
- We and our subsidiaries, including our TRSs, may be subject to state and local income, property and transfer taxes, such as mortgage recording taxes.

## **Requirements for Qualification as a REIT**

In order for us to qualify as a REIT, we must meet and continue to meet the requirements discussed below relating to our organization, sources of income, nature of assets and distributions of income to our stockholders.

### ***Organizational Requirements***

In order to qualify for taxation as a REIT under the Internal Revenue Code, we must:

- (i) be a corporation, trust or association that would be taxable as a domestic corporation but for the REIT provisions of the Internal Revenue Code;
- (ii) elect to be taxed as a REIT and satisfy relevant filing and other administrative requirements for REITs;
- (iii) be managed by one or more trustees or directors;
- (iv) have our beneficial ownership evidenced by transferable shares;
- (v) not be a financial institution or an insurance company subject to special provisions of the Internal Revenue Code;
- (vi) use the calendar year as its taxable year for federal income tax purposes;
- (vii) have at least 100 stockholders for at least 335 days of each taxable year of 12 months or during a proportionate part of a taxable year of less than 12 months; and
- (viii) not be closely held as defined for purposes of the REIT provisions of the Internal Revenue Code.

We would be treated as closely held if, during the last half of any taxable year, more than 50% in value of our outstanding capital shares is owned, directly or indirectly through the application of certain attribution rules, by five or fewer individuals, as defined in the Internal Revenue Code to include a supplemental unemployment compensation benefit plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes. Items (vii) and (viii) above will not apply until after the first taxable year for which we elect to be taxed as a REIT. If we comply with Treasury Regulations that provide procedures for ascertaining the actual ownership of our common stock for each taxable year and we did not know, and with the exercise of reasonable diligence would not have known, that we failed to meet item (viii) above for a taxable year, we will be treated as having met item (viii) for that year. In addition, our charter contains restrictions regarding ownership and transfer of shares of our common stock that are intended to assist us in continuing to satisfy the share ownership requirements in items (vii) and (viii) above. Our taxable year is the calendar year, which satisfies item (vi) above.

### ***Operational Requirements - Generally***

For purposes of the requirements described herein, any corporation that is a qualified REIT subsidiary of ours will not be treated as a corporation separate from us and all assets, liabilities and items of income, deduction and credit of our qualified REIT subsidiaries will be treated as our assets, liabilities and items of income, deduction and credit. A qualified REIT subsidiary is a corporation, other than a taxable REIT subsidiary (as described below under “—Operational Requirements—Asset Tests”), all of the capital shares of which is owned by a REIT (directly or through one or more entities that are disregarded for federal income tax purposes).

In the case of a REIT that is a partner in an entity treated as a partnership for federal income tax purposes, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the requirements described herein. In addition, the character of the assets and gross income of the partnership will retain the same character in the hands of the REIT for purposes of the REIT requirements, including the asset and gross income tests described below. As a result, our proportionate share of the assets, liabilities and items of income of our operating partnership and of any other partnership, joint venture, limited liability company or other entity treated as a partnership for federal income tax purposes in which we or our operating partnership have an interest will be treated as our assets, liabilities and items of income.

A REIT generally may jointly elect with a subsidiary corporation, whether or not wholly owned, to treat the subsidiary corporation as a TRS. A TRS cannot directly or indirectly operate or manage a lodging facility or a health care facility or directly or indirectly provide to any other person rights to any brand name under which any lodging facility or health care facility is operated. If one of our TRSs owns, directly or indirectly, more than 35%, by voting power or value, of the outstanding securities, other than certain straight-debt securities, of another corporation, such other corporation will also be treated as our TRS. A TRS or other taxable corporation is not ignored for federal income tax purposes. Accordingly, such an entity would generally be subject to corporate federal, state, local and income and franchise tax on its earnings, which may reduce the cash flow available to us and our ability to pay distributions to our stockholders.

A REIT is not treated as holding the assets of a TRS or other taxable subsidiary corporation or as receiving any income that the subsidiary earns. Rather, the stock issued by the subsidiary is an asset in the hands of the REIT, and the REIT recognizes as income the dividends, if any, that it receives from the subsidiary. Because we would not include the assets and income of a TRS in determining our compliance with the REIT income and asset tests, we may use TRSs to undertake indirectly activities that the REIT rules might otherwise preclude us from engaging in directly or through pass-through subsidiaries (e.g., activities that give rise to certain categories of income such as management fees).

Certain restrictions imposed on TRSs are intended to ensure that such entities will be subject to appropriate levels of federal income taxation. First, if a TRS has a debt to equity ratio as of the close of the taxable year exceeding 1.5 to 1, it may not deduct interest expense accrued in such year to an affiliated REIT to the extent that its net interest expense exceeds 50% of the TRS’s “adjusted taxable income” for that year. Disallowed interest may be carried forward and deducted to the extent 50% of the REITs adjusted taxable income exceeds its net interest expense in a subsequent year. In addition, if amounts are paid to a REIT or deducted by a TRS due to transactions between a REIT, its lessees or a TRS, that exceed the amount that would be paid to or deducted by a party in an arm’s-length transaction, the REIT generally will be subject to a tax equal to 100% of such excess.

We will file a TRS election with our subsidiary, whose wholly owned subsidiaries will be lessees of our hotel properties. We may form additional TRSs in the future.

### ***Operational Requirements—Gross Income Tests***

To qualify as a REIT, we must satisfy annually two gross income requirements.

- At least 75% of our gross income, excluding gross income from prohibited transactions, for each taxable year must be derived directly or indirectly from investments relating to real property or mortgages on real property and from other specified sources, including qualified temporary investment income, as described below. Gross income includes “rents from real property,” dividends received from other REITs, interest income derived from mortgage loans secured by real property (including certain types of mortgage-backed securities) and gains from the sale of real estate assets. This test is the 75% Gross Income Test.

- At least 95% of our gross income, excluding gross income from prohibited transactions, for each taxable year must be derived from the sources described above and from dividends, interest and gains from the sale or disposition of shares or securities or from any combination of the foregoing. This test is the 95% Gross Income Test.

### ***Rents from Real Property***

The rents we will receive or be deemed to receive will qualify as “rents from real property” for purposes of satisfying the gross income requirements for a REIT only if all of the following conditions are met:

- The amount of rent received from a customer must not be based in whole or in part on the income or profits of any person but may be based on a fixed percentage or percentages of gross receipts or sales.
- In general, neither we nor an owner of 10% or more of the shares of our common stock may directly or constructively own 10% or more of a tenant, which we refer to as a “Related Party Tenant,” other than a TRS. If the tenant is a TRS and the property is a “qualified lodging facility,” such TRS may not directly or indirectly operate or manage such property. Instead, the property must be operated on behalf of the TRS by a person who qualifies as an “independent contractor” and who is, or is related to a person who is, actively engaged in the trade or business of operating lodging facilities for any person unrelated to us and the TRS (such operator, an “eligible independent contractor”) at the time the TRS enters into a management agreement with such “eligible independent contractor.”
- If rent is partly attributable to personal property leased in connection with a lease of real property, the portion of the total rent that is attributable to the personal property will not qualify as rents from real property if it exceeds 15% of the total rent received under the lease.
- We normally must not operate or manage the property or furnish or render services to tenants, other than through an “independent contractor” who is adequately compensated and from whom we do not derive any income or through a TRS, provided that such services do not consist of managing or operating lodging facilities. A REIT may provide services with respect to its properties, and the income derived therefrom will qualify as “rents from real property,” if the services are “usually or customarily rendered” in connection with the rental of space only and are not otherwise considered “rendered to the occupant” primarily for its convenience. Even if the services provided by us with respect to a property are impermissible tenant services, the income derived therefrom that is not attributable to the impermissible tenant services will qualify as “rents from real property” if the income attributable to the impermissible tenant services does not exceed one percent of all amounts received or accrued with respect to that property.

Revenues from operating hotels are not qualifying income for purposes of the 75% or 95% Gross Income Tests. We must lease our hotel properties to generate rents that may be qualifying income for purposes of either the 75% or the 95% Gross Income Test. Our TRS lessee may lease (directly or through subsidiaries) any hotel properties from the operating partnership (or its affiliates), provided that the hotel property is a “qualified lodging facility” and is managed by an “eligible independent contractor.” We also may lease a hotel property to an unrelated lessee.

In order for the rent paid under the leases to constitute “rents from real property,” the leases must be respected as true leases for federal income tax purposes and not be treated as service contracts, joint ventures or some other type of arrangement. The determination of whether our leases are true leases depends on an analysis of all the surrounding facts and circumstances. In making such a determination, relevant factors may include the following:

- the intent of the parties;
- the form of the agreement;
- the degree of control over the property that is retained by the property owner (for example, whether the lessee has substantial control over the operation of the property or whether the lessee was required simply to use its best efforts to perform its obligations under the agreement); and
- the extent to which the property owner retains the risk of loss with respect to the property (for example, whether the lessee bears the risk of increases in operating expenses or the risk of damage to the property) or the potential for economic gain with respect to the property.

In addition, a contract that purports to be a service contract or a partnership agreement is treated instead as a lease of property for federal income tax purposes if the contract is properly treated as such, taking into account all relevant factors. Since the determination of whether a service contract should be treated as a lease is inherently factual, the presence or absence of any single factor may not be dispositive in every case.

We intend to structure our leases so that they qualify as true leases for federal income tax purposes. In particular, we will attempt to structure our leases so that:

- the lessor and the lessee intend for their relationship to be that of a lessor and lessee, and such relationship is documented by a lease agreement;
- the lessee has the right to exclusive possession and use and quiet enjoyment of the hotels covered by the lease during the term of the lease;
- the lessee bears the cost of, and is responsible for, day-to-day maintenance and repair of the hotels other than the cost of certain capital expenditures, and dictates through hotel managers that are eligible independent contractors, who work for the lessee during the terms of the lease, how the hotels are operated and maintained;
- the lessee bears all of the costs and expenses of operating the hotels, including the cost of any inventory used in their operation, during the term of the lease, other than real estate and personal property taxes and the cost of certain furniture, fixtures and equipment, and certain capital expenditures;
- the lessee benefits from any savings and bears the burdens of any increases in the costs of operating the hotels during the term of the lease;
- in the event of damage or destruction to a hotel, the lessee is at economic risk because it bears the economic burden of the loss in income from operation of the hotels subject to the right, in certain circumstances, to the abatement of rent during the period of repair and restoration to the extent the hotel is not tenantable;
- the lessee generally indemnifies the lessor against all liabilities imposed on the lessor during the term of the lease by reason of (i) injury to persons or damage to property occurring at the hotels or (ii) the lessee's use, management, maintenance or repair of the hotels;
- the lessee is obligated to pay, at a minimum, substantial base rent for the period of use of the hotels under the lease;
- the lessee stands to incur substantial losses or reap substantial gains depending on how successfully it, through the hotel managers, who work for the lessees during the terms of the leases, operates the hotels;
- each lease that we have entered into, at the time we entered into it (or at any time that any such lease is subsequently renewed or extended) enables the tenant to derive a meaningful profit, after expenses and taking into account the risks associated with the lease, from the operation of the hotels during the term of its leases; and
- upon termination of each lease, the applicable hotel is expected to have a substantial remaining useful life and substantial remaining fair market value.

Investors should be aware that there are no controlling Treasury regulations, published rulings or judicial decisions involving leases with terms substantially the same as our leases that discuss whether such leases constitute true leases for federal income tax purposes. If our leases are characterized as service contracts or partnership agreements, rather than as true leases, or disregarded altogether for tax purposes, part or all of the payments that our operating partnership and its subsidiaries receive from the TRS lessees may not be considered rent or may not otherwise satisfy the various requirements for qualification as "rents from real property." In that case, we would not be able to satisfy either the 75% or 95% Gross Income Test and, as a result, would lose our REIT status unless we qualify for relief.

As described above, in order for the rent that we receive to constitute "rents from real property," several other requirements must be satisfied. One requirement is that percentage rent must not be based in whole or in part on the income or profits of any person. Percentage rent, however, will qualify as "rents from real property" if it is based on percentages of receipts or sales and the percentages:

- are fixed at the time the percentage leases are entered into;
- are not renegotiated during the term of the percentage leases in a manner that has the effect of basing percentage rent on income or profits; and
- conform with normal business practice.

More generally, percentage rent will not qualify as "rents from real property" if, considering the leases and all the surrounding circumstances, the arrangement does not conform with normal business practice, but is in reality used as a means of basing the percentage rent on income or profits.

Second, we must not own, actually or constructively, 10% or more of the stock or the assets or net profits of any lessee (a "related party tenant"), other than a TRS. The constructive ownership rules generally provide that, if 10% or more in value of our shares is owned, directly or indirectly, by or for any person, we are considered as owning the stock owned, directly or indirectly, by or for such person. We currently intend to lease all of our hotels to TRS lessees. In addition, our declaration of trust prohibits transfers of our

shares of beneficial interest that would cause us to own actually or constructively, 10% or more of the ownership interests in any non-TRS lessee. Based on the foregoing, we should never own, actually or constructively, 10% or more of any lessee other than a TRS. However, because the constructive ownership rules are broad and it is not possible to monitor continually direct and indirect transfers of our shares of beneficial interest, no absolute assurance can be given that such transfers or other events of which we have no knowledge will not cause us to own constructively 10% or more of a lessee (or a subtenant, in which case only rent attributable to the subtenant is disqualified) other than a TRS at some future date.

As described above, we may own up to 100% of the capital stock of one or more TRSs. A TRS is a fully taxable corporation that generally may engage in any business, including the provision of customary or noncustomary services to tenants of its parent REIT, except that a TRS may not directly or indirectly operate or manage any lodging facilities or health care facilities or provide rights to any brand name under which any lodging or health care facility is operated, unless such rights are provided to an “eligible independent contractor” to operate or manage a lodging or health care facility if such rights are held by the TRS as a franchisee, licensee, or in a similar capacity and such hotel is either owned by the TRS or leased to the TRS by its parent REIT. A TRS will not be considered to operate or manage a qualified lodging facility solely because the TRS directly or indirectly possesses a license, permit, or similar instrument enabling it to do so. Additionally, a TRS that employs individuals working at a qualified lodging facility outside the United States will not be considered to operate or manage a qualified lodging facility located outside of the United States, as long as an “eligible independent contractor” is responsible for the daily supervision and direction of such individuals on behalf of the TRS pursuant to a management agreement or similar service contract. However, rent that we receive from a TRS with respect to any property will qualify as “rents from real property” as long as the property is a “qualified lodging facility” and such property is operated on behalf of the TRS by a person from whom we derive no income who is adequately compensated, who does not, directly or through its shareholders, own more than 35% of our shares, taking into account certain ownership attribution rules, and who is, or is related to a person who is, actively engaged in the trade or business of operating “qualified lodging facilities” for any person unrelated to us and the TRS lessee (an “eligible independent contractor”) at the time the TRS enters into a management agreement with such “eligible independent contractor.” A “qualified lodging facility” is a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis, unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility. A “qualified lodging facility” includes customary amenities and facilities operated as part of, or associated with, the lodging facility as long as such amenities and facilities are customary for other properties of a comparable size and class owned by other unrelated owners.

We intend to acquire hotels that we believe constitute qualified lodging facilities and to have our TRS lessees engage independent third-party hotel managers that qualify as “eligible independent contractors” to operate such hotels on behalf of such TRS lessees.

Third, the rent attributable to the personal property leased in connection with the lease of a hotel must not be greater than 15% of the total rent received under the lease. The rent attributable to the personal property contained in a hotel is the amount that bears the same ratio to total rent for the taxable year as the average of the fair market values of the personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real and personal property contained in the hotel at the beginning and at the end of such taxable year (the “personal property ratio”). To comply with this limitation, a TRS lessee may acquire furnishings, equipment and other personal property. We intend to monitor the relative value of personal property used with respect to our hotels, with the intention that either the personal property ratio is less than 15% or that any rent attributable to excess personal property, when taken together with all of our other nonqualifying income, will not jeopardize our ability to qualify as a REIT. There can be no assurance, however, that the IRS would not challenge our calculation of a personal property ratio, or that a court would not uphold such assertion. If such a challenge were successfully asserted, we could fail to satisfy the 75% or 95% Gross Income Test and thus potentially lose our REIT qualification.

Fourth, we generally cannot furnish or render services to the tenants of our hotels, or manage or operate our properties, other than through an independent contractor who is adequately compensated and from whom we do not derive or receive any income. Furthermore, our TRSs may provide customary and noncustomary services to our tenants without tainting our rental income from such properties, although any such services cannot consist of operating or managing hotels. We need not provide services through an “independent contractor” or TRS but instead may provide services directly to our tenants, if the services are “usually or customarily rendered” in connection with the rental of space for occupancy only and are not considered to be provided for the tenants’ convenience. In addition, we may provide a minimal amount of “noncustomary” services to the tenants of a property, other than through an independent contractor or a TRS, as long as our income from the services does not exceed 1% of our income from the related property. We will not perform any services other than customary ones for our lessees, unless such services are provided through independent contractors or TRSs or would not otherwise jeopardize our tax status as a REIT.

#### ***Other Income***

Interest income constitutes qualifying mortgage interest for purposes of the 75% Gross Income Test to the extent that the interest is paid on an obligation that is secured by a mortgage on real property. If we receive interest income with respect to a mortgage loan that is secured by both real property and other property, and the highest principal amount of the loan outstanding during a taxable year exceeds the fair value of the real property on the date that we committed to acquire or originated the mortgage loan, the interest

income will be apportioned between the real property and the other property, and our income from the loan will qualify for purposes of the 75% Gross Income Test only to the extent that the interest is allocable to the real property. Even if a loan is not secured by real property or is undersecured, the income that it generates generally will qualify for purposes of the 95% Gross Income Test.

To the extent that the terms of a loan provide for contingent interest that is based on the cash proceeds realized upon the sale of the property securing the loan, or a shared appreciation provision, income attributable to the participation feature will be treated as gain from sale of the underlying property, which generally will be qualifying income for purposes of both the 75% and 95% Gross Income Tests provided that the property is not inventory or dealer property in the hands of the borrower or the REIT.

To the extent that a REIT derives interest income from a mortgage loan where all or a portion of the amount of interest payable is contingent, such income generally will qualify for purposes of the gross income tests only if it is based upon the gross receipts or sales, and not the net income or profits, of the borrower or lessee. This limitation does not apply, however, where the borrower leases substantially all of its interest in the property to tenants or subtenants, to the extent that the rental income derived by the borrower or lessee, as the case may be, would qualify as rents from real property had it been earned directly by a REIT.

We may, from time to time, enter into hedging transactions. Any such hedging transactions could take a variety of forms, including the use of derivative instruments such as interest rate swap contracts, interest rate cap or floor contracts futures or forward contracts and options. Any income or gain derived by us from transactions that hedge certain risks will not be treated as gross income for purposes of either the 75% or the 95% Gross Income Test, provided specific requirements are met. Such requirements include that the hedging transaction be properly identified within prescribed time periods and that the transaction either (1) hedges risks associated with indebtedness issued by us that is incurred to acquire or carry “real estate assets” (as described below under “—Asset Tests”) or (2) manages the risks of currency fluctuations with respect to income or gain that qualifies under the 75% or 95% Gross Income Test (or assets that generate such income). We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT.

Certain foreign currency gains will be excluded from gross income for purposes of one or both of the gross income tests. “Real estate foreign exchange gain” will be excluded from gross income for purposes of the 75% and 95% gross income tests. Real estate foreign exchange gain generally includes foreign currency gain attributable to any item of income or gain that is qualifying income for purposes of the 75% gross income test, foreign currency gain attributable to the acquisition or ownership of (or becoming or being the obligor under) obligations secured by mortgages on real property or on interests in real property and certain foreign currency gain attributable to certain “qualified business units” of a REIT. “Passive foreign exchange gain” will be excluded from gross income for purposes of the 95% gross income test. Passive foreign exchange gain generally includes real estate foreign exchange gain as described above, and also includes foreign currency gain attributable to any item of income or gain that is qualifying income for purposes of the 95% gross income test and foreign currency gain attributable to the acquisition or ownership of (or becoming or being the obligor under) obligations. These exclusions for real estate foreign exchange gain and passive foreign exchange gain do not apply to any certain foreign currency gain derived from dealing, or engaging in substantial and regular trading, in securities. Such gain is treated as nonqualifying income for purposes of both the 75% and 95% gross income tests.

Prior to the making of investments in real estate assets, we may invest the net offering proceeds in liquid assets such as government securities or certificates of deposit. For purposes of the 75% Gross Income Test, income attributable to a stock or debt instrument purchased with the proceeds received by a REIT in exchange for stock in the REIT (other than amounts received pursuant to a distribution reinvestment plan) constitutes qualified temporary investment income if such income is received or accrued during the one-year period beginning on the date the REIT receives such new capital. To the extent that we hold any proceeds of the offering for longer than one year, we may invest those amounts in less liquid investments such as mortgage backed securities, maturing mortgage loans purchased from mortgage lenders or shares of common stock in other REITs to satisfy the 75% and 95% Gross Income Tests and the Asset Tests described below.

We may establish taxable REIT subsidiaries to hold assets generating non-qualifying income. Dividends we receive from our taxable REIT subsidiaries will be qualifying income for purposes of the 95% Gross Income Test but not the 75% Gross Income Test.

*Prohibited Transactions.* A REIT will incur a 100% tax on the net income (including foreign currency gain) derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. We believe that none of our assets will be held primarily for sale to customers and that a sale of any of our assets will not be in the ordinary course of our business. Whether a REIT holds an asset “primarily for sale to customers in the ordinary course of a trade or business” depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset. A safe harbor to the characterization of the sale of property by a REIT as a prohibited transaction and the 100% prohibited transaction tax is available if the following requirements are met:

- the REIT has held the property for not less than two years;
- the aggregate expenditures made by the REIT, or any partner of the REIT, during the two-year period preceding the date of the sale that are includable in the basis of the property do not exceed 30% of the selling price of the property;

- either (i) during the year in question, the REIT did not make more than seven sales of property other than foreclosure property or sales to which Section 1033 of the Code applies, (ii) the aggregate adjusted bases of all such properties sold by the REIT during the year did not exceed 10% of the aggregate bases of all of the assets of the REIT at the beginning of the year or (iii) the aggregate fair market value of all such properties sold by the REIT during the year did not exceed 10% of the aggregate fair market value of all of the assets of the REIT at the beginning of the year;
- in the case of property not acquired through foreclosure or lease termination, the REIT has held the property for at least two years for the production of rental income; and
- if the REIT has made more than seven sales of non-foreclosure property during the taxable year, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor from whom the REIT derives no income.

We generally will attempt to comply with the terms of the safe harbor. We cannot assure you, however, that we can comply with the safe harbor or that we will avoid owning property that may be characterized as property that we hold “primarily for sale to customers in the ordinary course of a trade or business.” The 100% tax will not apply to gains from the sale of property that is held through a TRS or other taxable corporation, although such income will be taxed to the corporation at regular corporate income tax rates.

**Foreclosure Property.** We will be subject to tax at the maximum corporate rate on any net income from foreclosure property, which includes certain foreign currency gains and related deductions, other than income that otherwise would be qualifying income for purposes of the 75% gross income test, less expenses directly connected with the production of that income. However, gross income from foreclosure property will qualify under the 75% and 95% gross income tests. Foreclosure property is any real property, including interests in real property, and any personal property incident to such real property:

- that is acquired by a REIT as the result of the REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default or default was imminent on a lease of such property or on indebtedness that such property secured;
- for which the related loan was acquired by the REIT at a time when the default was not imminent or anticipated; and
- for which the REIT makes a proper election to treat the property as foreclosure property.

A REIT will not be considered to have foreclosed on a property where the REIT takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss except as a creditor of the mortgagor. Property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property, or longer if an extension is granted by the Secretary of the Treasury. However, this grace period terminates and foreclosure property ceases to be foreclosure property on the first day:

- on which a lease is entered into for the property that, by its terms, will give rise to income that does not qualify for purposes of the 75% gross income test, or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify for purposes of the 75% gross income test;
- on which any construction takes place on the property, other than completion of a building or any other improvement, where more than 10% of the construction was completed before default became imminent; or
- which is more than 90 days after the day on which the REIT acquired the property and the property is used in a trade or business which is conducted by the REIT, other than through an independent contractor from whom the REIT itself does not derive or receive any income.

#### ***Failure To Satisfy the Gross Income Tests***

Notwithstanding our failure to satisfy one or both of the 75% and 95% Gross Income Tests for any taxable year, we may still qualify as a REIT for that year if we are eligible for relief under specific provisions of the Internal Revenue Code. These relief provisions generally will be available if:

- our failure to meet these tests was due to reasonable cause and not due to willful neglect;
- we attach a schedule of our income sources to our federal income tax return; and
- any incorrect information on the schedule is not due to fraud with intent to evade tax.

It is not possible, however, to state whether, in all circumstances, we would be entitled to the benefit of these relief provisions.

### ***Operational Requirements — Asset Tests***

At the close of each quarter of each taxable year, starting with the taxable year with respect to which we elect to be taxed as a REIT, we also must satisfy four tests, which we refer to as “Asset Tests,” relating to the nature and diversification of our assets.

- First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and government securities. The term “real estate assets” includes real property, mortgages on real property, shares of common stock in other qualified REITs and property attributable to the temporary investment of new capital as described above.
- Second, no more than 25% of our total assets may be represented by securities other than those in the 75% asset class.
- Third, for securities not in the 75% asset class, the value of any one issuer’s securities that we own may not exceed 5% of the value of our total assets, and we may not own more than 10% of the voting power or value of any one issuer’s outstanding securities. For these purposes, the term “securities” does not include the equity or debt securities of a qualified REIT subsidiary of ours or an equity interest in any entity treated as a partnership for federal tax purposes.
- Fourth, no more than 25% of the value of our total assets may consist of the securities of one or more taxable REIT subsidiaries.

For purposes of the 10% value test, the term “securities” does not include:

- “Straight debt” securities, which is defined as a written unconditional promise to pay on demand or on a specified date a sum certain in money if (i) the debt is not convertible, directly or indirectly, into equity, and (ii) the interest rate and interest payment dates are not contingent on profits, the borrower’s discretion, or similar factors. “Straight debt” securities do not include any securities issued by a partnership or a corporation in which we or any controlled TRS (i.e., a TRS in which we own directly or indirectly more than 50% of the voting power or value of the stock) hold non-“straight debt” securities that have an aggregate value of more than 1% of the issuer’s outstanding securities. However, “straight debt” securities include debt subject to the following contingencies:
  - a contingency relating to the time of payment of interest or principal, as long as either (i) there is no change to the effective yield of the debt obligation, other than a change to the annual yield that does not exceed the greater of 0.25% or 5% of the annual yield, or (ii) neither the aggregate issue price nor the aggregate face amount of the issuer’s debt obligations held by us exceeds \$1 million and no more than 12 months of unaccrued interest on the debt obligations can be required to be prepaid; and
  - a contingency relating to the time or amount of payment upon a default or prepayment of a debt obligation, as long as the contingency is consistent with customary commercial practice;
- Any loan to an individual or an estate;
- Any “section 467 rental agreement,” other than an agreement with a related party tenant;
- Any obligation to pay “rents from real property”;
- Certain securities issued by governmental entities;
- Any security issued by a REIT;
- Any debt instrument issued by an entity treated as a partnership for federal income tax purposes in which we are a partner to the extent of our proportionate interest in the equity and debt securities of the partnership; and
- Any debt instrument issued by an entity treated as a partnership for federal income tax purposes not described in the preceding bullet points if at least 75% of the partnership’s gross income, excluding income from prohibited transactions, is qualifying income for purposes of the 75% gross income test described above in “—Gross Income Tests.”

For purposes of the 10% value test, our proportionate share of the assets of a partnership is our proportionate interest in any securities issued by the partnership, without regard to the securities described in the last two bullet points above.

As described above, we may selectively invest from time to time in mortgage debt and mezzanine loans. Mortgage loans will generally qualify as real estate assets for purposes of the 75% asset test to the extent that they are secured by real property. However, if a loan is secured by real property and other property and the highest principal amount of a loan outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of the date we agreed to acquire the loan, then a portion of such loan likely will not be a qualifying real estate asset. Under current law, it is not clear how to determine what portion of such a loan will be treated as a real estate asset. The IRS has stated that it will not challenge a REIT’s treatment of a loan as being, in part, a real estate asset for purposes of the 75% asset test if the REIT treats the loan as being a qualifying real estate asset in an amount equal to the lesser of (i) the fair market value of the real property securing the loan on the date the REIT acquires the loan or (ii) the fair market value of the loan. We intend to invest in mortgage debt in a manner that will enable us to continue to satisfy the asset and gross income test requirements.

Although we expect that our investments in mezzanine loans will generally be treated as real estate assets, we anticipate that the mezzanine loans in which we invest will not meet all the requirements of the safe harbor in IRS Revenue Procedure 2003-65. Thus, no assurance can be provided that the IRS will not challenge our treatment of mezzanine loans as real estate assets. We intend to invest in mezzanine loans in a manner that will enable us to continue to satisfy the asset and gross income test requirements.

Any interest that we hold in a real estate mortgage investment conduit, or REMIC, will generally qualify as real estate assets and income derived from REMIC interests will generally be treated as qualifying income for purposes of the REIT Income Tests described above. If less than 95% of the assets of a REMIC are real estate assets, however, then only a proportionate part of our interest in the REMIC and income derived from the interest will qualify for purposes of the REIT asset and income tests. If we hold a “residual interest” in a REMIC from which we derive “excess inclusion income,” we will be required either to distribute the excess inclusion income or to pay tax on it (or a combination of the two), even though we may not receive the income in cash. To the extent that distributed excess inclusion income is allocable to a particular stockholder, the income (1) would not be allowed to be offset by any net operating losses otherwise available to the stockholder, (2) would be subject to tax as unrelated business taxable income in the hands of most types of stockholders that are otherwise generally exempt from federal income tax and (3) would result in the application of U.S. federal income tax withholding at the maximum rate (30%), without reduction pursuant to any otherwise applicable income tax treaty, to the extent allocable to most types of foreign stockholders. Moreover, any excess inclusion income that we receive that is allocable to specified categories of tax-exempt investors which are not subject to unrelated business income tax, such as government entities, may be subject to corporate-level income tax in our hands, regardless of whether it is distributed.

To the extent that we hold mortgage participations or CMBS that do not represent REMIC interests, such assets may not qualify as real estate assets, and the income generated from them may not qualify for purposes of the 75% Gross Income Test, depending upon the circumstances and the specific structure of the investment.

Certain of our mezzanine loans may qualify for an Internal Revenue Service safe harbor pursuant to which certain loans secured by a first priority security interest in ownership interests in a partnership or limited liability company will be treated as qualifying assets for purposes of the 75% asset test. We may make some mezzanine loans that do not qualify for that safe harbor and that do not qualify as “straight debt” securities or for one of the other exclusions from the definition of “securities” for purposes of the 10% Asset Test. We intend to make such investments in such a manner as not to fail the asset test described above.

We will monitor the status of our assets for purposes of the various asset tests and will manage our portfolio in order to comply at all times with such tests.

#### ***Failure to Satisfy the Asset Tests***

If we meet the Asset Tests at the close of any quarter, we will not lose our REIT status for a failure to satisfy the Asset Tests at the end of a later quarter in which we have not acquired any securities or other property if such failure occurs solely because of changes in asset values. If our failure to satisfy the Asset Tests results from an acquisition of securities or other property during a quarter, we can cure the failure by disposing of a sufficient amount of non-qualifying assets within 30 days after the close of that quarter. We intend to maintain adequate records of the value of our assets to ensure compliance with the Asset Tests and to take other action within 30 days after the close of any quarter as may be required to cure any noncompliance. If that does not occur, we may nonetheless qualify for one of the relief provisions described below.

The Internal Revenue Code contains a number of provisions applicable to REITs, including relief provisions that make it easier for REITs to satisfy the asset requirements or to maintain REIT qualification notwithstanding certain violations of the asset and other requirements.

One such provision allows a REIT which fails one or more of the asset requirements to nevertheless maintain its REIT qualification if (1) it provides the IRS with a description of each asset causing the failure, (2) the failure is due to reasonable cause and not willful neglect, (3) the REIT pays a tax equal to the greater of (a) \$50,000 per failure and (b) the product of the net income generated by the assets that caused the failure multiplied by the highest applicable corporate tax rate (currently 35%) and (4) the REIT either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure or otherwise satisfies the relevant asset tests within that time frame.

A second relief provision applies to de minimis violations of the 10% and 5% asset tests. A REIT may maintain its qualification despite a violation of such requirements if (1) the value of the assets causing the violation do not exceed the lesser of 1% of the REIT's total assets and \$10,000,000, or (2) the REIT either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or the relevant tests are otherwise satisfied within that time frame.

#### ***Operational Requirements — Annual Distribution Requirement***

To qualify as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders each year in the amount of at least 90% of our REIT taxable income (computed without regard to the dividends paid deduction and our net capital gain and subject to certain other potential adjustments).

In addition to distributions made in the taxable year to which they relate, certain distributions made in the following year are taken into account for these purposes. If dividends are declared in October, November or December of the taxable year, are payable to stockholders of record on a specified date in any such month, and are actually paid before the end of January of the following year, such dividends are treated as both paid by us and received by our stockholders on December 31 of the year in which they are declared. In addition, at our election, a dividend for a taxable year may be declared before we timely file our tax return for the year provided we pay such dividend with or before our first regular dividend payment after such declaration and such payment is made during the 12-month period following the close of such taxable year. These dividends are taxable to our stockholders in the year in which paid, even though the distributions relate to our prior taxable year for purposes of the 90% distribution requirement.

In order for distributions to be counted towards our distribution requirement and to provide a tax deduction to us, they must not be “preferential dividends.” A dividend is not a preferential dividend if it is pro rata among all outstanding shares within a particular class and is in accordance with the preferences among our different classes of shares as set forth in our organizational documents. A distribution of a preferential dividend may cause other distributions to be treated as preferential dividends, possibly preventing us from satisfying the distribution requirement for REIT qualification.

In addition, if we fail to distribute during each calendar year at least the sum of:

- 85% of our ordinary income for that year;
- 95% of our capital gain net income other than the capital gain net income which we elect to retain and pay tax on for that year; and
- any undistributed taxable income from prior periods, we will be subject to a 4% nondeductible excise tax on the excess of the amount of the required distributions over the sum of (1) the amounts actually distributed plus (2) retained amounts on which we pay corporate tax.

We intend to make timely distributions sufficient to qualify for taxation as a REIT and to avoid income and excise taxes on undistributed income; however, it is possible that we may experience timing differences between (1) the actual receipt of income and payment of deductible expenses and (2) the inclusion of that income and deduction of those expenses for purposes of computing our taxable income. It is also possible that we may be allocated a share of net capital gain attributable to the sale of depreciated property by our operating partnership that exceeds our allocable share of cash attributable to that sale. In those circumstances, we may have less cash than is necessary to meet our annual distribution requirement or to avoid income or excise taxation on undistributed income. Additionally, we may find it necessary in those circumstances to arrange for financing or raise funds through the issuance of additional shares of common stock to meet our distribution requirements. If we fail to satisfy the distribution requirement for any taxable year by reason of a later adjustment to our taxable income dividends, we may be able to pay “deficiency dividends” in a later year and include such dividends in our deductions for dividends paid for the earlier year. In that event, we may be able to avoid losing our REIT status or being taxed on amounts distributed as deficiency dividends, but we would be required to pay interest and a penalty to the Internal Revenue Service.

We may elect to retain, rather than distribute, our net long-term capital gains. The effect of such an election would be as follows:

- we would be required to pay federal income tax on these gains;
- stockholders, while required to include their proportionate share of the undistributed long-term capital gains in income, would receive a credit or refund for their share of the tax paid by the REIT; and
- the basis of the stockholder’s shares of common stock would be increased by the difference between the designated amount included in the stockholder’s long-term capital gains and the tax deemed paid with respect to such shares of common stock.

### ***Operational Requirements — Recordkeeping***

We must maintain certain records as set forth in Treasury Regulations to avoid the payment of monetary penalties to the Internal Revenue Service. Such Treasury Regulations require that we request, on an annual basis, certain information designed to disclose the ownership of shares of our outstanding common stock. We intend to comply with these requirements.

### **Failure to Qualify as a REIT**

In the event we violate a provision of the Internal Revenue Code that would result in our failure to qualify as a REIT (other than an Income Test or Asset Test violation), specified relief provisions will be available to us to avoid such disqualification if (1) the violation is due to reasonable cause and not due to willful neglect, (2) we pay a penalty of \$50,000 for each failure to satisfy the provision and (3) the violation does not include a violation under the gross income or asset tests described above (for which other specified relief provisions are available) or the failure to meet the minimum distribution requirements.

If we fail to qualify as a REIT for any reason in a taxable year and applicable relief provisions do not apply, we will be subject to tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. We will not be able to deduct dividends distributed to our stockholders in any year in which we fail to qualify as a REIT. We also will be disqualified for the four taxable years following the year during which qualification was lost unless we are entitled to relief under specific statutory provisions.

## **Sale-Leaseback Transactions**

Some of our investments may be in the form of sale-leaseback transactions. We normally intend to treat these transactions as true leases for federal income tax purposes. However, depending on the terms of any specific transaction, the Internal Revenue Service might take the position that the transaction is not a true lease but is more properly treated in some other manner. If such recharacterization were successful, we would not be entitled to claim the depreciation deductions available to an owner of the property. In addition, the recharacterization of one or more of these transactions might cause us to fail to satisfy the Asset Tests or the Income Tests described above based upon the asset we would be treated as holding or the income we would be treated as having earned, and such failure could result in our failing to qualify as a REIT. Alternatively, the amount or timing of income inclusion or the loss of depreciation deductions resulting from the recharacterization might cause us to fail to meet the distribution requirement described above for one or more taxable years absent the availability of the deficiency distribution procedure or might result in a larger portion of our distributions being treated as ordinary distribution income to our stockholders.

## **Taxation of Taxable U.S. Stockholders**

In this section, the phrase “U.S. stockholder” means a holder of our common stock that for federal income tax purposes is:

- a citizen or resident of the United States;
- a corporation or other entity treated as a corporation for U.S. federal income tax purposes created or organized in or under the laws of the United States or of any political subdivision thereof;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust, if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

If a partnership, including for this purpose any entity that is treated as a partnership for U.S. federal income tax purposes, holds our common stock, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. An investor that is a partnership and the partners in such partnership should consult their tax advisors about the U.S. federal income tax consequences of the acquisition, ownership and disposition of our common stock.

For any taxable year for which we qualify for taxation as a REIT, amounts distributed to, and gains realized by, taxable U.S. stockholders with respect to our common stock generally will be taxed as described herein.

In addition to regular federal income tax on taxable income, high-income U.S. individuals, estates, and trusts are subject to an additional 3.8% tax on net investment income. For these purposes, net investment income includes dividends and gains from sales of stock. In the case of an individual, the tax will be 3.8% of the lesser of the individual’s net investment income or the excess of the individual’s modified adjusted gross income over \$250,000 in the case of a married individual filing a joint return or a surviving spouse, \$125,000 in the case of a married individual filing a separate return, or \$200,000 in the case of a single individual.

### ***Distributions Generally***

Distributions to U.S. stockholders, other than capital gain dividends discussed below, will constitute dividends up to the amount of our current or accumulated earnings and profits and generally will be taxable to the stockholders as ordinary income. These distributions are not eligible for the dividends received deduction generally available to corporations. In addition, with limited exceptions, these dividends are not eligible for taxation at the preferential income tax rates for qualified dividends received by individuals. U.S. stockholders that are individuals, however, are taxed at preferential qualified dividend rates on dividends that are attributable to (1) income retained by us in the prior taxable year on which we were subject to corporate level income tax (less the amount of tax), (2) dividends received by us from taxable C corporations, or (3) income in the prior taxable year from the sales of “built-in gain” property acquired by us from C corporations in carryover basis transactions (less the amount of corporate tax on such income).

To the extent that we make a distribution in excess of our current and accumulated earnings and profits, the distribution will be treated first as a tax-free return of capital, reducing the tax basis in the U.S. stockholder’s shares of common stock, and the amount of each distribution in excess of a U.S. stockholder’s tax basis in its shares of common stock will be taxable as gain realized from the sale of its shares of common stock. Dividends that we declare in October, November or December of any year payable to a stockholder of record on a specified date in any of these months will be treated as both distributed by us and received by the stockholder on December 31 of the year, provided that we actually distribute the dividend during January of the following calendar year. U.S. stockholders may not include any of our losses on their own federal income tax returns.

We will be treated as having sufficient earnings and profits to treat as a dividend any distribution by us up to the amount required to be distributed to avoid imposition of the 4% excise tax discussed above. Moreover, any “deficiency dividend” will be treated as an ordinary or capital gain distribution, as the case may be, regardless of our earnings and profits. As a result, stockholders may be required to treat as taxable some distributions that would otherwise result in a tax-free return of capital.

### ***Capital Gain Dividends***

Distributions to U.S. stockholders that we properly designate as capital gain dividends normally will be treated as long-term capital gains to the extent they do not exceed our actual net capital gain for the taxable year without regard to the period for which the U.S. stockholder has held his shares of common stock. A corporate U.S. stockholder might be required to treat up to 20% of some capital gain distributions as ordinary income. Long-term capital gains are generally taxable at maximum federal rates of 20% in the case of non-corporate stockholders. Capital gains attributable to the sale of depreciable real property held for more than 12 months are subject to a 25% maximum federal income tax rate for non-corporate taxpayers, to the extent of previously claimed depreciation deductions.

### ***Certain Dispositions of Our Common Stock***

In general, capital gains recognized by individuals upon the sale or disposition of shares of common stock will be long-term capital gains if such shares of common stock are held for more than 12 months and will be taxed at ordinary income rates if such shares of common stock are held for 12 months or less. Capital losses recognized by a stockholder upon the disposition of a share of our common stock held for more than one year at the time of disposition will be considered long-term capital losses and are generally available only to offset capital gain income of the stockholder (except in the case of individuals, who may offset up to \$3,000 of ordinary income each year with such capital losses). In addition, any loss upon a sale or exchange of shares of common stock by a stockholder who has held such shares of common stock for six months or less, after applying holding period rules, will be treated as a long-term capital loss to the extent of distributions received from us that are required to be treated by the stockholder as long-term capital gain.

### ***Repurchases of Our Common Stock***

A repurchase of our common stock will be treated as a distribution in exchange for the repurchased shares and taxed in the same manner as other taxable share sales discussed above, provided that the repurchase satisfies one of the tests enabling the repurchase to be treated as a sale or exchange. A repurchase will be treated as a sale or exchange if it (1) is “substantially disproportionate” with respect to a stockholder, (2) results in a “complete termination” of a stockholder’s interest in our shares or (3) is “not essentially equivalent to a dividend” with respect to a stockholder, all within the meaning of applicable provisions of the Internal Revenue Code. In determining whether any of these tests have been met, shares considered to be owned by a stockholder by reason of certain constructive ownership rules, as well as shares actually owned, generally must be taken into account.

A repurchase that does not qualify as an exchange under such tests will constitute a dividend equivalent repurchase that is treated as a taxable distribution and taxed in the same manner as regular distributions (*i.e.*, ordinary dividend income to the extent paid out of earnings and profits unless properly designated as a capital gain dividend). In addition, although guidance is sparse, the IRS could take the position that a stockholder who does not participate in any repurchase treated as a dividend should be treated as receiving a constructive share distribution taxable as a dividend in the amount of their increased percentage ownership of our shares as a result of the repurchase, even though the stockholder did not actually receive cash or other property as a result of the repurchase.

### ***Passive Activity Losses and Investment Interest Limitations***

Distributions made by us and gain arising from the sale, repurchase or exchange by a U.S. stockholder of shares of our common stock will not be treated as passive activity income. As a result, U.S. stockholders will not be able to apply any “passive losses” against income or gain relating to shares of our common stock. Distributions made by us, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation. A U.S. stockholder that elects to treat capital gain dividends, capital gains from the disposition of shares or qualified dividend income as investment income for purposes of the investment interest limitation will be taxed at ordinary income rates on such amounts.

### ***Information Reporting Requirements and Backup Withholding for U.S. Stockholders***

We will report to U.S. stockholders of our common stock and to the Internal Revenue Service the amount of distributions made or deemed made during each calendar year and the amount of tax withheld, if any. Under some circumstances, U.S. stockholders may be subject to backup withholding on payments made with respect to, or cash proceeds of a sale or exchange of, our common stock. Backup withholding will apply only if the stockholder:

- fails to furnish its taxpayer identification number (social security number in the case of an individual);
- furnishes an incorrect taxpayer identification number;
- is notified by the Internal Revenue Service that the stockholder has failed properly to report payments of interest or distributions and is subject to backup withholding; or
- under some circumstances, fails to certify, under penalties of perjury, that it has furnished a correct taxpayer identification number and has not been notified by the Internal Revenue Service that the stockholder is subject to backup withholding for failure to report interest and distribution payments or has been notified by the Internal Revenue Service that the stockholder is no longer subject to backup withholding for failure to report those payments.

Backup withholding will not apply with respect to payments made to some stockholders, such as corporations and tax-exempt organizations. Backup withholding is not an additional tax. Rather, the amount of any backup withholding with respect to a payment to a U.S. stockholder will be allowed as a credit against the U.S. stockholder's United States federal income tax liability and may entitle the U.S. stockholder to a refund, provided that the required information is furnished to the Internal Revenue Service. U.S. stockholders should consult their tax advisors regarding their qualification for exemption from backup withholding and the procedure for obtaining an exemption.

Brokers are subject to information reporting requirements relating to certain transactions involving shares of our capital stock held by a stockholder other than an exempt recipient ("covered stock"). Specifically, upon the transfer or repurchase of shares of covered stock, the broker must report certain information to the stockholder and the Internal Revenue Service, including the adjusted tax basis of the shares and whether any gain or loss recognized on the transfer or repurchase is long-term or short-term. Shares of covered stock will be transferred or repurchased on a "first in/first out" basis unless the stockholder identifies specific lots to be transferred or repurchased in a timely matter.

If we take an organizational action such as a stock split, merger or acquisition that affects the tax basis of shares of covered stock or even make distributions that exceed our current or accumulated earnings and profits, we will report to each stockholder and the Internal Revenue Service (or post on our website) a description of the action and the quantitative effect of that action on the tax basis of the applicable shares.

Brokers may be subject to transfer statement reporting on certain transactions not otherwise subject to the reporting requirements discussed above. Transfer statements, however, are issued only between "brokers" and are not issued to stockholders or the Internal Revenue Service.

Stockholders are encouraged to consult their tax advisors regarding the application of the information reporting rules discussed above to their investment in shares of our common stock.

### **Tax-Exempt Stockholders**

Tax-exempt entities, including employee pension benefit trusts and individual retirement accounts, generally are exempt from United States federal income taxation. These entities are subject to taxation, however, on any "unrelated business taxable income," which we refer to as "UBTI," as defined in the Internal Revenue Code. Dividends from us and gains with respect to our stock should not be UBTI unless a tax-exempt stockholder holds our common stock in an unrelated trade or business or has incurred debt in connection with the purchase of our shares.

However, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans that are exempt from taxation under specified provisions of the Internal Revenue Code are subject to different UBTI rules, which generally will require them to treat distributions from us as UBTI unless the organization properly sets aside or reserves such amounts for purposes specified in the Internal Revenue Code. These organizations are urged to consult their own tax advisor with respect to the treatment of our distributions to them.

In addition, qualified pension trusts that hold more than 10% by value of the shares of a REIT may be required to treat a specified percentage of REIT distributions as UBTI if we become a "pension-held REIT". We believe that our stock ownership limitations should prevent us from becoming a pension-held REIT, but we can give no assurances that we will not be a pension-held REIT.

### **Certain Tax Considerations for Non-U.S. Stockholders**

The rules governing U.S. federal income taxation of non-resident alien individuals and foreign corporations, estate and trusts that are not U.S. stockholders, which we refer to collectively as "Non-U.S. stockholders," are complex. The following discussion is intended only as a summary of these rules. Non-U.S. stockholders should consult with their own tax advisors to determine the impact of U.S. federal, state and local income tax laws on an investment in our common stock, including any reporting requirements as well as the tax treatment of the investment under the tax laws of their home country.

#### ***Ordinary Dividends***

The portion of distributions received by Non-U.S. stockholders payable out of our earnings and profits that are not attributable to our gains from sales of United States real property interests, or USRPIs, or designated as capital gain dividends and that are not effectively connected with a U.S. trade or business of the Non-U.S. stockholder will be subject to U.S. withholding tax at the rate of 30%, unless reduced by an applicable tax treaty. In cases where the distribution income from a Non-U.S. stockholder's investment in our common stock is, or is treated as, effectively connected with the Non-U.S. stockholder's conduct of a U.S. trade or business, the Non-U.S. stockholder generally will be subject to U.S. tax at graduated rates, in the same manner as U.S. stockholders, such income must generally be reported on a U.S. income tax return filed by or on behalf of the Non-U.S. stockholder, and the income may also be subject to the 30% branch profits tax in the case of a Non-U.S. stockholder that is a corporation.

### ***Non-Dividend Distributions***

If we cannot determine at the time at which a distribution is made whether the distribution will exceed current and accumulated earnings and profits, we will withhold at the rate applicable to dividends. However, a Non-U.S. stockholder may seek a refund from the Internal Revenue Service of any amounts withheld if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits. If our common stock constitutes a USRPI, as described below, distributions by us in excess of the sum of our earnings and profits plus the Non-U.S. stockholder's basis in shares of our common stock will be taxed under the Foreign Investment in Real Property Tax Act of 1980, which we refer to as "FIRPTA," at the rate of tax, including any applicable capital gains rates, that would apply to a U.S. stockholder of the same type (subject to a special alternative minimum tax rule for nonresident aliens), and the collection of the tax will be enforced by a refundable withholding at a rate of 10% of the amount by which the distribution exceeds the Non-U.S. stockholder's share of our earnings and profits.

### ***Capital Gain Dividends***

Capital gain dividends with respect to our dispositions of USRPIs generally will be treated as income that is effectively connected with a U.S. trade or business, reportable on a U.S. tax return by the Non-U.S. stockholder and taxed at regular U.S. income tax rates (and a 30% profits tax in the case of a corporate Non-U.S. stockholder) without regard to whether the distribution is designated as a capital gain distribution and, in addition, shall be subject to a 35% withholding tax. A capital gain dividend would be treated the same as an ordinary dividend from us if (1) the capital gain distribution is received with respect to a class of stock that is regularly traded on an established securities market located in the United States and (2) the recipient Non-U.S. stockholder does not own more than 5% of that class of stock at any time during the taxable year in which the capital gain distribution is received. We do not anticipate our common stock satisfying the "regularly traded" requirement. Capital gain dividends with respect to sales of assets other than USRPIs generally are not subject to U.S. income tax to Non-U.S. stockholders.

### ***Dispositions of Our Common Stock***

Gain with respect to a sale of our common stock by a Non-U.S. stockholder generally will be subject to U.S. taxation under FIRPTA if 50% or more of our assets throughout a prescribed testing period consist of interests in real property located within the United States unless an exception for stock of a publicly traded corporation or an exception for a "domestically controlled" REIT applies.

A domestically controlled REIT is a REIT in which, at all times during a specified testing period, less than 50% in value of its shares of common stock is held directly or indirectly by non-U.S. persons. We currently anticipate that we will be a domestically controlled REIT and, therefore, that the sale of our common stock should not be subject to taxation under FIRPTA. However, we cannot assure you that we are or will continue to be a domestically controlled REIT. If we were not a domestically controlled REIT, whether a Non-U.S. stockholder's sale of our common stock would be subject to tax under FIRPTA as a sale of a USRPI would depend on whether our common stock were "regularly traded" on an established securities market and on the size of the selling stockholder's interest in us. We do not expect to be "regularly traded" on an established securities market in the near future.

If the gain on the sale of shares of common stock were subject to taxation under FIRPTA, a Non-U.S. stockholder would be subject to the same treatment as a U.S. stockholder with respect to the gain, subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals. Gain from the sale of our common stock that would not otherwise be subject to tax under FIRPTA will nonetheless be taxable in the United States to a Non-U.S. stockholder if the Non-U.S. stockholder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a "tax home" in the United States, in which case the nonresident alien individual will be subject to a 30% tax on the gain from sale of our stock.

### ***Recent Changes in U.S. Federal Income Tax Withholding***

After June 30, 2014, withholding at a rate of 30% will be required on dividends in respect of, and after December 31, 2016, withholding at a rate of 30% will be required on gross proceeds from the sale of shares of our common stock held by or through certain foreign financial institutions (including investment funds), unless such institution enters into an agreement with the Secretary of the Treasury (unless alternative procedures apply pursuant to an applicable intergovernmental agreement between the United States and the relevant foreign government) to report, on an annual basis, information with respect to shares in, and accounts maintained by, the institution to the extent such shares or accounts are held by certain U.S. persons or by certain non-U.S. entities that are wholly or partially owned by U.S. persons. Accordingly, the entity through which our shares are held will affect the determination of whether such withholding is required. Similarly, after June 30, 2014, dividends in respect of, and after December 31, 2016, gross proceeds from the sale of, our shares held by an investor that is a non-financial non-U.S. entity will be subject to withholding at a rate of 30%, unless such entity either (1) certifies to us that such entity does not have any "substantial U.S. owners" or (ii) provides certain information regarding the entity's "substantial U.S. owners," which we will in turn provide to the Secretary of the Treasury. Non-U.S. stockholders are encouraged to consult with their tax advisers regarding the possible implications of these rules on their investment in our common stock.

## ***Estate Tax***

If our shares are owned or treated as owned by an individual who is not a U.S. citizen or resident (as specifically defined for federal estate tax purposes) at the time of the individual's death, the shares will be includible in the individual's gross estate for federal estate tax purposes and may be subject to federal estate tax, unless an applicable estate tax treaty provides otherwise.

## ***Information Reporting Requirements and Backup Withholding for Non-U.S. Stockholders***

Non-U.S. stockholders should consult their tax advisors with regard to U.S. information reporting and backup withholding requirements under the Internal Revenue Code.

## **Federal Income Tax Aspects of Our Operating Partnership**

The following discussion summarizes certain federal income tax considerations applicable to our investment in our operating partnership. The discussion does not cover state or local tax laws or any federal tax laws other than income tax laws.

### ***Classification as a Partnership***

Under applicable Treasury Regulations, an unincorporated domestic entity with at least two members may elect to be classified either as an association taxable as a corporation or as a partnership. If the entity fails to make an election, it will be treated as a partnership for federal income tax purposes. Our operating partnership intends to be classified as a partnership for federal income tax purposes and will not elect to be treated as an association taxable as a corporation.

Even though our operating partnership will not elect to be treated as an association for federal income tax purposes, it may be taxed as a corporation if it is deemed to be a "publicly traded partnership." A publicly traded partnership is a partnership whose interests are traded on an established securities market or are readily tradable on a secondary market or the substantial equivalent thereof. Applicable Treasury regulations, which we refer to as the "PTP Regulations," provide limited safe harbors from the definition of a publicly traded partnership. Pursuant to one of those safe harbors, which we refer to as the "Private Placement Exclusion," interests in a partnership will not be treated as readily tradable on a secondary market or the substantial equivalent thereof if (1) all interests in the partnership were issued in a transaction (or transactions) that were not required to be registered under the Securities Act and (2) the partnership does not have more than 100 partners at any time during the partnership's taxable year. In determining the number of partners in a partnership, a person owning an interest in a flow-through entity (including a partnership, grantor trust or S corporation) that owns an interest in the partnership is treated as a partner in such partnership only if (a) substantially all of the value of the owner's interest in the flow-through entity is attributable to the flow-through entity's direct or indirect interest in the partnership and (b) a principal purpose of the use of the flow-through entity is to permit the partnership to satisfy the 100 partner limitation. We and our operating partnership believe and currently intend to take the position that our operating partnership should not be classified as a publicly traded partnership because (1) limited partnership interests are not traded on an established securities market and (2) limited partnership interests should not be considered readily tradable on a secondary market or the substantial equivalent thereof. In addition, our operating partnership presently qualifies for the Private Placement Exclusion.

Even if our operating partnership were considered a publicly traded partnership under the PTP Regulations, our operating partnership should not be treated as a corporation for federal income tax purposes as long as 90% or more of its gross income consists of "qualifying income" under section 7704(d) of the Internal Revenue Code. In general, qualifying income includes interest, dividends, real property rents (defined by reference to the REIT rules) and gain from the sale or disposition of real property. If our operating partnership were characterized as a publicly traded partnership but not taxed as a corporation because of the qualifying income exception, holders of limited partnership interests would be subject to special rules under section 469 of the Internal Revenue Code. Under such rules, each holder of limited partnership interests would be required to treat any loss derived from our operating partnership separately from any income or loss derived from any other publicly traded partnership, as well as from income or loss derived from other passive activities. In such case, any net losses or credits attributable to our operating partnership that are carried forward may only be offset against future income of our operating partnership. Moreover, unlike other passive activity losses, suspended losses attributable to our operating partnership would only be allowed upon the complete disposition of the common limited partnership interest holder's "entire interest" in our operating partnership.

If for any reason our operating partnership were taxable as a corporation, rather than a partnership, for federal income tax purposes, we would not be able to qualify as a REIT, unless we are eligible for relief from the violation pursuant to relief provisions described above. In addition, any change in our operating partnership's status for tax purposes might be treated as a taxable event, in which case we might incur a tax liability without any related cash distribution. Further, items of income and deduction of our operating partnership would not pass through to its partners, and its partners would be treated as stockholders for tax purposes. Our operating partnership would be required to pay income tax at corporate tax rates on its net income, and distributions to its partners would constitute distributions that would not be deductible in computing our operating partnership's taxable income.

## ***Income Taxation of Our Operating Partnership and its Partners***

*Partners, Not Operating Partnership, Subject to Tax.* A partnership is not a taxable entity for federal income tax purposes. As a partner in our operating partnership, we will be required to take into account our allocable share of our operating partnership's income, gains, losses, deductions and credits for any taxable year of our operating partnership ending within or with our taxable year, without regard to whether we have received or will receive any distributions from our operating partnership.

*Operating Partnership Allocations.* Although a partnership agreement generally determines the allocation of income and losses among partners, such allocations will be disregarded for tax purposes under section 704(b) of the Internal Revenue Code if they do not comply with the provisions of section 704(b) of the Internal Revenue Code and the Treasury Regulations promulgated thereunder. If an allocation is not recognized for federal income tax purposes, the item subject to the allocation will be reallocated in accordance with the partner's interests in the partnership, which will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. Our operating partnership's allocations of taxable income and loss are intended to comply with the requirements of section 704(b) of the Internal Revenue Code and the Treasury Regulations promulgated thereunder.

*Tax Allocations With Respect to Contributed Properties.* Pursuant to section 704(c) of the Internal Revenue Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership must be allocated for federal income tax purposes in a manner such that the contributor is charged with, or benefits from, the unrealized gain or unrealized loss associated with the property at the time of the contribution. The amount of unrealized gain or unrealized loss is generally equal to the difference between the fair market value of the contributed property at the time of contribution and the adjusted tax basis of such property at the time of contribution. Under applicable Treasury Regulations, partnerships are required to use a "reasonable method" for allocating items subject to section 704(c) of the Internal Revenue Code, and several reasonable allocation methods are described therein.

Under the operating partnership agreement, subject to exceptions applicable to the special limited partnership interests, depreciation or amortization deductions of our operating partnership generally will be allocated among the partners in accordance with their respective interests in our operating partnership, except to the extent that our operating partnership is required under section 704(c) to use a different method for allocating depreciation deductions attributable to its properties. In addition, gain or loss on the sale of a property that has been contributed to our operating partnership will be specially allocated to the contributing partner to the extent of any built-in gain or loss with respect to the property for federal income tax purposes. It is possible that we may (1) be allocated lower amounts of depreciation deductions for tax purposes with respect to contributed properties than would be allocated to us if each such property were to have a tax basis equal to its fair market value at the time of contribution and (2) be allocated taxable gain in the event of a sale of such contributed properties in excess of the economic profit allocated to us as a result of such sale. These allocations may cause us to recognize taxable income in excess of cash proceeds received by us, which might adversely affect our ability to comply with the REIT distribution requirements, although we do not anticipate that this event will occur. The foregoing principles also will affect the calculation of our earnings and profits for purposes of determining the portion of our distributions that are taxable as a dividend. The allocations described in this paragraph may result in a higher portion of our distributions being taxed as a dividend than would have occurred had we purchased such properties for cash.

*Basis in Operating Partnership Interest.* The adjusted tax basis of our partnership interest in our operating partnership generally will be equal to (1) the amount of cash and the basis of any other property contributed to our operating partnership by us, (2) increased by (a) our allocable share of our operating partnership's income and (b) our allocable share of indebtedness of our operating partnership and (3) reduced, but not below zero, by (a) our allocable share of our operating partnership's loss and (b) the amount of cash distributed to us, including constructive cash distributions resulting from a reduction in our share of indebtedness of our operating partnership. If the allocation of our distributive share of our operating partnership's loss would reduce the adjusted tax basis of our partnership interest in our operating partnership below zero, the recognition of the loss will be deferred until such time as the recognition of the loss would not reduce our adjusted tax basis below zero. If a distribution from our operating partnership or a reduction in our share of our operating partnership's liabilities would reduce our adjusted tax basis below zero, that distribution, including a constructive distribution, will constitute taxable income to us. The gain realized by us upon the receipt of any such distribution or constructive distribution would normally be characterized as capital gain, and if our partnership interest in our operating partnership has been held for longer than the long-term capital gain holding period (currently one year), the distribution would constitute long-term capital gain.

*Sale of Our Operating Partnership's Property.* Generally, any gain realized by our operating partnership on the sale of property held for more than one year will be long-term capital gain, except for any portion of such gain that is treated as depreciation or cost recovery recapture. Our share of any gain realized by our operating partnership on the sale of any property held by our operating partnership as inventory or other property held primarily for sale to customers in the ordinary course of our operating partnership's trade or business will be treated as income from a prohibited transaction that is subject to a 100% tax. Whether property is held primarily for sale to customers in the ordinary course of a trade or business depends on the facts and circumstances surrounding each property. We intend to avoid the 100% prohibited transaction tax by (1) conducting activities that may otherwise be considered prohibited transactions through a taxable REIT subsidiary, (2) conducting our operations in such a manner so that no sale or other

disposition of an asset we own, directly or through any subsidiary other than a taxable REIT subsidiary, will be treated as a prohibited transaction or (3) structuring certain dispositions of our properties to comply with certain safe harbors available under the Internal Revenue Code for properties held at least two years. Despite our present intention, no assurance can be given that any particular property we own, directly or through any subsidiary entry, including our operating partnership, but excluding out taxable REIT subsidiaries, will not be treated as property held primarily for sale to customers in the ordinary course of trade or business.

## **Other Tax Considerations**

### ***Legislative or Other Actions Affecting REITs***

The rules dealing with U.S. federal income taxation are constantly under review. No assurance can be given as to whether, when, or in what form, the U.S. federal income tax laws applicable to us and our stockholders may be changed. Changes to the federal tax laws and interpretations of federal tax laws could adversely affect an investment in shares of our common stock.

### ***State, Local and Non-U.S. Taxes***

We and/or you may be subject to taxation by various states, localities and non-U.S. jurisdictions, including those in which we or a holder of our common stock transacts business, owns property or resides. The state, local and non-U.S. tax treatment may differ from the federal income tax treatment described above. You are urged to consult your own tax advisors regarding the effect of state, local and non-U.S. tax laws upon an investment in our common stock.

## STATE AND LOCAL TAX CONSIDERATIONS

We and any operating subsidiaries we may form may be subject to state and local tax in states and localities in which we or they do business or own property. Our tax treatment, the tax treatment of our operating partnership, any operating subsidiaries, joint ventures or other arrangements we or our operating partnership may form or enter into and the tax treatment of the holders of our common stock in local jurisdictions may differ from the federal income tax treatment described above. Consequently, prospective stockholders should consult their own tax advisors regarding the effect of state and local tax laws on their investment in our common stock.

Some states may impose an entity level tax directly on us. For example, Texas enacted legislation in 2006 that amended its franchise tax effective for reports originally due on or after January 1, 2008. Under the revised franchise tax, commonly referred to as a margins tax, a REIT may be treated as a “taxable entity” if it has any amount of its assets in direct holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate. If the REIT is treated as a taxable entity, then the tax base is the entity’s gross margin, computed as the lesser of (1) 70% of the entity’s total revenue or (2) the entity’s total revenue less compensation or cost of goods sold, subject to allocation and apportionment under the applicable rules. Each prospective investor is advised to consult his or her own tax advisor to determine the state and local tax consequences of this and other entity level taxes that may be imposed on us.

## ERISA CONSIDERATIONS

Employee benefit plans that are subject to the fiduciary provisions of ERISA (including, without limitation, pension and profit-sharing plans) and plans that are subject to Section 4975 of the Internal Revenue Code (including, without limitation, IRAs and Keogh plans) and entities deemed to hold “plan assets” of each of the foregoing, as well as governmental plans, foreign plans and other employee benefit plans, accounts or arrangements that are not subject to the fiduciary provisions of ERISA or Section 4975 of the Internal Revenue Code and entities deemed to hold “plan assets” of any of the foregoing may generally invest in us, subject to the following considerations. For purposes of this section, all of the different types of plans or arrangements identified above are collectively identified as benefit plans.

The following summary is based on the fiduciary responsibility provisions of ERISA, relevant regulations and opinions Issued by the United States Department of Labor, or the DOL, and court decisions, and on the pertinent provisions of the Internal Revenue Code, regulations issued thereunder and published rulings and procedures of the Internal Revenue Service as in effect on the date of this prospectus. This summary does not purport to be complete and is qualified in its entirety by reference to ERISA and the Internal Revenue Code. No assurance can be given that future regulations, changes in administrative regulations or rulings or court decisions will not significantly modify the requirements summarized herein. Any such changes may be retroactive and thereby apply to transactions entered into prior to the date of their enactment or release. In addition, this summary does not address the impact of applicable federal, state, local, or non-U.S. law on the decision to purchase shares of our common stock by a plan or arrangement not subject to the fiduciary provisions of ERISA (for example, governmental plans, non-electing church plans, and foreign plans). Nothing in this summary should be construed as legal advice or a legal opinion and you should consult your own legal advisor regarding the purchase shares of our common stock.

### **General Fiduciary Considerations for Investment in our Company by Benefit Plans**

The fiduciary provisions of ERISA, and the laws applicable to governmental, foreign or other employee benefit plans or retirement arrangements that are not subject to ERISA, may impose limitations on investment in our company. Fiduciaries of benefit plans, in consultation with their advisors, should consider, to the extent applicable, the impact of such fiduciary rules and regulations and other laws on an investment in our company. Among other considerations, the fiduciary of a benefit plan should take into account the composition of the benefit plan’s portfolio with respect to diversification; the cash flow needs of the benefit plan and the effect thereon of the illiquidity of the investment; the economic terms of the benefit plan’s investment in us; the benefit plan’s funding objectives; the tax effects of the investment; and the fact that our management will not take the particular objectives of any investors into account.

It is intended that our assets will not be considered plan assets under ERISA or be subject to any fiduciary or investment restrictions that may exist under laws applicable to plans not subject to ERISA. Each benefit plan will be required to acknowledge and agree in connection with its investment in our shares to the foregoing status of our company and that there is no rule, regulation or requirement applicable to such investor that is inconsistent with the foregoing description of us.

Benefit plan fiduciaries may be required to determine and report annually the fair market value of the assets of the benefit plan. Since it is expected that there will not be any public market for our shares, there may not be an independent basis for the benefit plan fiduciary to determine the fair market value of our shares.

### **ERISA Restrictions if the Company Holds Plan Assets**

If we are deemed to hold plan assets under the plan asset regulation (as defined and described in the following paragraph), the investment in us by each such benefit plan investor could constitute an improper delegation of investment authority by the fiduciary of such benefit plan investor. In addition, any transaction we enter into would be treated as a transaction with each such benefit plan investor (such as a property lease, acquisition, sale or financing) with certain “parties in interest” (as defined in ERISA) or “disqualified persons” (as defined in Section 4975 of the Internal Revenue Code) with respect to a benefit plan investor (as defined in the following paragraph) could be a “prohibited transaction” under ERISA or Section 4975 of the Internal Revenue Code. If we were subject to ERISA, certain aspects of our structure could also violate ERISA.

#### ***ERISA Plan Assets***

The DOL has published regulations relating to the definition of “plan assets,” 29 C.F.R. Section 2510.3-101, as modified by ERISA Section 3(42), or the “plan asset regulation.” Under the plan asset regulation, a benefit plan investor’s assets would be deemed to include an undivided interest in each of our underlying assets unless investment by benefit plan investors is not “significant,” we constitute an “operating company”, or our stock is considered to be “publicly offered” (each as defined below). A benefit plan investor includes any employee benefit plan that is subject to the fiduciary provisions of ERISA, plans that are subject to Section 4975 of the Internal Revenue Code, and entities deemed to hold plan assets of each of the foregoing.

### ***Significant Investment by Benefit Plan Investors***

Investment by benefit plan investors would not be “significant” if less than 25% of the value of each class of equity interests in our company (excluding equity interests held by persons (other than benefit plan investors) with discretionary authority or control over our assets or that provide investment advice for a fee (direct or indirect) with respect to our assets, and affiliates (other than a benefit plan investor) of any of the foregoing persons) is held by benefit plan investors. Commingled vehicles that are subject to ERISA are generally counted as benefit plan investors for this purpose only to the extent of investment in such entity by benefit plan investors.

We reserve the right to reject subscriptions in whole or in part for any reason, including that the investor is a benefit plan investor. However, we are not required to limit participation by benefit plan investors. In the event we elect to limit investment in us by benefit plan investors, we may have the authority to restrict transfers of our shares and may require a full or partial withdrawal of any benefit plan investor to the extent we deem appropriate to avoid having our assets deemed to be plan assets of any benefit plan investor.

### ***Operating Company Status of Company***

If participation by benefit plan investors in us is “significant” as defined above, we intend, but are not required, to conduct our operations so as to qualify as an “operating company,” including a “real estate operating company,” or a “venture capital operating company,” so that our assets will not be considered “plan assets” of any benefit plan investor. To constitute a “venture capital operating company” under the plan asset regulation, an entity such as us must, on its initial valuation date and during each annual valuation period, have at least 50% of its assets (valued at cost, excluding short-term investments pending long-term commitment or distribution) invested in operating companies with respect to which the entity obtains direct contractual rights to participate significantly in management decisions, and must regularly exercise its rights in the ordinary course of its business. To constitute a “real estate operating company” under the plan asset regulation, an entity such as us must, on its initial valuation date and during each annual valuation period, have at least 50% of its assets (valued at cost, excluding short-term investments pending long-term commitment or distribution) invested in real estate which is managed or developed and with respect to which such entity has the right to substantially participate directly in the management or development activities, and must engage directly, in the ordinary course of its business, in real estate management or development activities.

There is very little authority regarding the application of ERISA and the plan asset regulation to entities such as us, and there can be no assurance that the DOL or the courts would not take a position or promulgate additional rules or regulations that could significantly impact the “plan asset” status of our company.

### ***“Publicly Offered” Status of Our Stock***

If participation by benefit plan investors in us is “significant” as defined above and we do not qualify as an “operating company,” our assets may not be “plan assets” if our stock qualifies for the “publicly offered” exemption under the plan asset regulation. The plan asset regulation provides that if an investment in an entity constitutes “publicly offered securities,” the assets of the issuer of the securities will not be deemed to be plan assets for purposes of ERISA and the Code. The definition of publicly offered securities requires that such securities be registered for federal securities law purposes and that such securities be “widely held” and “freely transferable.”

Under the plan asset regulation, a class of securities will meet the registration requirements under federal securities laws if they are (1) part of a class of securities registered under section 12(b) or 12(g) of the Exchange Act or (2) part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act and the class of securities of which such security is a part is registered under the Exchange Act within 120 days (or such later time as may be allowed by the SEC) after the end of the fiscal year of the issuer during which the offering of such securities to the public occurred. Also under the plan asset regulation, a class of securities will be “widely held” if it is held by 100 or more different persons independent of the issuer. We anticipate that we will meet both the registration and shareholder requirements. However, our stock must also meet the “freely transferable” requirement.

The “freely transferable” requirement under the plan asset regulation is a facts and circumstances determination. The plan asset regulation and its preamble provide that, in the case of a security that is part of an offering in which the minimum investment is \$10,000 or less, the following requirements, alone or in combination, ordinarily will not affect a finding that the security is freely transferable: (1) any requirement that not less than a minimum number of shares or limited partnership interests of such security be transferred or assigned by any investor, provided that such requirement does not prevent transfer of all of the then remaining shares or limited partnership interests held by an investor; (2) any prohibition against transfer or assignment of such security or rights in respect thereof to an ineligible or unsuitable investor; (3) any restriction on, or prohibition against, any transfer or assignment which would either result in a termination or reclassification of the entity for federal or state tax purposes or which would violate any state or federal statute, regulation, court order, judicial decree, or rule of law; (4) any requirement that reasonable transfer or administrative fees be paid in connection with a transfer or assignment; (5) any requirement that advance notice of a transfer or assignment be given to the entity; (6) any restriction on substitution of an assignee as a limited partner of a partnership, including a general partner consent requirement, provided that the economic benefits of ownership of the assignor may be transferred or assigned without regard to such restriction or consent; and (7) any administrative procedure which establishes an effective date, or an event, prior to which a transfer or assignment will not be effective. While we reasonably believe that our stock will meet the “freely transferrable” requirement, this area of the law is not well-developed and no assurance can be given that the DOL or the courts would not take a position concluding that the “freely transferrable” or other requirements were not met.

## **Prohibited Transaction Considerations**

Fiduciaries of benefit plan investors should also consider whether an investment in us could involve a direct or indirect transaction with a “party in interest” or “disqualified person” as defined in ERISA and Section 4975 of the Internal Revenue Code, and if so, whether such prohibited transaction may be covered by an exemption. ERISA contains a statutory exemption that permits a benefit plan investor to enter into a transaction with a person who is a party in interest or a disqualified person solely by reason of being a service provider or affiliated with a service provider to the benefit plan investor, provided that the transaction is for “adequate consideration.” There are also a number of statutory or regulatory exemptions or administrative prohibited transaction class exemptions that may be available to certain fiduciaries acting on behalf of a benefit plan investor. Fiduciaries of benefit plan investors should also consider whether investment in our company could involve a conflict of interest. In particular, a prohibited conflict of interest could arise if the fiduciary acting on behalf of the benefit plan investor has any interest in or affiliation with us.

## **Other Benefit Plans & Similar Arrangements**

Certain plans and arrangements such as governmental plans, non-electing church plans, and foreign plans are not subject to the fiduciary provisions of ERISA and are also not subject to the prohibited transaction provisions under Section 4975 of the Internal Revenue Code. However, such plans and arrangements may be subject to federal, state, local, or non-U.S. laws or regulations governing the investment and management of the assets of such plans including limitations on permissible investments. Accordingly, fiduciaries or other parties authorized to act on behalf of such plans and arrangements, in consultation with their advisors, should consider the requirements of applicable law on an investment in our company.

The fiduciary or others authorized to act on behalf of such plans will be required to represent and warrant that an investment in us is permissible, complies in all respects with applicable law and has been duly authorized.

## **Individuals Investing With IRA Assets**

Shares sold by us may be purchased or owned by investors who are investing assets of their IRAs. Our acceptance of an investment by an IRA should not be considered to be a determination or representation by us or any of our respective affiliates that such an investment is appropriate for an IRA. In consultation with its advisors, each prospective IRA investor should carefully consider whether an investment in us is appropriate for, and permissible under, the terms of its IRA governing documents. IRA investors should consider in particular that our shares will be illiquid and that it is not expected that a significant market will exist for the resale of our shares, as well as the other general fiduciary considerations described above.

Although IRAs are not subject to ERISA, they are subject to the provisions of Section 4975 of the Internal Revenue Code, prohibiting transactions with “disqualified persons” and investments and transactions involving fiduciary conflicts. A prohibited transaction or conflict of interest could arise if the fiduciary making the decision to invest has a personal interest in or affiliation with us or any of our affiliates. In the case of an IRA, a prohibited transaction or conflict of interest that involves the beneficiary of the IRA could result in disqualification of the IRA. A fiduciary for an IRA who has any personal interest in or affiliation with us or any of our affiliates, should consult with his or her tax and legal advisors regarding the impact such interest may have on an investment in our shares with assets of the IRA.

## **Annual Valuation**

A fiduciary of an employee benefit plan subject to ERISA is required to determine annually the fair market value of each asset of the plan as of the end of the plan’s fiscal year and to file a report reflecting that value with the Department of Labor. When the fair market value of any particular asset is not available, the fiduciary is required to make a good faith determination of that asset’s fair market value, assuming an orderly liquidation at the time the determination is made. In addition, a trustee or custodian of an IRA must provide an IRA participant with a statement of the value of the IRA each year. In discharging its obligation to value assets of a plan, a fiduciary subject to ERISA must act consistently with the relevant provisions of the plan and the general fiduciary standards of ERISA.

Unless and until our shares are listed on a national securities exchange, we do not expect that a public market for our shares will develop. To date, neither the IRS nor the Department of Labor has promulgated regulations specifying how a plan fiduciary should determine the fair market value of shares when the fair market value of such shares is not determined in the marketplace. Until 18 months after the last offering of our shares and prior to any listing of our shares on a national securities exchange, we intend to use the offering price of shares in our most recent offering as the estimated value of a share of our common stock; provided, however, that if we have sold properties or other assets and have made one or more special distributions to stockholders of all or a portion of the net proceeds from such sales, the estimated value of a share of our common stock will be equal to the offering price of shares in our most recent offering less the amount of net sale proceeds per share that constitute a return of capital distributed to investors as a result of such sales. Beginning 18 months after the last offering of our shares and prior to any listing of our shares on a national securities exchange, the estimated value of our shares will be based on valuations of our properties and other assets. These valuations may be prepared by persons independent of us and our advisor.

## **Conclusion**

Acceptance of subscriptions of any benefit plan is in no respect a representation by us or any other party that such investment meets the relevant legal requirements with respect to that benefit plan or that the investment is appropriate for such benefit plan. Each benefit plan fiduciary should consult with his or her own legal advisors as to the propriety of an investment in our company in light of the specific requirements applicable to that benefit plan.

## **PLAN OF DISTRIBUTION**

### **General**

We are offering up to \$1,100,000,000 in shares of our common stock in this offering. We are offering \$1,000,000,000 in shares of our common stock to the public at a price of \$25.00 per share, which we refer to as the primary offering. We are also offering \$100,000,000 in shares of our common stock to our stockholders pursuant to our distribution reinvestment plan at a price of \$23.75 per share. We reserve the right to reallocate the shares of common stock we are offering between the primary offering and our distribution reinvestment plan. Prior to the conclusion of this offering, if any of the shares of our common stock initially allocated to our distribution reinvestment plan remain unsold after meeting anticipated obligations under our distribution reinvestment plan, we may decide to sell some or all of such shares of common stock to the public in the primary offering. Similarly, prior to the conclusion of this offering, if the shares of our common stock initially allocated to our distribution reinvestment plan have been purchased and we anticipate additional demand for shares of common stock under our distribution reinvestment plan, we may choose to reallocate some or all of the shares of our common stock allocated to be offered in the primary offering to our distribution reinvestment plan.

We are offering shares in our primary offering until the earlier of (1) the date all the shares offered in the primary offering are sold or (2) two years from the initial effective date of the registration statement for this offering. Under rules promulgated by the SEC, we may be able to extend this offering one additional year. Under rules promulgated by the SEC, in some circumstances in which we are pursuing the registration of shares of our common stock in a follow-on offering, we could continue the primary offering until as late as July 20, 2018. In many states, we renew the registration statement or file a new registration statement to continue this offering beyond one year from the date of this prospectus. We may terminate this offering at any time.

The offering price may not be indicative of the price our stockholders would receive if they sold our shares in an arms-length transaction, if our shares were actively traded or if we were liquidated. In addition, the proceeds received from a liquidation of our assets may be substantially less than the offering price of our shares because of the fees and costs associated with this offering. Our board of directors may, in its sole discretion, from time to time, change the price at which we offer shares to the public in the primary offering or pursuant to our distribution reinvestment plan based upon changes in our estimated value per share and other factors that our board of directors deems relevant.

We are offering the shares of our common stock to the public on a best efforts basis, which means generally that our dealer manager and the participating broker-dealers described below will be required to use only their best efforts to sell the shares of our common stock, and they have no firm commitment or obligation to purchase any shares of our common stock. Our agreement with our dealer manager may be terminated by either party upon 60 days' written notice.

### **Minimum Offering**

Subscription proceeds will be placed in escrow until such time as subscriptions aggregating at least the minimum offering of \$2,000,000 in shares of our common stock have been received and accepted by us. Funds in escrow will be invested in short-term investments, which may include obligations of, or obligations guaranteed by, the U.S. government or bank money-market accounts or certificates of deposit of national or state banks that have deposits insured by the Federal Deposit Insurance Corporation (including certificates of deposit of any bank acting as a depository or custodian for any such funds) that can be readily sold, with appropriate safety of principal. Subscribers may not withdraw funds from the escrow account. Any purchase of shares by our sponsor and its affiliates and our directors and officers will be included for purposes of determining whether the minimum of \$2,000,000 of shares of common stock has been sold. If subscriptions for at least the minimum offering have not been received and accepted by January 20, 2016, this offering will be terminated and your funds will be returned to you within ten (10) business days after the date of such termination. Interest will accrue on funds in the escrow account as applicable to the short-term investments in which such funds are invested. During any period in which subscription proceeds are held in escrow, interest earned thereon will be allocated among subscribers on the basis of the respective amounts of their subscriptions and the number of days that such amounts were on deposit. Such interest will be paid to subscribers upon the termination of the escrow period, subject to withholding for taxes pursuant to applicable Treasury regulations. We will bear all expenses of the escrow and, as such, any interest to be paid to any subscriber will not be reduced for such expense.

### **Dealer Manager and Participating Broker-Dealer Compensation and Terms**

Except as provided below, Moody Securities, LLC, our dealer manager, receives a sales commission of 7.0% of the gross proceeds from the sale of shares of our common stock in the primary offering. The dealer manager also receives 3.0% of the gross proceeds from the sale of shares of our common stock in the primary offering in the form of a dealer manager fee as compensation for acting as the dealer manager. We do not pay any sales commission or dealer manager fee for shares of our common stock sold pursuant to our distribution reinvestment plan. We will also reimburse our dealer manager for accountable bona fide due diligence expenses supported by detailed itemized invoices. Our advisor receives reimbursement for cumulative organization and offering expenses incurred by our advisor such as legal, accounting, printing and other offering expenses, including marketing, salaries and direct expenses of its employees, employees of its affiliates and others while engaged in registering and marketing the shares of our common stock, which includes development of marketing materials and marketing presentations, planning and participating in due diligence and training and education and generally coordinating the marketing process for us. Any such reimbursements will not exceed actual expenses incurred

by the advisor and will only be made to the extent that such reimbursements would not cause the cumulative sales commission, the dealer manager fee and other organization and offering expenses borne by us to exceed 15.0% of gross offering proceeds from the sale of shares in the primary offering as of the date of reimbursement. Our advisor and its affiliates are responsible for the payment of our cumulative organization and offering expenses to the extent that total organization and offering expenses, including sales commissions, dealer manager fees and accountable due diligence expenses, exceed 15.0% of the aggregate gross offering proceeds from the sale of shares in the primary offering, without recourse against or reimbursement by us. We do not pay referral or similar fees to any accountants, attorneys or other persons in connection with the distribution of the shares of our common stock.

Our dealer manager may authorize certain additional broker-dealers who are members of FINRA to participate in selling shares of our common stock to investors. Our dealer manager may re-allow all or a portion of its sales commissions from the sale of shares in the primary offering to such participating broker-dealers with respect to shares of our common stock sold by them. Our dealer manager, in its sole discretion, may also re-allow to participating broker-dealers a portion of its dealer manager fee for reimbursement of marketing expenses. The maximum amount of reimbursements would be based on such factors as the number of shares sold by participating broker-dealers, the assistance of such participating broker-dealers in marketing the offering and due diligence expenses incurred.

As required by the rules of FINRA, total underwriting compensation will not exceed 10.0% of our gross offering proceeds. FINRA and many states limit our total organization and offering expenses, which includes underwriting compensation, reimbursement of bona fide due diligence expenses and issuer organization and offering expenses, to 15.0% of gross offering proceeds. Assuming we raise the maximum offering amount, we expect our total organization and offering expenses to be approximately 12.0% of the gross offering proceeds from our primary offering.

<b>Expense</b>	<b>Maximum Percent of Gross Primary Offering Proceeds</b>
Sales commissions <sup>(1)</sup> .....	7.0%
Dealer manager fee <sup>(1)</sup> .....	3.0%
All other organization and offering expenses <sup>(2)</sup> .....	2.0%
<b>Total</b> .....	<b>12.0%</b>

(1) We may later elect to modify our commission structure, including adopting multiple share classes or trailing commissions, depending on changes in industry regulations and best practices. Any such modification, and subsequent offers and sales, will be subject to any applicable regulatory approvals.

(2) Organizational and offering expenses consist of reimbursement of, among other items, the cumulative cost of actual legal, accounting, printing and other accountable offering expenses, including amounts to reimburse our advisor for marketing, salaries and direct expenses of its employees, employees of its affiliates and others while engaged in registering and marketing the shares of our common stock to be sold in this offering, which expenses include the development of marketing materials and marketing presentations, participating in due diligence, training seminars and educational conferences and coordinating generally the marketing process for this offering.

To the extent permitted by law and our charter, we will indemnify the participating broker-dealers, including our dealer manager, against certain liabilities arising under the Securities Act and certain liabilities arising from breaches of our representations and warranties contained in our dealer manager agreement.

### **Sales Commissions and Volume Discounts**

Our executive officers and directors and their immediate family members, as well as officers and employees of our advisor and our advisor's affiliates and their immediate family members, and, if approved by our board of directors, joint venture partners, consultants and other service providers may purchase shares of our common stock in this offering and may be charged a reduced rate for certain fees and expenses in respect of such purchases. We expect that a limited number of shares of our common stock will be sold to such persons. However, except for certain share ownership and transfer restrictions contained in our charter, there is no limit on the number of shares of our common stock that may be sold to such persons. In addition, the sales commission and dealer manager fee may be reduced or waived in connection with certain categories of sales, such as sales for which a volume discount applies, sales to our affiliates and sales under our distribution reinvestment plan. The amount of net proceeds to us will not be affected by reducing or eliminating the sales commissions or the dealer manager fee payable in connection with sales to such investors and affiliates. Our advisor and its affiliates will be expected to hold their shares of our common stock purchased as stockholders for investment and not with a view towards distribution.

Certain institutional investors and our affiliates may also agree with a participating broker-dealer selling shares of our common stock (or with our dealer manager if no participating broker-dealer is involved in the transaction) to reduce or eliminate the sales commission. The amount of net proceeds to us will not be affected by reducing or eliminating commissions payable in connection with sales to such institutional investors and affiliates.

In connection with sales of over \$500,000 or more to a qualifying purchaser (as defined below), a participating broker-dealer may offer such qualifying purchaser a volume discount by reducing the amount of its sales commissions. Any reduction in the amount of the selling commissions in respect of volume discounts received will be credited to the qualifying purchaser in the form of additional shares, effectively reducing the per share purchase price payable by the qualifying purchaser. Fractional shares will be issued.

Assuming a public offering price of \$25.00 per share, the following table illustrates the various discount levels that may be offered to qualifying purchasers by participating broker-dealers for shares purchased in the primary offering:

**Commissions on Sales per Incremental Share in Volume Discount Range**

<b>Dollar Volume of Shares Purchased</b>	<b>Purchase Price per Share to Investor</b>	<b>Percentage (Based on \$25.00/Share)</b>	<b>Amount per Share</b>	<b>Dealer Manager Fee per Share</b>	<b>Net Proceeds per Share</b>
\$500,000 or less .....	\$ 25.00	7.0%	\$ 1.75	\$ 0.75	\$ 22.50
\$500,001-\$750,000 .....	\$ 24.75	6.0%	\$ 1.50	\$ 0.75	\$ 22.50
\$750,001-\$1,000,000 .....	\$ 24.50	5.0%	\$ 1.25	\$ 0.75	\$ 22.50
\$1,000,001-\$2,000,000 .....	\$ 24.25	4.0%	\$ 1.00	\$ 0.75	\$ 22.50
\$2,000,001-\$3,000,000 .....	\$ 24.00	3.0%	\$ 0.75	\$ 0.75	\$ 22.50
\$3,000,001-\$5,000,000 .....	\$ 23.75	2.0%	\$ 0.50	\$ 0.75	\$ 22.50
Over \$5,000,001 .....	\$ 23.50	1.0%	\$ 0.25	\$ 0.75	\$ 22.50

As an example, a single purchaser would receive 30,101.01 shares rather than 30,000 shares for an investment of \$750,000 and the selling commission would be \$50,051.51. The discount would be calculated as follows: the purchaser would acquire 20,000 shares at a cost of \$25.00 and 10,101.01 at a cost of \$24.75 per share and would pay commissions of \$1.75 per share for 20,000 shares and \$1.50 per share for 10,101.01 shares. The dealer manager fee of \$0.75 per share would still be payable out of the purchase price per share for the shares purchased. In no event will the proceeds to us be less than \$22.50 per share. If we revise the offering price in this offering, the percentage discounts on sales commissions set out above will be applied to the new offering price.

We will apply the reduced per share purchase price on the portion of the purchase which exceeds the \$500,000 share purchase threshold. Subscriptions may be combined for the purpose of determining the volume discounts in the case of subscriptions made by any qualifying purchaser, provided all such shares are purchased through the same broker-dealer. The volume discount shall be prorated among the separate subscribers considered to be a single qualifying purchaser. Any request to combine more than one subscription must be made in writing submitted simultaneously with your subscription for shares, and must set forth the basis for such request. Any such request will be subject to verification by the dealer manager that all of such subscriptions were made by a single qualifying purchaser.

For the purposes of such volume discounts, the term “qualifying purchaser” includes:

- an individual, his or her spouse and their children under the age of 21 who purchase the shares for his, her or their own accounts;
- a corporation, partnership, association, joint-stock company, trust fund or any organized group of persons, whether incorporated or not;
- an employees’ trust, pension, profit sharing or other employee benefit plan qualified under Section 401(a) of the Internal Revenue Code; and
- all commingled trust funds maintained by a given bank.

Notwithstanding the above, in connection with volume sales, investors who would not constitute a single qualifying purchaser may request in writing to aggregate subscriptions as part of a combined order for purposes of determining the number of shares purchased, provided that any aggregate group of subscriptions must be received from the same participating broker-dealer, including the dealer manager. Any such reduction in selling commission will be prorated among the separate subscribers.

Because all investors will be paid the same distributions per share as other investors, an investor qualifying for a volume discount will receive a higher percentage return on his or her investment than investors who do not qualify for such discount. Investors should ask their broker-dealer about the opportunity to receive volume discounts by either qualifying as a qualifying purchaser or by having their subscription(s) aggregated with the subscriptions of other investors, as described above.

We will not pay any selling commissions in connection with the sale of shares to investors whose contracts for investment advisory and related brokerage services include a fixed or “wrap” fee feature. Investors may agree with their participating brokers to reduce the amount of selling commissions payable with respect to the sale of their shares down to zero if (1) the investor has engaged the services of a registered investment advisor or other financial advisor who will be paid compensation for investment advisory services or other financial or investment advice or (2) the investor is investing through a bank trust account with respect to which the investor has delegated the decision-making authority for investments made through the account to a bank trust department. The net proceeds to us will not be affected by reducing the commissions payable in connection with such transaction. All such sales must be made through registered broker-dealers. Neither our dealer manager nor its affiliates will directly or indirectly compensate any person engaged as an investment advisor or a bank trust department by a potential investor as an inducement for such investment advisor or bank trust department to advise favorably for an investment in our shares. In connection with the sale of shares to investors who elect the “wrap fee” feature, the dealer manager may pay to the registered investment advisor or other financial advisor or the company that sponsors the wrap account, service or other denominated fees on an annual basis.

## **SUPPLEMENTAL SALES MATERIAL**

In addition to this prospectus, we may utilize certain sales material in connection with the offering of shares of our common stock, although only when accompanied by or preceded by the delivery of this prospectus. In certain jurisdictions, some or all of such sales material may not be available. This material may include information relating to this offering, the past performance of our sponsor and its affiliates, property brochures and articles and publications concerning real estate. In addition, the sales material may contain certain quotes from various publications without obtaining the consent of the author or the publication for use of the quoted material in the sales material.

The offering of shares of our common stock is made only by means of this prospectus. Although the information contained in such sales material will not conflict with any of the information contained in this prospectus, such material does not purport to be complete, and should not be considered a part of this prospectus or the registration statement of which this prospectus is a part, or as incorporated by reference in this prospectus or said registration statement or as forming the basis of the offering of the shares of our common stock.

## **LEGAL MATTERS**

The legality of the shares of our common stock being offered hereby has been passed upon for us by Venable LLP. Alston & Bird LLP has reviewed the statements relating to certain federal income tax matters under the caption "Federal Income Tax Considerations" and passed upon our qualification as a REIT for federal income tax purposes.

## **EXPERTS**

The consolidated balance sheet of Moody National REIT II, Inc. and subsidiaries as of December 31, 2014, and the related consolidated statements of operations, equity and cash flows for the period from July 25, 2014 (date of inception) through December 31, 2014 appearing in this Prospectus and Registration Statement has been audited by Frazier & Deeter, LLC, independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and is included in reliance upon such report given upon the authority of such firm as experts in accounting and auditing.

## **ADDITIONAL INFORMATION**

We have filed a registration statement on Form S-11 with the SEC with respect to the shares of our common stock to be issued in this offering. This prospectus is a part of that registration statement, and, as permitted under SEC rules, does not contain all the information you can find in the registration statement or the exhibits to the registration statement. We refer you to the registration statement and the exhibits to the registration statement for additional information relating to us. Statements contained in this prospectus as to the contents of any agreement or other document are only summaries of such agreement or document and in each instance, if we have filed the agreement or document as an exhibit to the registration statement, we refer you to the copy of the agreement or document filed as an exhibit to the registration statement.

Upon the effectiveness of the registration statement, we will file reports, proxy statements and other information with the SEC pursuant to the Exchange Act. The registration statement is, and any of these future filings with the SEC will be, publicly available over the Internet on the SEC's website (<http://www.sec.gov>). You may also read and copy the registration statement, the exhibits to the registration statement and the reports, proxy statements and other information we will file with the SEC at the SEC's public reference room at 100 F Street, N.E., Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 for further information regarding the operation of the public reference room.

You may also request a copy of these filings at no cost, by writing or telephoning us at:

6363 Woodway Drive, Suite 110  
Houston, Texas 77057  
713-977-7500  
Attn: Investor Relations

Within 120 days after the end of each fiscal year we will provide to our stockholders of record an annual report. The annual report will contain audited financial statements and certain other financial and narrative information that we are required to provide to stockholders.

We also maintain a website at <http://moodynationalreit.com>, where there may be additional information about our business, but the contents of that site are not incorporated by reference in or otherwise a part of this prospectus.

## INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

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## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholder  
Moody National REIT II, Inc.:

We have audited the accompanying consolidated balance sheet of Moody National REIT II, Inc. and subsidiaries (the “Company”) as of December 31, 2014 and the related consolidated statements of operations, equity and cash flows for the period from July 25, 2014 (date of inception) through December 31, 2014. These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Moody National REIT II, Inc. and its subsidiaries as of December 31, 2014 and the results of their operations and their cash flows for the period from July 25, 2014 (date of inception) through December 31, 2014 in conformity with U.S. generally accepted accounting principles.

/s/ Frazier & Deeter, LLC

Atlanta, Georgia  
January 12, 2015

**Moody National REIT II, Inc.**  
**Consolidated Balance Sheet**  
December 31, 2014

<b>Assets</b>	
Cash and cash equivalents .....	\$ 198,624
<b>Total assets</b> .....	<u>\$ 198,624</u>
<b>Liabilities and stockholder's equity</b>	
<b>Total liabilities</b> .....	\$ —
<b>Special Limited Partnership Interests</b> .....	1,000
<b>Stockholder's equity</b>	
Preferred stock, \$0.01 par value per share; 100,000,000 shares authorized; no shares issued and outstanding .....	—
Convertible stock, \$0.01 par value per share; 1,000 shares authorized; no shares issued and outstanding .....	—
Common stock, \$0.01 par value per share; 999,999,000 shares authorized 8,000 issued and outstanding .....	80
Additional paid-in capital .....	199,920
Accumulated deficit .....	<u>(2,376)</u>
<b>Total stockholder's equity</b> .....	<u>197,624</u>
<b>Total liabilities and stockholder's equity</b> .....	<u>\$ 198,624</u>

See accompanying notes to the consolidated financial statements.

**Moody National REIT II, Inc.**  
**Consolidated Statement of Operations**

Period from July 25, 2014 (date of inception) through December 31, 2014

<b>Revenue</b> .....	\$ —
Total revenue .....	<u>—</u>
<b>Expenses</b>	
Organizational expenses .....	<u>2,376</u>
Total expenses .....	<u>2,376</u>
<b>Net loss attributable to common shareholders</b> .....	<u>\$ (2,376)</u>
<b>Net loss per share attributable to common shareholders – basic and diluted</b> .....	<u>\$ (0.30)</u>
<b>Weighted average shares outstanding</b> .....	<u>8,000</u>

See accompanying notes to consolidated financial statements.

**Moody National REIT II, Inc.**  
**Consolidated Statement of Equity**

Period from July 25, 2014 (date of inception) through December 31, 2014

	<u>Preferred Stock</u>		<u>Convertible Stock</u>		<u>Common Stock</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Total Equity</u>
	<u>Number of Shares</u>	<u>Par Value</u>	<u>Number of Shares</u>	<u>Par Value</u>	<u>Number of Shares</u>	<u>Par Value</u>			
Balance at July 25, 2014 (date of inception) .....	—	\$ —	—	\$ —	—	\$ —	\$ —	\$ —	\$ —
Issuance of common stock .....	—	—	—	—	8,000	80	199,920		200,000
Net loss .....	—	—	—	—				(2,376)	(2,376)
Balance at December 31, 2014 .....	<u>—</u>	<u>\$ —</u>	<u>—</u>	<u>\$ —</u>	<u>8,000</u>	<u>\$ 80</u>	<u>\$ 199,920</u>	<u>\$ (2,376)</u>	<u>\$ 197,624</u>

See accompanying notes to consolidated financial statements.

**Moody National REIT II, Inc.**  
**Consolidated Statement of Cash Flows**

Period from July 25, 2014 (date of inception) through December 31, 2014

**Cash flows from operating activities**

Net loss .....	\$ (2,376)
Net cash used in operating activities .....	<u>(2,376)</u>

**Cash flows from financing activities**

Proceeds from issuance of common stock .....	200,000
Proceeds from issuance of Special Limited Partnership Interest .....	<u>1,000</u>
Net cash provided by financing activities .....	<u>200,000</u>

Net change in cash and cash equivalents .....	197,624
Cash and cash equivalents at beginning of period .....	<u>—</u>
Cash and cash equivalents at end of period .....	<u>\$ 198,624</u>

See accompanying notes to consolidated financial statements.

**MOODY NATIONAL REIT II, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**December 31, 2014**

**1. Organization**

Moody National REIT II, Inc. (the “Company”) was formed on July 25, 2014, as a Maryland corporation and intends to qualify as a real estate investment trust (“REIT”). The Company expects to use the proceeds from its initial public offering to invest in a portfolio of hospitality properties focusing primarily on the premier-brand, select-service segment of the hospitality sector. To a lesser extent, the Company may also invest in hospitality-related real estate securities and debt investments. As discussed in Note 3, the Company issued common stock to Moody National REIT Sponsor, LLC (“Sponsor”) on August 15, 2014. The Company has not begun operations.

The Company is offering a maximum of 40,000,000 shares of its common stock to the public in its primary offering (the “Offering”) at \$25.00 per share, with discounts available to certain purchasers, and 4,210,526 shares of its common stock pursuant to its distribution reinvestment plan (the “DRP”) at \$23.75 per share. The Company may reallocate the shares between the Offering and the DRP. In addition, the Company’s board of directors may, from time to time, in its sole discretion, change the price at which the Company offers shares to the public in the Offering or to its stockholders pursuant to the DRP to reflect changes in the Company’s estimated value per share and other factors that the Company’s board of directors deems relevant.

The Company’s advisor is Moody National Advisor II, LLC (“Advisor”), a Delaware limited liability company and an affiliate of Sponsor. Subject to certain restrictions and limitations, Advisor is responsible for managing the Company’s affairs on a day-to-day basis and for identifying and making acquisitions and investments on behalf of the Company.

Substantially all of the Company’s business is conducted through Moody National Operating Partnership II, LP, a Delaware limited partnership (the “OP”). The Company is the sole general partner of the OP. The initial limited partners of the OP are Moody OP Holdings II, LLC, a Delaware limited liability company and a wholly owned subsidiary of the Company (“Moody OP”), and Moody National LPOP II, LLC (“Moody LPOP II”), an affiliate of Advisor. Moody OP has invested \$1,000 in the OP in exchange for limited partner interests, and Moody LPOP II has invested \$1,000 in the OP in exchange for a separate class of limited partnership interests (the “Special Limited Partnership Interests”). As the Company accepts subscriptions for shares, it will transfer substantially all of the net proceeds of the Offering to the OP as a capital contribution. The partnership agreement provides that the OP will be operated in a manner that will enable the Company to (1) satisfy the requirements for being classified as a REIT for tax purposes, (2) avoid any federal income or excise tax liability, and (3) ensure that the OP will not be classified as a “publicly traded partnership” for purposes of Section 7704 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), which classification could result in the OP being taxed as a corporation, rather than as a partnership. In addition to the administrative and operating costs and expenses incurred by the OP in acquiring and operating real properties, the OP will pay all of the Company’s administrative costs and expenses, and such expenses will be treated as expenses of the OP.

**2. Summary of Significant Accounting Policies**

***Consolidation***

The Company’s consolidated financial statements include the Company’s accounts and the accounts of subsidiaries over which the Company has control, including the OP and Moody OP. All intercompany balances and transactions are eliminated in consolidation.

***Organization and Offering Costs***

Organization and offering costs of the Company will be incurred by Advisor on behalf of the Company and, accordingly, are not a direct liability of the Company. Under the terms of the agreement with Advisor, upon the sale of shares of common stock to the public, the Company will be obligated to reimburse Advisor for organization and offering costs incurred by Advisor in connection with the Offering. The amount of the reimbursement to Advisor for cumulative organization and offering costs is limited to a maximum amount of up to 15% of the aggregate gross proceeds from the sale of the shares of common stock sold in the Company’s public offerings. Such costs shall include legal, accounting, printing and other offering expenses, including marketing, salaries and direct expenses of Advisor’s employees and employees of Advisor’s affiliates and others. Any such reimbursement will not exceed actual expenses incurred by Advisor.

***Income Taxes***

The Company intends to make an election to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code, commencing in the taxable year in which the Company raises \$2,000,000 in the Offering. If the Company qualifies for taxation as a REIT, the Company generally will not be subject to federal corporate income tax to the extent it distributes its REIT taxable income to its stockholders, so long as it distributes at least 90 percent of its REIT taxable income (which is computed without regard to the dividends paid deduction or net capital gain and which does not necessarily equal net income as calculated in accordance with U.S. generally accepted accounting principles (“GAAP”)). REITs are subject to a number of other organizational and operational requirements. Even if the Company qualifies for taxation as a REIT, it may be subject to certain state and local taxes on its income and property, and federal income and excise taxes on its undistributed income.

### ***Cash and Cash Equivalents***

Cash and cash equivalents consist of cash on hand and highly liquid investments purchased with original maturities of three months or less.

### **3. Capitalization**

Under the Company's charter, the Company has the authority to issue 999,999,000 shares of common stock, 100,000,000 shares of preferred stock, and 1,000 shares of non-participating, non-voting convertible stock. All shares of such stock have a par value of \$0.01 per share. On August 15, 2014, the Company sold 8,000 shares of common stock to Sponsor at a purchase price of \$25.00 per share for an aggregate purchase price of \$200,000, which was paid in cash. The Company's board of directors is authorized to amend its charter, without the approval of the stockholders, to increase the aggregate number of authorized shares of capital stock or the number of shares of any class or series that the Company has authority to issue.

### **4. Related Party Arrangements**

Advisor and certain affiliates of Advisor receive fees and compensation in connection with the Company's public offering, and the acquisition, management and sale of the Company's real estate investments. In addition, in exchange for \$1,000 and in consideration of services to be provided by Advisor, the OP has issued an affiliate of the Advisor, Moody LPOP II, a separate, special limited partnership interest, in the form of Special Limited Partnership Interests. For further detail, please see Note 6 ("Subordinated Partnership Interest") below.

Moody National Securities, LLC ("Moody Securities"), the dealer manager of the Offering, receives a commission of up to 7.0% of gross offering proceeds. Moody Securities may reallocate all or a portion of such sales commissions earned to participating broker-dealers. In addition, the Company pays Moody Securities a dealer manager fee of up to 3.0% of gross offering proceeds, a portion of which may be reallocated to participating broker-dealers. No selling commissions or dealer manager fee are paid for sales under the DRP.

Advisor receives reimbursement for organizational and offering expenses incurred on the Company's behalf, but only to the extent that such reimbursements do not exceed actual expenses incurred by Advisor and do not cause the cumulative sales commission, the dealer manager fee and other organization and offering expenses borne by the Company to exceed 15.0% of gross offering proceeds from the sale of shares in its public offering as of the date of reimbursement.

Advisor, or its affiliates, also receive an acquisition fee equal to 1.5% of (1) the cost of all investments the Company acquires (including the Company's pro rata share of any indebtedness assumed or incurred in respect of the investment and exclusive of acquisition and financing coordination fees), (2) the Company's allocable cost of investments acquired in a joint venture (including the Company's pro rata share of the purchase price and the Company's pro rata share of any indebtedness assumed or incurred in respect of that investment and exclusive of acquisition fees and financing coordination fees) or (3) the amount funded by the Company to acquire or originate a loan or other investment, including mortgage, mezzanine or bridge loans (including any third-party expenses related to such investment and exclusive of acquisition fees and financing coordination fees). Once the proceeds from the primary public offering have been fully invested, the aggregate amount of acquisition fees and financing coordination fees shall not exceed 1.9% of the contract purchase price and the amount advanced for a loan or other investment, as applicable, for all the assets acquired.

Advisor also receives financing coordination fees of 1% of the amount available under any loan or line of credit made available to the Company and 0.75% of the amount available or outstanding under any refinanced loan or line of credit. Advisor will pay some or all of these fees to third parties with whom it subcontracts to coordinate financing for the Company.

The Company pays Moody National Hospitality Management, LLC ("Property Manager"), a monthly hotel management fee equal to 4.0% of the monthly gross receipts from the properties managed by Property Manager for services it provides in connection with operating and managing properties. Property Manager may pay some or all of the compensation it receives from the Company to a third-party property manager for management or leasing services. In the event that the Company contracts directly with a non-affiliated third-party property manager, the Company will pay Property Manager a market-based oversight fee. The Company will reimburse the costs and expenses incurred by Property Manager on the Company's behalf, including legal, travel and other out-of-pocket expenses that are directly related to the management of specific properties, but the Company will not reimburse Property Manager for general overhead costs or personnel costs other than employees or subcontractors who are engaged in the on-site operation, management, maintenance or access control of the properties.

The Company also pays an annual incentive fee to Property Manager. Such annual incentive fee is equal to 15% of the amount by which the operating profit from the properties managed by Property Manager for such fiscal year (or partial fiscal year) exceeds 8.5% of the total investment of such properties. Property Manager may pay some or all of this annual fee to third-party sub-property managers for management services. For purposes of this fee, "total investment" means the sum of (i) the price paid to acquire a property, including closing costs, conversion costs, and transaction costs; (ii) additional invested capital; and (iii) any other costs paid in connection with the acquisition of the property, whether incurred pre- or post-acquisition.

The Company pays Advisor a monthly asset management fee of one-twelfth of 1.0% all real estate investments the Company acquires.

Advisor or its affiliates also are paid a disposition fee in an amount of up to one-half of the brokerage commission paid but in no event greater than 3.0% of the contract sales price of each property or other investment sold; provided, however, in no event may the aggregate of the disposition fees paid to the Advisor and any real estate commissions paid to unaffiliated third parties exceed 6.0% of the contract sales price.

The Company reimburses Advisor for all expenses paid or incurred by Advisor in connection with the services provided to the Company, subject to the limitation that the Company will not reimburse Advisor for any amount by which its operating expenses (including the asset management fee) at the end of the four preceding fiscal quarters exceeds the greater of: (1) 2% of its average invested assets, or (2) 25% of its net income determined without reduction for any additions to reserves for depreciation, bad debts or other similar non-cash reserves and excluding any gain from the sale of the Company's assets for that period. Notwithstanding the above, the Company may reimburse Advisor for expenses in excess of this limitation if a majority of the independent directors determines that such excess expenses are justified based on unusual and non-recurring factors.

## **5. Incentive Award Plan**

The Company has adopted an incentive plan (the "Incentive Award Plan") that provides for the grant of equity awards to its employees, directors and consultants and those of the Company's affiliates. The Incentive Award Plan authorizes the grant of non-qualified and incentive stock options, restricted stock awards, restricted stock units, stock appreciation rights, dividend equivalents and other stock-based awards or cash-based awards. Shares of common stock will be authorized and reserved for issuance under the Incentive Award Plan. The Company has adopted an independent directors compensation plan (the "Independent Directors Compensation Plan") pursuant to which each of the Company's independent directors is entitled, subject to the plan's conditions and restrictions, to receive an initial grant of 5,000 shares of restricted stock when the Company raises the minimum offering amount of \$2,000,000 in its Offering. Each new independent director that subsequently joins the Company's board of directors will receive a grant of 5,000 shares of restricted stock upon his or her election to the Company's board of directors. In addition, on the date of each of the first four annual meetings of the Company's stockholders at which an independent director is re-elected to the Company's board of directors, he or she will receive an additional grant of 2,500 shares of restricted stock. Subject to certain conditions, the non-vested shares of restricted stock granted pursuant to the Independent Directors Compensation Plan will vest and become non-forfeitable in four equal quarterly installments beginning on the first day of the first quarter following the date of grant; provided, however, that the restricted stock will become fully vested on the earlier to occur of (1) the termination of the independent director's service as a director due to his or her death or disability, or (2) a change in control of the Company. No awards have been granted under either plan as of December 31, 2014.

## **6. Subordinated Partnership Interest**

Pursuant to the Limited Partnership Agreement for the OP approved by the Company's initial directors, Moody LPOP II, the holder of the Special Limited Partnership Interests, are entitled to receive distributions equal to 15.0% of the OP's net cash flows, whether from continuing operations, the repayment of loans, the disposition of assets or otherwise, but only after the Company's stockholders have received, in the aggregate, cumulative distributions equal to their total invested capital plus a 6.0% cumulative, non-compounded annual pre-tax return on such aggregated invested capital. In addition, the Special Limited Partnership Interest holder is entitled to a separate payment if it redeems its Special Limited Partnership Interests. The Special Limited Partnership Interests may be redeemed upon: (1) the listing of the Company's common stock on a national securities exchange; or (2) the occurrence of certain events that result in the termination or non-renewal of the Company's advisory agreement, in each case for an amount that that Moody LPOP II would have been entitled to receive had the OP disposed of all of its assets at the enterprise valuation as of the date of the event triggering the redemption.

## **7. Subsequent Events**

The Company has evaluated all events subsequent to the consolidated financial statements through January 12, 2015. The Company concluded that no events necessitate recognition in the consolidated financial statements or disclosure in the notes to the consolidated financial statements as of December 31, 2014.

## **APPENDIX A**

### **PRIOR PERFORMANCE TABLES**

The following prior performance tables provide information relating to the real estate investment programs sponsored by Moody National and its affiliates, collectively referred to herein as the “prior real estate programs.” These programs were not prior programs of Moody National REIT II, Inc. Moody National and its affiliates provide commercial real estate services, which focus on identifying and developing institutional quality real estate products and programs for individual and institutional investors. Each individual prior real estate program has its own specific investment objectives; however, the general investment objectives common to all prior real estate programs include providing investors with (1) exposure to investment in real estate as an asset class and (2) current income. Accordingly, each of the prior real estate programs has similar investment objectives to those of Moody National REIT II, Inc.

This information should be read together with the summary information included in the “Prior Performance Summary” section of this prospectus.

INVESTORS SHOULD NOT CONSTRUE INCLUSION OF THE FOLLOWING TABLES AS IMPLYING, IN ANY MANNER, THAT WE WILL HAVE RESULTS COMPARABLE TO THOSE REFLECTED IN SUCH TABLES. DISTRIBUTABLE CASH FLOW, FEDERAL INCOME TAX DEDUCTIONS OR OTHER FACTORS COULD BE SUBSTANTIALLY DIFFERENT. INVESTORS SHOULD NOTE THAT, BY ACQUIRING OUR SHARES, THEY WILL NOT BE ACQUIRING ANY INTEREST IN ANY PRIOR PROGRAM.

#### **Description of the Tables**

All information contained in the Tables in this Appendix A is as of December 31, 2013. The following tables are included herein:

Table III—Annual Operating Results of Prior Real Estate Programs

Table IV—Operating Results of Prior Real Estate Programs Which Have Completed Operations

Table V—Sale or Disposition of Properties by Prior Real Estate Programs

We have not included in this Appendix A Table I (Experience in Raising and Investing Funds) or Table II (Compensation to Sponsor) because there are no prior real estate programs the offering of which closed during the three years ended December 31, 2013 and therefore Tables I and II are inapplicable.

**TABLE III ANNUAL OPERATING RESULTS OF PRIOR PROGRAMS  
(UNAUDITED)**

Table III sets forth the annual operating results of prior real estate programs that closed during the five years ended December 31, 2013. All figures are as of December 31, 2013.

**Moody National Financial Fund I, LLC**

	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>
<b>Summary Balance Sheet Data:</b>					
Total Assets (before depreciation) .....	—	\$ 1,781,493	\$ 1,782,575	\$ 1,780,268	\$ 3,307,018
Total Assets (after depreciation) .....	—	\$ 1,781,493	\$ 1,782,575	\$ 1,780,268	\$ 3,307,018
Liabilities .....	—	\$ 361,186	\$ 363,989	\$ 363,738	\$ 166,144
Estimated Per Share Value .....	N/A	N/A	N/A	N/A	N/A
<b>Summary Income Statement Data:</b>					
Gross Revenues .....	\$ 63,426	\$ 257,630	\$ 257,413	\$ 449,929	\$ 570,705
Operating Expenses .....	—	—	—	—	—
Operating Income .....	\$ 63,426	\$ 257,630	\$ 257,413	\$ 449,929	\$ 570,705
Interest Expense .....	—	—	—	—	—
Net Income (GAAP basis) .....	\$ 63,426	\$ 257,630	\$ 257,413	\$ 449,929	\$ 570,705
<b>Summary Cash Flows Data:</b>					
Cash Generated from Operating Activities(1) .....	\$ 63,426	\$ 257,630	\$ 257,413	\$ 449,929	\$ 570,705
Cash Generated from Investing Activities .....	—	—	—	—	—
Cash Generated from Financing Activities .....	—	—	—	—	—
Total Cash Generated .....	\$ 63,426	\$ 257,630	\$ 257,413	\$ 449,929	\$ 570,705
<b>Amount and Source of Distributions</b>					
Total Distributions Paid to Investors .....	\$ 63,426	\$ 257,630	\$ 257,413	\$ 449,929	\$ 570,705
Distribution Data Per \$1,000 Invested:					
Total Cash Distributions to Investors .....	\$ 145	\$ 148	\$ 148	\$ 172	\$ 169
From Operations .....	\$ 145	\$ 148	\$ 148	\$ 172	\$ 169
From all other sources (financing or other sources) .....	—	—	—	—	—

**Notes to Table III**

- (1) Cash Generated From Operating Activities reflects payments to investors pursuant to a master lease on the property and does not reflect the cash generated at the property level.

**TABLE IV**  
**OPERATING RESULTS OF COMPLETED PRIOR PROGRAMS**  
**(UNAUDITED)**

Table IV presents information regarding the operating results of prior real estate programs that have completed operations (no longer hold properties) during the five years ended December 31, 2013. All amounts presented are as of December 31, 2013.

	Westgate Technology Center <sup>(1)</sup>	Orlando Radisson Inn	Springhill Suites Altamonte and Holiday Inn Express Orlando <sup>(2)</sup>	Residence Inn Perimeter	Springhill Suites Des Moines	Residence Inn Torrance	Fairfield Inn Denver South, Fairfield In Aurora and Fairfield Inn Westminister	Courtyard Willoughby	TownePlace Suites Miami Airport and TownePlace Suites Miami Lakes	Fairfield Inn & Suites West Des Moines
Aggregate Dollar Amount Raised	\$ 4,000,000	\$ 2,895,000	\$ 10,210,000	\$ 7,080,000	\$ 4,310,000	\$ 23,015,000	\$ 11,500,000	\$ 5,985,000	\$ 5,915,000	\$ 6,555,000
Number of Properties Purchased	1	1	2	1	1	1	3	1	2	1
Duration of Program (Months)	60	52	49	30	41	40	45	44	51	48
Date of Program Closing	July 6, 2010 <sup>(1)</sup>	May 13, 2010	December 9, 2010 <sup>(2)</sup>	May 27, 2010	March 10, 2011	March 10, 2011	March 21, 2011	June 1, 2011	July 1, 2011	October 27, 2011
Total Compensation Paid to Sponsor <sup>(3)</sup>	\$ 551,633	\$ 916,226	\$ 1,601,280	\$ 3,672,453	\$ 998,682	\$ 7,957,234	\$ 3,504,649	\$ 1,100,453	\$ 2,971,880	\$ 1,205,210
Median Annual Leverage	65 %	56%	60 %	59%	66%	61%	58%	61%	74%	53%
Annualized Return on Investment	-13 %	-11%	-21 %	-20%	-23%	-23%	-21%	-23%	-21%	-23%

	Renaissance Meadowlands	Nashville Marriott Courtyard	TownePlace Suites Mt. Laurel	Courtyard Columbus Airport	Memphis Residence Inn	Fairfield Inn Meadowlands	Courtyard by Marriott Columbus Downtown	Residence Inn Midtown Atlanta
Aggregate Dollar Amount Raised	\$ 22,385,000	\$ 12,140,000	\$ 5,595,000	\$ 11,110,000	\$ 6,930,000	\$ 11,695,000	\$ 11,110,000	\$ 7,475,000
Number of Properties Purchased	1	1	1	1	1	1	1	1
Duration of Program (Months)	56	74	60	59	83	56	68	66
Date of Program Closing	January 6, 2012	February 15, 2012	April 5, 2012	May 11, 2012	December 27, 2012	December 28, 2012	February 8, 2013	August 6, 2013
Total Compensation Paid to Sponsor <sup>(3)</sup>	\$ 4,276,919	\$ 2,091,318	\$ 1,528,436	\$ 1,974,267	\$ 1,096,750	\$ 1,972,430	\$ 1,974,267	\$ 1,195,580
Median Annual Leverage	58%	60%	58%	58%	53%	61%	49%	58%
Annualized Return on Investment	-17%	-10%	-17%	-16%	-13%	-17%	-13%	-15%

**Notes to Table IV**

- (1) In July 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the Westchase Technology Center property.
- (2) In November 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the Holiday Inn Express Orlando property. In December 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on Springhill Suites Altamonte property.
- (3) Includes financing fees, acquisition fees, deposits, prepaid items and funds for the acquisition of personal property based on asset class.
- (4) Annualized return on investment is calculated based upon (a) the difference between the aggregate amounts distributed to investors and the aggregate amount invested by investors, divided by (b) the aggregate amount invested by investors multiplied by the number of years from the initial investment from an investor to the liquidity event. We did not exclude from the amount raised from investors any underwriting fees and commissions disclosed to investors and paid from the amount raised.

**TABLE V**  
**SALE OR DISPOSITION OF PROPERTIES**  
**(UNAUDITED)**

Table V sets forth summary information on the results of the sale or disposal of properties since December 31, 2010 by prior real estate programs.

Property	Location	Date Acquired	Date of Sale	Selling Price, Net of Closing Costs and GAAP Adjustments						Cost of Properties Including Closing and Soft Costs			Excess (Deficiency) of Property Operating Cash Receipts Over Cash Expenditures
				Cash Received Net of Closing Costs	Mortgage Balance at Time of Sale	Closing Costs	Purchase Money Mortgage Taken Back By Program	Adjustments Resulting From Application of GAAP	Total	Original Mortgage Financing	Total Acquisition Cost, Capital Improvements, Closing and Soft Cost	Total	
Westchase Technology Center <sup>(1)</sup>	Houston, Texas	August 8, 2005	July 6, 2010	\$ 7,962,039	\$ 7,962,039	—	—	—	—	\$ 8,200,000	\$ 4,000,000	\$12,200,000	\$ 1,350,930
Orlando Radisson Inn	Orlando, Florida	April 3, 2006	May 13, 2010	4,682,404	3,754,755	\$ 917,596	—	—	\$ 927,649	3,965,000	2,985,000	6,950,000	716,400
Springhill Suites Altamonte <sup>(2)</sup>	Altamonte Springs, Florida	March 3, 2006	December 9,2010	6,931,368	6,931,368	—	—	—	—	7,006,000	4,875,000	11,881,000	748,689
Holiday Inn Express Orlando <sup>(3)</sup>	Orlando, Florida	December 6, 2006	November 15, 2010	8,701,310	8,701,310	—	—	—	—	8,795,000	5,335,000	14,130,000	890,411
Residence Inn Perimeter	Atlanta, Georgia	November 7, 2007	May 27, 2010	12,776,325	10,426,325	—	—	—	\$ 2,350,000	10,665,000	7,080,000	17,745,000	562,660
Springhill Suites Des Moines	Des Moines, Iowa	August 31, 2007	March 10, 2011	8,242,822	8,242,822	—	—	—	—	8,367,000	4,310,000	12,677,000	312,475
Residence Inn Torrance	Torrance, California	November 2, 2007	March 10, 2011	35,613,897	35,613,897	—	—	—	—	36,873,000	23,015,000	59,888,000	1,879,140
Fairfield Inn Denver South, Fairfield Inn Aurora and Fairfield Inn Westminster	Denver, Colorado	August 29, 2007	March 21, 2011	16,173,121	16,173,121	—	—	—	—	16,200,000	11,500,000	27,700,000	1,840,000
Courtyard Willoughby	Willoughby Hills, Ohio	August 31, 2007	June 1, 2011	9,369,843	9,369,843	—	—	—	—	9,511,000	5,985,000	15,496,000	448,875
TownePlace Suites Miami Airport and TownePlace Suites Miami Lakes	Miami, Florida	May 18, 2007	July 1, 2011	17,390,686	17,390,686	—	—	—	—	17,635,000	5,915,000	23,550,000	1,064,305
Fairfield Inn & Suites West Des Moines	West Des Moines, Iowa	August 31, 2007	October 27, 2011	7,403,075	7,403,075	—	—	—	—	7,576,000	6,555,000	14,131,000	554,322
Renaissance Meadowlands	Rutherford, New Jersey	August 31, 2007	January 6, 2012	31,495,869	31,495,869	—	—	—	—	32,000,000	22,385,000	54,385,000	3,139,700
Nashville Marriott Courtyard	Nashville, Tennessee	March 3, 2006	February 15, 2012	29,907,681	18,940,623	1,092,319	—	—	10,967,058	20,580,000	12,140,000	32,720,000	4,707,104
TownePlace Suites Mt. Laurel	Mount Laurel, New Jersey	May 18, 2007	April 5, 2012	7,800,646	7,800,646	—	—	—	—	7,835,000	5,595,000	13,430,000	895,200
Courtyard Columbus Airport	Columbus, Ohio	August 31, 2007	May 11, 2012	15,378,000	15,378,000	—	—	—	—	15,378,000	11,110,000	26,488,000	1,955,154
Memphis Residence Inn	Memphis, Tennessee	March 24, 2006	December 27, 2012	7,805,003	7,805,003	—	—	—	—	8,440,000	6,930,000	15,370,000	1,663,200
Fairfield Inn Meadowlands	East Rutherford, New Jersey	August 31, 2007	December 28, 2012	18,675,000	18,675,000	—	—	—	—	18,675,000	11,695,000	30,370,000	1,740,000
Courtyard by Marriott Columbus Downtown	Columbus, Ohio	August 31, 2007	February 8, 2013	13,778,243	10,725,879	571,757	—	—	3,052,364	11,202,000	5,845,000	17,047,000	1,116,047
Residence Inn Midtown Atlanta	Atlanta, Georgia	August 31, 2007	August 6, 2013	10,478,926	10,478,926	—	—	—	—	10,932,000	7,475,000	18,407,000	778,301

- (1) In July 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the Westchase Technology Center property.
- (2) In December 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the Springhill Suites Altamonte property.
- (3) In November 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the Holiday Inn Express Orlando property.



**APPENDIX B**  
**FORM OF SUBSCRIPTION AGREEMENT**  
**SUBSCRIPTION AGREEMENT INSTRUCTIONS**  
**FOR THE PROSPECTUS DATED JANUARY 20, 2015**

Please refer to the following instructions in completing the attached Signature Page. Failure to follow these instructions may result in the rejection of your subscription.

Individuals desiring to purchase shares of common stock (the “Shares”) in Moody National REIT II, Inc., a Maryland corporation (the “Company”), must sign and deliver a copy of the attached subscription agreement signature page (“Signature Page”) along with the acknowledgement of receipt of the prospectus in Section 5 of this Subscription Agreement. If this subscription is accepted, it will be held, together with the accompanying payment, on the terms described in the Company’s prospectus dated January 20, 2015 (the “Prospectus”). Subscriptions may be rejected in whole or in part by the Company in its sole and absolute discretion. Upon completion of this transaction, investors will receive a confirmation of purchase, subject to acceptance by the Company, within 30 days from the date the subscription is received. In no event may a subscription for Shares be accepted until at least five business days after the date the subscriber receives the final Prospectus.

**1. INVESTMENT.** A minimum investment of \$2,500 is required. A check for the full purchase price of the shares subscribed for should be made payable to “UMB Bank, N.A., as escrow agent for Moody National REIT II, Inc.” After satisfaction of the minimum offering amount, a check for the full purchase price of shares subscribed for should be made payable to “Moody National REIT II, Inc.” Shares may be purchased only by persons meeting the standards set forth under the Section of the Prospectus entitled “Suitability Standards.” Please indicate the state in which the sale was made in Section 1 of this Subscription Agreement. If this is an initial investment, please check the box indicating it as such. Otherwise, please check the “Additional Investment” box. The “Additional Investment” box must be checked in order for this subscription to be combined with another subscription for purposes of a volume discount. A completed Subscription Agreement is required for each initial and additional investment.

**2. FORM OF OWNERSHIP.** Please check the appropriate box to indicate the type of entity or type of individuals subscribing.

**3. CUSTODIAL OWNERSHIP ACCOUNTS.** If applicable, please provide the information requested for Custodial Accounts in this Section. Please enter the exact name in which the Shares are to be held and the mailing address and telephone numbers of the registered owner of this investment. In the case of a qualified plan or trust, this will be the address of the trustee.

**4. REGISTRATION INFORMATION AND ADDRESS.** Please enter the exact name in which the Shares are to be held. For joint tenants with a right of survivorship or tenants-in-common, include the names of both investors. In the case of partnerships or corporations, include the name of an individual to whom correspondence will be addressed. Trusts should include the name of the trustee. All investors must complete the space provided for taxpayer identification number or social security number. By signing in Section 11, the investor(s) is/are certifying that the taxpayer or social security number(s) is/are correct. Enter the mailing address and telephone numbers of the registered owner of this investment. In the case of a qualified plan or trust, this will be the address of the trustee.

**5. INVESTOR ACKNOWLEDGMENT.** Please separately initial each representation made by the investor where indicated. Except in the case of fiduciary accounts, the investor may not grant any person a power of attorney to make such representations on such investor’s behalf.

**6. SUITABILITY ACKNOWLEDGEMENT.** Please complete this Section so that the Company and your broker-dealer can assess whether your subscription is suitable given your financial condition.

**7. DISTRIBUTION REINVESTMENT PLAN.** By electing the distribution reinvestment plan, the investor elects to reinvest 100% of cash distributions otherwise payable to such investor in common stock of the Company. If cash distributions are to be sent to an address other than that provided in Section 4 (such as a bank, brokerage firm or savings and loan, etc.), please provide the name, account number and address.

**8. FINANCIAL ADVISOR.** This Section is to be completed by the Registered Investment Advisor (RIA), or the registered representative and the broker-dealer.

**9. PAYMENT INSTRUCTIONS.** Please indicate the method of payment for your subscription in this Section.

**10. SUBSCRIBER SIGNATURES.** The subscription agreement Signature Page must be signed by an authorized representative. The subscription agreement Signature Page, which has been delivered with the Prospectus, together with a check for the full purchase price, should be delivered or mailed to your broker-dealer. Only original, completed copies of subscription agreements may be accepted. Photocopied or otherwise duplicated subscription agreements cannot be accepted by the Company.

## **MAILING INSTRUCTIONS.**

The completed subscription agreement, including the executed subscription agreement signature page and payment (if sent by mail), should be sent to:

Prior to the Company raising the minimum offering amount of \$2,000,000:

### **Via Mail**

Moody National REIT II, Inc.  
c/o UMB Bank, N.A.  
1010 Grand Blvd., 4<sup>th</sup> Floor  
Mail Stop 1020409  
Kansas City, MO 64106  
Attn: Lara Stevens, Corporate Trust

Following the Company raising the minimum offering amount of \$2,000,000:

### **Via Mail**

Moody National REIT II, Inc.  
c/o DST Services, Inc.  
P.O. Box 219280  
Kansas City, MO 64121-9280

### **Via Overnight Delivery**

Moody National REIT II, Inc.  
c/o DST Services, Inc.  
430 West 7th Street  
Kansas City, MO 64105-1407

**IF YOU NEED FURTHER ASSISTANCE IN COMPLETING THIS SUBSCRIPTION AGREEMENT SIGNATURE PAGE,  
PLEASE CALL (888) 457-2358.**

## SUBSCRIPTION AGREEMENT

Moody National REIT II, Inc.  
P.O. Box 219280  
Kansas City, MO 64121-9280  
Telephone: (888) 457-2358  
Website: [www.moodynationalreit.com](http://www.moodynationalreit.com)

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### 1 – INVESTMENT – See payment instructions in Section 9 below.

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**Minimum investment is \$2,500.** Total Dollar amount invested: \_\_\_\_\_ Total Number of Shares Purchased: \_\_\_\_\_

**State of Sale (if different from State of Residence):** \_\_\_\_\_

This is an ☐ initial investment; or ☐ additional investment.

- ☐ Payment will be made ☐ check enclosed; or ☐ funds wired.
- ☐ **NET OF COMMISSION PURCHASE.** Check this box if you are purchasing Shares from a registered investment advisor (RIA), or if you are an investment participant in a wrap account or fee in lieu of commissions account approved by the broker-dealer, RIA, or a bank acting as a trustee or fiduciary, or similar entity.

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### 2 – FORM OF OWNERSHIP

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- ☐ **Individual**      ☐ **Joint Tenants with Rights of Survivorship**      ☐ **Tenants in Common**
- ☐ **Corporation** – Authorized signature required. Include copies of corporate resolutions designating executive officer as the person authorized to sign on behalf of corporation and authorizing the investment.
- ☐ **Partnership** – Authorized signature required. Include copy of partnership agreement.  
Identify whether general or limited partnership: \_\_\_\_\_
- ☐ **Estate** – Personal representative signature required. Include a copy of the court appointment dated within 90 days.  
Name of Executor: \_\_\_\_\_
- ☐ **Trust** – Trustee signature required in Section 11 below. **A copy of the title and signature pages of the trust are required.**  
Name of Trust: \_\_\_\_\_  
Name of Trustee(s): \_\_\_\_\_
- ☐ **Qualified Pension Plan or Profit Sharing Plan (Non-Custodian)** – Trustee signature required in Section 11 below. Include a copy of the title and signature pages of the plan.  
Name of Trustee: \_\_\_\_\_
- ☐ **Other Non-Custodial Ownership Account (Specify):** \_\_\_\_\_

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### 3 – CUSTODIAL OWNERSHIP ACCOUNTS

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Moody National REIT Sponsor, LLC does not provide custodial services; therefore, if this is a custodial account, a custodian must be indicated below. For custodial accounts, a completed copy of this Subscription Agreement should be sent directly to the custodian. The custodian will forward the subscription documents and wire the appropriate funds pursuant to the payment instructions in Section 9 below.

- |  |  |
|--|--|
| <input type="checkbox"/> <b>Traditional IRA</b> – Custodian signature required in Section 11 below.                | <input type="checkbox"/> <b>Roth IRA</b> – Custodian signature required in Section 11 below.                   |
| <input type="checkbox"/> <b>KEOGH Plan</b> – Custodian signature required in Section 11 below.                     | <input type="checkbox"/> <b>Simplified Employee Pension/Trust (SEP)</b>  |
| <input type="checkbox"/> <b>Pension or Profit-Sharing Plan</b> – Custodian signature required in Section 11 below. | <input type="checkbox"/> <b>Uniform Gift to Minors Act</b> – Custodian Signature required in Section 11 below. |
- State of \_\_\_\_\_  
Custodian for: \_\_\_\_\_
- ☐ **Other (Specify):** \_\_\_\_\_

**Required for all custodial ownership accounts:**

Name of Custodian: \_\_\_\_\_ Trustee: \_\_\_\_\_ Other Administrator: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Custodian Telephone Number: \_\_\_\_\_

Custodian Social Security Number/Tax Identification Number: \_\_\_\_\_

Custodian Account Number: \_\_\_\_\_

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**4 – REGISTRATION INFORMATION AND ADDRESS – Please complete the following applicable information:**

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Name of Investor/Trustee in which Shares are to be Registered (Please print clearly): \_\_\_\_\_

Name of Joint Investor/Joint Trustee in which Shares are to be Registered (if applicable): \_\_\_\_\_

Name of Trust in which Shares are to be Registered (if applicable): \_\_\_\_\_

Taxpayer Identification Number (Trust &amp; Custodial Accounts must provide TIN and SSN): \_\_\_\_\_

**Social Security Number(s):**

Investor/Trustee: \_\_\_\_\_ Joint Investor/Joint Trustee: \_\_\_\_\_

Physical Address of Investor (*may not be a P.O.**Box*): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Mailing Address of Joint Investor: (if different from above)(*P.O. Box is acceptable*): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Telephone Number: \_\_\_\_\_ Evening Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**Citizenship Status of Investor**☐ U.S. Citizen☐ Resident Alien☐ Non-Resident Alien**Citizenship Status of Joint Investor**☐ U.S. Citizen☐ Resident Alien☐ Non-Resident Alien

Investor/Trustee Driver's License No./State of Issue: \_\_\_\_\_ Date of Birth (MM/DD/YYYY): \_\_\_\_\_

Joint Investor/Joint Trustee Driver's License No./State of Issue: \_\_\_\_\_ Date of Birth (MM/DD/YYYY): \_\_\_\_\_

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**5 – INVESTOR ACKNOWLEDGEMENT**

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Please separately initial each of the representations below. In the case of joint investors, each investor must initial. Except in the case of fiduciary accounts, you may not grant any person power of attorney to make such representations on your behalf. In order to induce the Company to accept this subscription, I (we) hereby represent and warrant that:

	<b>Investor</b>	<b>Co-Investor</b>
(a) I (we) received a final Prospectus for the Company relating to the Shares, wherein the terms and conditions of the offering are described, five business days in advance of the date hereof.	Initials _____	Initials _____
(b) I (we) accept the terms and conditions of the Company's charter.	Initials _____	Initials _____
(c) I am (we are) purchasing Shares for my (our) own account and acknowledge that the investment is not liquid.	Initials _____	Initials _____
(d) I (we) acknowledge that the assignability and transferability of the Shares is restricted and will be governed by the Company's charter and bylaws and all applicable laws as described in the Prospectus.	Initials _____	Initials _____

	<b>Investor</b>		<b>Co-Investor</b>	
(e) I (we) acknowledge that there is no public market for the Shares and, accordingly, it may not be possible to readily liquidate an investment in the Company.	Initials	_____	Initials	_____

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## 6 – SUITABILITY ACKNOWLEDGEMENT

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**Please separately initial ALL that apply:**

	<b>Investor</b>		<b>Co-Investor</b>	
I (we) have a net worth (exclusive of home, home furnishings and automobiles) of \$250,000 or more.	Initials	_____	Initials	_____
I (we) have a net worth (exclusive of home, home furnishings and automobiles) of at least \$70,000 and had during the last year or that I (we) will have during the current tax year a minimum of \$70,000 annual gross income.	Initials	_____	Initials	_____
If an <b>Alabama</b> investor, I (we) have a liquid net worth of at least 10 times my (our) investment in the Company and its affiliates.	Initials	_____	Initials	_____
If an <b>Iowa</b> investor, my (our) maximum in the Company and affiliated programs cannot exceed 10% of my (our) liquid net worth. “Liquid net worth” shall be defined as that portion of net worth (total assets, exclusive of home, auto and home furnishings minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.	Initials	_____	Initials	_____
If a <b>Kansas</b> investor, my (our) aggregate investment in this offering and other similar investments does not exceed 10% of my (our) liquid net worth. “Liquid net worth” shall be defined as that portion of my (our) total net worth that is comprised of cash, cash equivalents, and readily marketable securities, as determined in conformity with GAAP.	Initials	_____	Initials	_____
If a <b>Kentucky</b> investor, my (our) investment in this offering does not exceed ten percent (10%) of my (our) liquid net worth.	Initials	_____	Initials	_____
If a <b>Maine</b> investor, my (our) aggregate investment in this offering and similar direct participation investments not exceed 10% of my (our) liquid net worth. For this purpose, “liquid net worth” is defined as that portion of net worth that consists of cash, cash equivalents and readily marketable securities.	Initials	_____	Initials	_____
If a <b>Nebraska</b> investor, my (our) investment in this offering and the securities of other direct participation programs (including REITs, oil and gas programs, equipment leasing programs, business development companies and commodity pools) does not exceed 10% of my (our) net worth (excluding the value of my (our) home, home furnishings, and automobiles).	Initials	_____	Initials	_____
If a <b>New Jersey</b> investor, I (we) have either (a) a minimum liquid net worth of at least \$100,000 and a minimum annual gross income of not less than \$85,000, or (b) a minimum liquid net worth of \$350,000. For these purposes, “liquid net worth” is defined as that portion of net worth (total assets exclusive of home, home furnishings, and automobiles, minus total liabilities) that consists of cash, cash equivalents and readily marketable securities. In addition, my (our) investment in the Company, its affiliates, and other non-publicly traded direct investment programs (including real estate investment trusts, business development companies, oil and gas programs, equipment leasing programs and commodity pools, but excluding unregistered, federally and state exempt private offerings) does not exceed ten percent (10%) of my (our) liquid net worth.	Initials	_____	Initials	_____

	Investor	Co-Investor
If a <b>New Mexico</b> investor, my (our) investment in the Company, shares of its affiliates and in other real estate investment trusts may not exceed ten percent (10%) of my (our) liquid net worth. "Liquid net worth" shall be defined as that portion of net worth (total assets exclusive of primary residence, home furnishings and automobiles minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.	Initials _____	Initials _____
If a <b>North Dakota</b> investor, my (our) net worth is at least ten times my (our) investment in the Company.	Initials _____	Initials _____
If an <b>Ohio</b> investor, my (our) aggregate investment in the Company, its affiliates and other non-traded real estate investment programs cannot exceed 10% of my (our) liquid net worth. "Liquid net worth" shall be defined as that portion of net worth (total assets exclusive of home, home furnishings, and automobiles minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.	Initials _____	Initials _____
If an <b>Oregon</b> investor, my (our) aggregate investment in the Company does not exceed 10% of my (our) liquid net worth.	Initials _____	Initials _____
If a <b>Tennessee</b> investor, my (our) investment in the Company must not exceed 10% of my (our) liquid net worth (exclusive of home, home furnishings and automobile).	Initials _____	Initials _____
If a non-accredited <b>Vermont</b> investor, my (our) investment in the Company cannot exceed 10% of my (our) liquid net worth. For these purposes, "liquid net worth" is defined as an investor's total assets (not including home, home furnishings, or automobiles) minus total liabilities.	Initials _____	Initials _____

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## 7 – DISTRIBUTION REINVESTMENT PLAN

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### Non-Custodial Ownership

- ☐ I prefer to participate in the Distribution Reinvestment Plan (DRIP). In the event that the DRIP is not offered for a distribution, your distribution will be sent by check to the address in Section 4 above.
- ☐ I prefer that my distribution be paid by check to the address in Section 4 above.
- ☐ I prefer that my distribution be deposited directly into the account listed as follows:

Name of Financial Institution: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Name(s) on Account: \_\_\_\_\_

Bank Routing Number: \_\_\_\_\_ Account Number: \_\_\_\_\_

- ☐ Checking/Savings Account (voided check is required)
- ☐ Brokerage Account Number (if applicable): \_\_\_\_\_

### Custodial Ownership

- ☐ I prefer to participate in the Distribution Reinvestment Plan (DRIP). In the event that the DRIP is not offered for a distribution, your distribution will be sent to your Custodian for deposit into your Custodial account cited in Section 3 above.
- ☐ I prefer that my distribution be sent to my Custodian for deposit into my Custodial account identified in Section 3 above.

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### 8 – FINANCIAL ADVISOR – To be completed by the RIA or Registered Representative and the Broker-Dealer

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The Financial Advisor and in the case of a Broker-Dealer, an authorized principal of the Broker-Dealer must sign below to complete the order. The Financial Advisor and/or Broker-Dealer hereby warrant that each is duly licensed and may lawfully conduct business in the state designated as the subscriber's legal residence or the state in which the sale was made, if different.

Name of Broker-Dealer or Registered Investment Advisory Firm: \_\_\_\_\_

Firm Home Office Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Name of Financial Advisor: \_\_\_\_\_

Financial Advisor Branch Code: \_\_\_\_\_ Financial Advisor Rep Number: \_\_\_\_\_

Financial Advisor Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Financial Advisor Authorized E-Mail Address: \_\_\_\_\_

Shares Sold NAV: \_\_\_\_\_ Purchase Volume Discount: \_\_\_\_\_

The undersigned confirm that they (i) have reasonable grounds to believe that the information and representations concerning the investors identified herein are true, correct and complete in all respects; (ii) have discussed such investor's prospective purchase of Shares with such investor; (iii) have advised such investor of all pertinent facts with regard to the lack of liquidity and marketability of the Shares; (iv) have delivered a current Prospectus and related supplements, if any, to such investor; (v) have reasonable grounds to believe that the investor is purchasing these Shares for its own account; and (vi) have reasonable grounds to believe that the purchase of Shares is a suitable investment for such investor, that such investor meets the suitability standards applicable to such investor set forth in the Prospectus and related supplements, if any, and that such investor is in a financial position to enable such investor to realize the benefits of such an investment and to suffer any loss that may occur with respect thereto. The undersigned attest that the Financial Advisor and the Broker-Dealer are subject to the USA PATRIOT Act. In accordance with Section 326 of the Act, the registered representative and the Broker-Dealer have performed a Know Your Customer review of each investor who has signed this Subscription Agreement in accordance with the requirements of the Customer Identification Program.

Signature of Financial Advisor\*: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Broker-Dealer (Authorized Principal)\*: \_\_\_\_\_ Date: \_\_\_\_\_

**\*SIGNATURES OF THE FINANCIAL ADVISOR AND AN AUTHORIZED FIRM PRINCIPAL ARE REQUIRED FOR PROCESSING.**

E-Mail: \_\_\_\_\_

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## 9 – PAYMENT INSTRUCTIONS

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### Payment Method:

- ☐ **By Mail** – Checks should be made payable to “UMB Bank, N.A., as escrow agent for Moody National REIT II, Inc.” or, after the minimum offering amount is raised, to “Moody National REIT II, Inc.” You should consult with your registered representative if you are unsure how to make your check payable. Forward the subscription agreement to the address set forth in the instructions to this Subscription Agreement.
- ☐ **By Wire Transfer** – If paying by wire transfer, please request that the wire reference the subscriber’s name in order to assure that the wire is credited to the proper account.

Prior to the Company raising the minimum offering amount of \$2,000,000, wire transfers should be sent to:

UMB Bank, N.A., as escrow agent for Moody National REIT II, Inc. • ABA No. 101000695 • Account No. 9872189205 • FCT:  
Moody National REIT II, Inc. • Attn: Lara Stevens

Following the Company raising the minimum offering amount of \$2,000,000, wire transfers should be made to the Company. You should consult with your registered representative to confirm wiring instructions for your subscription.

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## 10 – SUBSCRIBER SIGNATURES

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I (we) declare that the information supplied is true and correct and may be relied upon by the Company.

**TAXPAYER IDENTIFICATION NUMBER CERTIFICATION (required).** Each invest signing below, under penalties of perjury, certifies that:

- (1) The number shown in the Investor Social Security Number/Taxpayer Identification Number field in Section 4 of this form is my correct Social Security Number/Taxpayer Identification Number (or I am waiting for a number to be issued to me);
- (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding;
- (3) I am a U.S. person (including a non-resident alien).

**NOTE: You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.**

The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

The Company is required by law to obtain, verify and record certain personal information from you or persons on your behalf in order to establish the account. Required information includes name, date of birth, permanent residential address and social security/taxpayer identification number. We may also ask to see other identifying documents. If you do not provide the information, the Company may not be able to open your account. By signing the Subscription Agreement, you agree to provide this information and confirm that this information is true and correct. If we are unable to verify your identity, or that of another person(s) authorized to act on your behalf, or if we believe we have identified potentially criminal activity, we reserve the right to take action as we deem appropriate which may include closing your account.

**Signature of Individual Owner:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print or Type Name:** \_\_\_\_\_

**Signature of Joint Account Owner:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print or Type Name:** \_\_\_\_\_

**Signature of Custodian Trustee, Officer, General Partner or other Authorized Person:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print or Type Name:** \_\_\_\_\_

**Signature of Additional Person ( if required ):** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print or Type Name:** \_\_\_\_\_

## APPENDIX C

### DISTRIBUTION REINVESTMENT PLAN

This DISTRIBUTION REINVESTMENT PLAN (the “Plan”) is adopted by Moody National REIT II, Inc., a Maryland corporation (the “Company”), pursuant to its charter (the “Charter”). Unless otherwise defined herein, capitalized terms shall have the same meaning as set forth in the Charter.

1. *Distribution Reinvestment.* As agent for the stockholders (the “Stockholders”) of the Company who purchase shares of the Company’s common stock (“Shares”) pursuant to the Company’s initial public offering (the “Initial Offering”) or any future offering of the Shares (“Future Offering”), and who elect to participate in the Plan (the “Participants”), the Company will apply all distributions declared and paid in respect of the Shares held by each Participant (the “Distributions”), including Distributions paid with respect to any full or fractional Shares acquired under the Plan, to the purchase of Shares for such Participants directly, if permitted under state securities laws and, if not, through the Dealer Manager or Soliciting Dealers registered in the Participant’s state of residence.

2. *Effective Date.* The effective date of this Plan shall be the date that the minimum offering requirements (as defined in the Prospectus relating to the Initial Offering) are met in connection with the Initial Offering.

3. *Procedure for Participation.* Any Stockholder who has received a Prospectus, as contained in the registration statement filed by the Company with the Securities and Exchange Commission (the “SEC”), may elect to become a Participant by completing and executing the subscription agreement, an enrollment form or any other appropriate authorization form as may be made available by the Company, the Dealer Manager or the Soliciting Dealer. Participation in the Plan will begin with the next Distribution payable after acceptance of a Participant’s subscription, enrollment or authorization. Shares will be purchased under the Plan on the date that Distributions are paid by the Company.

4. *Suitability.* Each Participant is requested to promptly notify the Company in writing if the Participant experiences a material change in his or her financial condition, including the failure to meet the income, net worth and investment concentration standards imposed by such Participant’s state of residence and set forth in the Company’s most recent prospectus. For the avoidance of doubt, this request in no way shifts to the Participant the responsibility of the Sponsor, or any other person selling shares on behalf of the Company to the Participant to make every reasonable effort to determine that the purchase of Shares is a suitable and appropriate investment based on information provided by such Participant.

5. *Purchase of Shares.* Participants will acquire Shares from the Company under the Plan (the “Plan Shares”) at \$23.75 per Share; provided, however, that the Board of Directors may, in its sole discretion, from time to time, change this price based upon changes in the Company’s estimated value per share and other factors that the Board of Directors deems relevant. If the Company determines to change the price at which the Company offers shares, the Company does not anticipate that it will do so more frequently than quarterly. Participants may acquire Shares from the Company under the Plan until the earliest of (a) all the Plan Shares registered in the Initial Offering or any Future Offering are issued, (b) the Initial Offering and any Future Offering of Plan Shares terminate and the Company elects to deregister with the SEC the unsold Plan Shares, or (c) there is more than a de minimis amount of trading in the Shares, at which time any registered Plan Shares then available under the Plan will be sold at a price equal to the fair market value of the Shares, as determined by the Board of Directors by reference to the applicable sales price with respect to the most recent trades occurring on or prior to the relevant Distribution date. Participants in the Plan may also purchase fractional Shares so that 100% of the Distributions will be used to acquire Shares. However, a Participant will not be able to acquire Plan Shares to the extent that any such purchase would cause such Participant to exceed the Aggregate Share Ownership Limit or the Common Share Ownership Limit as set forth in the Charter or otherwise would cause a violation of the Share ownership restrictions set forth in the Charter.

Shares to be distributed by the Company in connection with the Plan may (but are not required to) be supplied from: (a) the Plan Shares which will be registered with the SEC in connection with the Company’s Initial Offering, (b) Shares to be registered with the SEC in a Future Offering for use in the Plan (a “Future Registration”), or (c) Shares purchased by the Company for the Plan in a secondary market (if available) or on a stock exchange (if listed) (collectively, the “Secondary Market”).

Shares purchased in any Secondary Market will be purchased at the then-prevailing market price, which price will be utilized for purposes of issuing Shares in the Plan. Shares acquired by the Company in any Secondary Market or registered in a Future Registration for use in the Plan may be at prices lower or higher than the Share price which will be paid for the Plan Shares pursuant to the Initial Offering.

If the Company acquires Shares in any Secondary Market for use in the Plan, the Company shall use its reasonable efforts to acquire Shares at the lowest price then reasonably available. However, the Company does not in any respect guarantee or warrant that the Shares so acquired and purchased by the Participant in the Plan will be at the lowest possible price. Further, irrespective of the Company’s ability to acquire Shares in any Secondary Market or to make a Future Offering for Shares to be used in the Plan, the Company is in no way obligated to do either, in its sole discretion.

6. Taxes. IT IS UNDERSTOOD THAT REINVESTMENT OF DISTRIBUTIONS DOES NOT RELIEVE A PARTICIPANT OF ANY INCOME TAX LIABILITY WHICH MAY BE PAYABLE ON THE DISTRIBUTIONS. INFORMATION REGARDING POTENTIAL TAX INCOME LIABILITY OF PARTICIPANTS MAY BE FOUND IN THE PUBLIC FILINGS MADE BY THE COMPANY WITH THE SEC.

7. Share Certificates. The ownership of the Shares purchased through the Plan will be in book-entry form unless and until the Company issues certificates for its outstanding common stock.

8. Reports. Within 90 days after the end of the Company's fiscal year, the Company shall provide each Stockholder with an individualized report on such Stockholder's investment, including the purchase date(s), purchase price and number of Shares owned, as well as the dates of Distributions and amounts of Distributions paid during the prior fiscal year. In addition, the Company shall provide to each Participant an individualized quarterly report at the time of each Distribution payment showing the number of Shares owned prior to the current Distribution, the amount of the current Distribution and the number of Shares owned after the current Distribution.

9. Termination by Participant. A Participant may terminate participation in the Plan at any time, without penalty, by delivering to the Company a written notice. Prior to the listing of the Shares on a national stock exchange, any transfer of Shares by a Participant to a non-Participant will terminate participation in the Plan with respect to the transferred Shares. If a Participant terminates Plan participation, the Company will ensure that the terminating Participant's account will reflect the whole number of shares in such Participant's account and provide a check for the cash value of any fractional share in such account. Upon termination of Plan participation for any reason, Distributions will be distributed to the Stockholder in cash.

10. Amendment, Suspension or Termination of Plan by the Company. The Board of Directors may by majority vote (including a majority of the Independent Directors) amend, suspend or terminate the Plan for any reason upon ten days' written notice to the Participants; provided, however, that the Board of Directors may not so amend the Plan to restrict or remove the right of Participants to terminate participation in the Plan at any time without penalty.

11. Liability of the Company. The Company shall not be liable for any act done in good faith, or for any good faith omission to act, including, without limitation, any claims or liability (a) arising out of failure to terminate a Participant's account upon such Participant's death prior to receipt of notice in writing of such death; or (b) with respect to the time and the prices at which Shares are purchased or sold for a Participant's account. To the extent that indemnification may apply to liabilities arising under the Securities Act of 1933, as amended, or the securities laws of a particular state, the Company has been advised that, in the opinion of the SEC and certain state securities commissioners, such indemnification is contrary to public policy and, therefore, unenforceable.

**MOODY NATIONAL REIT II, INC.**



**UP TO \$1,100,000,000 IN SHARES OF  
COMMON STOCK  
PROSPECTUS**

You should rely only on the information contained in this prospectus. No dealer, salesperson or other individual has been authorized to give any information or to make any representations that are not contained in this prospectus. If any such information or statements are given or made, you should not rely upon such information or representation. This prospectus does not constitute an offer to sell any securities other than those to which this prospectus relates, or an offer to sell, or a solicitation of an offer to buy, to any person in any jurisdiction where such an offer or solicitation would be unlawful. This prospectus speaks as of the date set forth below. You should not assume that the delivery of this prospectus or that any sale made pursuant to this prospectus implies that the information contained in this prospectus will remain fully accurate and correct as of any time subsequent to the date of this prospectus.

Until April 20, 2015 (90 days after the date of this prospectus), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

January 20, 2015

**MOODY NATIONAL REIT II, INC.**  
**SUPPLEMENT NO. 9 DATED JANUARY 15, 2016**  
**TO THE PROSPECTUS DATED JANUARY 20, 2015**

This document supplements, and should be read in conjunction with, our prospectus dated January 20, 2015 relating to our offering of up to \$1,100,000,000 in shares of our common stock. This Supplement No. 9 supersedes and replaces all prior supplements to our prospectus. Terms used and not otherwise defined in this Supplement No. 9 shall have the same meanings as set forth in our prospectus. The purpose of this Supplement No. 9 is to disclose:

- the status of our public offering;
- our board of directors' determination of an estimated value per share;
- a description of our property;
- selected financial data;
- information regarding our indebtedness;
- information regarding our distributions;
- information regarding redemption of our shares;
- compensation paid to our advisor and its affiliates;
- an update to our suitability standards with respect to investors in Massachusetts and New Jersey;
- an update to our subscription agreement;
- a clarification to the section of our prospectus entitled "Description of Capital Stock— Meetings, Special Voting Requirements and Access To Records;"
- an update to our plan of distribution;
- an amendment to our Dealer Manager Agreement to allow participating dealers to elect the timing of payments of selling commissions;
- an update to our prior performance summary and prior performance tables;
- information on experts;
- our Current Report on form 8/K-A filed on December 30, 2015, containing certain financial information about the Residence Inn Austin (defined herein); and
- our Quarterly Report on Form 10-Q for the period ended September 30, 2015.

**Status of Our Public Offering**

We commenced our initial public offering of up to \$1,100,000,000 in shares of our common stock on January 20, 2015. The terms of our public offering required us to deposit all subscription proceeds in escrow pursuant to the terms of our escrow agreement with UMB Bank, N.A., our escrow agent, until the earlier of the date that we receive subscriptions aggregating at least \$2,000,000 (including shares purchased by our sponsor, its affiliates and our directors and officers) or January 20, 2016. On July 2, 2015, we received subscriptions aggregating \$2,000,000, and the subscription proceeds held in escrow were released to us. As of January 8, 2016, we had received and accepted investors' subscriptions for and issued 532,468 shares of our common stock in our public offering, including 1,945 shares issued pursuant to our distribution reinvestment plan, resulting in gross offering proceeds of approximately \$13,263,077.

**Our Board of Directors' Determination of an Estimated Value Per Share**

On November 12, 2015, our board of directors determined an estimated value per share of our common stock of \$25.03 as of October 31, 2015. In determining an estimated value per share of our common stock, our board of directors relied upon information provided in a report, which we refer to as the valuation report, by our advisor, the recommendation of the audit committee of the board of directors, and the board of directors' experience with, and knowledge of our assets, including the hotel property that we own, as of October 31, 2015.

We are providing the estimated value per share to assist broker-dealers and stockholders in evaluating us. The objective of the board of directors in determining the estimated value per share was to arrive at a value, based on recent available data, that it believed was

reasonable based on methods that it deemed appropriate after consultation with our advisor and the audit committee of the board of directors. The estimated value per share is based on (x) the estimated value of our assets less the estimated value of our liabilities divided by (y) the number of outstanding shares of our common stock, all as of October 31, 2015. We intend to determine an updated estimated value per share every year on or about the last day of our fiscal year, or more frequently in the sole discretion of the board of directors, which may be substantially different than the value determined as of October 31, 2015.

Investors are cautioned that the market for commercial real estate can fluctuate quickly and substantially and values of our assets and liabilities are expected to change in the future. Investors should also consider that we are in the very early stages of raising capital in our continuous public offering and as of October 31, 2015, the valuation date, we owned only one real property asset. As and when we continue to raise capital from the sale of shares of our common stock in our continuous public offering and to invest in additional real estate properties, our assets and liabilities, and the value per share of our common stock, will vary significantly from the values as of October 31, 2015.

The following is a summary of the valuation methods used for our assets and liabilities:

*Real Estate Investments.* As of October 31, 2015, we held an ownership interest in the hotel commonly known as the Residence Inn Austin University Area, in Austin, TX, or the Residence Inn Austin, as our sole real property asset. Our board of directors determined that the market value of the Austin property was \$27,500,000 as of that date. This determination was based on an appraisal of the “market value – as is” as of July 29, 2015 of the Austin property performed by Landauer Valuation & Advisory, a division of Newmark Grubb Knight Frank, or Landauer, a third party appraiser, in connection with the underwriting of the mortgage secured by the Residence Inn Austin. The appraisal was conducted to conform with applicable federal laws and professional standards, including 12 C.F.R. 564 and Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice. The purchase price for the Residence Inn Austin was \$25,500,000, exclusive of closing costs.

*Note Payable.* The valuation report contained an estimated valuation of our note payable as equal to the carrying value as of October 31, 2015, as determined by generally accepted accounting principles. Our board of directors determined that the value of the note payable on October 31, 2015 was \$16,575,000.

*Other Assets and Liabilities.* The valuation report contained our other assets and liabilities, consisting primarily of cash and cash equivalents, restricted cash, deferred costs, accounts receivable, and prepaid expenses and other assets. The carrying value of these other assets and liabilities were considered by our board of directors to be equal to fair value as of October 31, 2015 due to their short maturities.

*Estimated Value Per Share.* The estimated value per share was based upon 319,261 shares of our common stock outstanding as of October 31, 2015. Although the estimated value per share has been developed as a measure of value as of October 31, 2015, a specific time, the estimated value per share does not reflect a liquidity discount for the fact that the shares are not currently traded on a national securities exchange or the limited nature in which a stockholder may redeem shares under the share repurchase program (as may be amended from time to time), a discount for the non-assumability or prepayment obligations associated with certain of our debt, or a discount for the our corporate level overhead.

The following table presents how the estimated value per share was determined as of October 31, 2015:

Investments in hotel properties .....	\$ 27,500,000
Cash, cash equivalents and restricted cash .....	1,388,942
Other assets .....	504,172
	<u>29,393,114</u>
Note payable .....	16,575,000
Other liabilities .....	4,825,444
Special limited partnership interests .....	1,000
	<u>21,401,444</u>
Estimated value .....	<u>\$ 7,991,670</u>
Common stock outstanding .....	319,261
Estimated value per share .....	\$ 25.03

As of October 31, 2015, our estimated value per share was allocated on a per share basis as follows:

Investments in hotel properties .....	\$ 86.14
Note payable .....	(51.92)
Other assets, liabilities and special limited partnership interests .....	(9.19)
Estimated value per share .....	<u>\$ 25.03</u>

*Material Assumptions in Property Valuation.* Landauer made certain key assumptions in the discounted cash flow models that it used to value the Residence Inn Austin, which are set forth below:

Direct capitalization – capitalization rate .....	9.00%
Yield capitalization – discount rate .....	11.75%
Yield capitalization – terminal capitalization rate .....	9.25%

While we believe that Landauer’s assumptions are reasonable, a change in these assumptions would significantly impact the appraised value of the Residence Inn Austin property and thus, our estimated value per share. The table below illustrates the impact on the estimated value per share if the capitalization rates and discount rate listed above were increased or decreased by 2.5%, assuming all other factors remain unchanged:

	Increase (Decrease) in the Estimated Value per Share due to	
	Decrease of 2.5%	Increase of 2.5%
Direct capitalization – capitalization rate .....	\$ 27.22	\$ 22.84
Yield capitalization – discount rate only .....	\$ 26.60	\$ 23.47
Yield capitalization – terminal capitalization rate only .....	\$ 25.97	\$ 24.09

*Limitations of Valuation Method.* Financial Industry Regulatory Authority, Inc., or FINRA, rules provided limited guidance on the methods an issuer must use to determine its estimated value per share. As with any valuation method, and as noted above, the methods used to determine our estimated value per share were based upon a number of assumptions, estimates and judgments that may not be accurate or complete. The estimated value per share determined by our board of directors is not a representation, warranty or guarantee that, among other things:

- a stockholder would be able to realize the estimated value per share if such stockholder attempts to sell his or her shares;
- a stockholder would ultimately realize distributions per share equal to the estimated value per share upon liquidation of our assets and settlement of our liabilities or a sale of us;
- shares of our common stock would trade at the estimated value per share on a national securities exchange;
- a third party would offer the estimated value per share in an arms-length transaction to purchase all or substantially all of the shares of our common stock; or
- the methods used to determine the estimated value per share would be acceptable to FINRA, under the Employee Retirement Income Security Act, the SEC or any state securities regulatory entity with respect to their respective requirements.

Further, the estimated value per share was calculated as of a particular moment in time and the value of our shares will fluctuate over time as a result of, among other things, future acquisitions or dispositions of assets (including acquisitions and dispositions of real estate investments since October 31, 2015), developments related to individual assets and changes in the real estate and capital markets.

### **Our Property**

On September 25, 2015, Moody National REIT I, Inc. assigned to us all of its rights to and interests in the Agreement of Purchase and Sale for the acquisition of the Residence Inn Austin from an unaffiliated seller. On October 15, 2015, we assigned all of our right, title and interest in and to the Residence Inn Austin to Moody National Lancaster-Austin Holding, LLC, our indirect, wholly owned subsidiary, or Moody Holding.

On October 15, 2015, Moody Holding acquired fee simple title to the Residence Inn Austin. Moody Holding paid an aggregate cash purchase price of \$25,500,000 for the Residence Inn Austin, which was financed with (1) a portion of the proceeds from our public offering and (2) the proceeds of a mortgage loan secured by the Residence Inn Austin with an aggregate principal amount of \$16,575,000, or the property loan, from KeyBank National Association, or the Lender. See “Property Financing” below for an additional discussion of the property loan. In connection with the acquisition of the Residence Inn Austin, our advisor earned an acquisition fee of \$382,500 and a debt financing fee of \$165,750. The Residence Inn Austin is the only property that we currently own.

### **Description of Property**

The Residence Inn Austin is a select-service hotel facility comprised of 112 guest rooms. The Residence Inn Austin opened on January 14, 2014, and benefits from its proximity to the University of Texas campus, Dell Children’s Hospital, Seton Medical corporate headquarters and the Texas State Capitol.

Management currently has no plans to renovate the Residence Inn Austin. Management believes that the Residence Inn Austin is adequately covered by insurance and is suitable for its intended purposes. For federal income tax purposes, we estimate that the depreciable basis in the Residence Inn Austin will be approximately \$21.2 million. We depreciate buildings based upon an estimated useful life of 39-40 years using the straight-line method. For 2014, the Residence Inn Austin paid real estate taxes of approximately \$249,000 at a rate of approximately 2.4%

The Residence Inn Austin faces competition from other hotel properties located in the Austin, Texas market.

### ***Leasing and Management of the Property***

Moody Holding leases the Residence Inn Austin to Moody National Lancaster-Austin MT, LLC, an indirect, wholly-owned subsidiary of our operating partnership, or the Master Tenant, pursuant to a Hotel Lease Agreement between Moody Holding and Master Tenant, or the Hotel Lease. The Hotel Lease provides for a ten-year lease term, subject to a one-year extension in the event that the property loan is still in effect as of the end of the lease term; provided, however, that Moody Holding may terminate the Hotel Lease upon 45 days prior written notice to the Master Tenant in the event that Moody Holding contracts to sell the Residence Inn Austin to a non-affiliated entity, effective upon the consummation of such a sale of the Residence Inn Austin. Pursuant to the Hotel Lease, the Master Tenant will pay an annual base rent of \$2,800,000 per year for the first five years of the term of the Hotel Lease. The annual base rent paid by Master Tenant will be adjusted as set forth in the Hotel Lease beginning in year six of the lease term. In addition, Master Tenant will pay an annual percentage rent, to the extent that such percentage rent is greater than the base rent due for such period, in an amount equal to (1) a fixed percentage of the Residence Inn Austin's gross revenues for the previous year (as set forth in the Hotel Lease), minus (2) the amount of the annual base rent paid for the previous year. The annual percentage rent will be adjusted as set forth in the Hotel Lease beginning in year six of the lease term.

The Master Tenant is party to a Relicensing Franchise Agreement, or the Franchise Agreement, with Marriott International, Inc., or Marriott, pursuant to which Marriott has granted Master Tenant a limited, non-exclusive license to establish and operate the Residence Inn Austin using certain of Marriott's proprietary marks and systems. The Franchise Agreement expires on January 14, 2034. Pursuant to the Franchise Agreement, the Master Tenant pays Marriott a monthly franchise fee equal to 6.0% of the Residence Inn Austin's gross room revenues (as defined in the Franchise Agreement) and a monthly marketing fund contribution fee equal to 2.5% of the Residence Inn Austin's gross room revenues.

Moody National Hospitality Management, LLC, an affiliate of our advisor, or the Property Manager, manages the Residence Inn Austin pursuant to a Hotel Management Agreement between the Property Manager and the Master Tenant, or the Management Agreement. Pursuant to the Management Agreement, the Master Tenant pays the Property Manager a monthly base management fee in an amount equal to 4.0% of the Residence Inn Austin's gross operating revenues (as defined in the Management Agreement) per fiscal year. Each month during the term of the Management Agreement and for one month following the termination of the Management Agreement, the Property Manager will also receive a \$2,500 fee for providing centralized accounting services, which accounting services fee will be subject to annual increases based upon increases in the consumer price index. In addition, the Property Manager will receive a monthly revenue management services fee of \$1,200. The Property Manager will also be eligible to receive additional fees for technical, procurement or other services provided by the Property Manager at the request of the Master Tenant. The Management Agreement has an initial ten-year term, and thereafter will automatically renew for four consecutive five-year terms unless Property Manager or Master Tenant provides written notice of termination at least 180 days prior to the end of the then-current term. Master Tenant may terminate the Management Agreement upon (1) a material breach, default, or noncompliance by Property Manager under the Management Agreement, (2) the operation of the Residence Inn Austin by the Property Manager in such a manner as to cause Marriott to require the removal of the Property Manager as the operator of the Residence Inn Austin or to give notice to the Master Tenant of its intent to terminate the Franchise Agreement, or (3) the Property Manager's bankruptcy, dissolution, insolvency or liquidation or general assignment for the benefit of creditors, subject to cure provisions as described in the Management Agreement. In the event that Master Tenant terminates the Management Agreement for any reason other than Property Manager's default or bankruptcy, the Master Tenant will pay the Property Manager a termination fee equal to the base management fee estimated to be earned by Property Manager for the remaining term of the Management Agreement, as adjusted for inflation and other factors. Notwithstanding the foregoing, so long as the property loan remains outstanding, the Master Tenant may terminate the Management Agreement at any time upon 30 days prior notice with or without cause, and no termination fee will be paid in connection with such termination.

### ***Property Financing***

In connection with the acquisition of the Residence Inn Austin, Moody Holding borrowed \$16,575,000 from the Lender pursuant to the property loan. The property loan is evidenced by a promissory note issued pursuant to a Loan Agreement.

The entire unpaid principal balance of the property loan and all accrued and unpaid interest thereon and all other amounts due under the property loan are due and payable in full on November 1, 2025. Interest on the outstanding principal balance of the property loan accrues at a fixed per annum rate equal to 4.58%. In the event that, and so long as, any event of default has occurred and is continuing under the property loan, the outstanding principal balance of the property loan and any unpaid interest thereon will bear interest at a per annum rate equal to the lesser of (1) the highest interest rate permitted by applicable law and (2) 9.58%. In addition, in the event that

any principal, interest or any other amount due under the property loan is not paid when due, Moody Holding will pay upon demand by the Lender a late charge in an amount equal to the lesser of (1) 5.0% of the amount of the overdue payment and (2) the maximum amount payable pursuant to applicable law. Moody Holding may, upon at least 30 days prior written notice, prepay the outstanding principle balance, plus all accrued interest and other amounts due, in full (but not in part) without payment of any penalty or premium on July 2, 2025 or any business day thereafter.

The performance of the obligations of Moody Holding under the property loan are secured by, among other things, a security interest in the Residence Inn Austin and other collateral granted to Lender pursuant to a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing.

We have agreed to irrevocably and unconditionally guarantee the prompt and unconditional payment to the Lender and its successors and assigns of certain obligations and liabilities of Moody Holding and the Master Tenant for which they may be liable pursuant to the Loan Agreement.

Pursuant to an Environmental Indemnity Agreement, or the Environmental Indemnity, we and Moody Holdings, or the Indemnitors, have agreed to jointly and severally indemnify and hold harmless the Lender and its officers, directors, employees and agents, from and against any losses, damages, costs, claims, suits or other liabilities of any nature that the Lender may suffer or incur as a result of, among other things, (1) any presence of any hazardous substances at the Residence Inn Austin or release of hazardous substances from the Residence Inn Austin, (2) any activity by the Indemnitors or their respective affiliates or any tenant or occupant of the Residence Inn Austin in connection with any treatment, storage, release, removal, handling, transfer or transportation to or from the Residence Inn Austin of any hazardous substances, (3) any non-compliance or violations of any environmental laws or permits in connection with the Residence Inn Austin or its operations, and (4) any breach by the Indemnitors of any representation, warranty, covenant or other obligation relating to environmental laws or hazardous substances under the Environmental Indemnity or any other loan document.

### Selected Financial Data

The following selected financial data should be read in conjunction with our consolidated financial statements and related notes thereto and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contained in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed with the SEC on November 16, 2015, which is included as part of this prospectus supplement. Our historical results are not necessarily indicative of results for any future period.

	As of September 30, 2015	As of December 31, 2014
<b>Selected Financial Data</b>		
<b>BALANCE SHEET DATA:</b>		
Total assets .....	\$ 6,114,024	\$ 198,624
Total liabilities .....	857,396	—
Special limited partnership interests .....	1,000	1,000
Total equity .....	5,255,628	197,624
 <b>STATEMENT OF OPERATIONS DATA:</b>		
Total revenue .....	\$ 18	\$ —
Total expenses .....	45,410	2,376
Net loss attributable to common stockholders .....	(45,392)	(2,376)
<b>STATEMENT OF CASH FLOWS DATA:</b>		
Net cash used in operating activities .....	(5,421)	(2,376)
Net cash used in investing activities .....	(1,288,340)	—
Net cash provided by financing activities .....	5,430,911	201,000
<b>OTHER DATA:</b>		
Dividends declared .....	\$ 55,239	\$ —

### Information Regarding Our Indebtedness

As of December 31, 2015, we had total outstanding indebtedness of \$16,575,000, which was comprised exclusively of the outstanding principal balance on the note secured by the Residence Inn Austin.

### Information Regarding Our Distributions

On July 2, 2015, our board of directors authorized and declared the payment of cash distributions to our stockholders. The distribution (1) accrues daily to our stockholders of record as of the close of business on each day commencing on August 1, 2015, (2) is payable in cumulative amounts on or before the 15th day of each calendar month with respect to the prior month, and (3) is calculated at a rate of \$0.00479 per share of our common stock per day, a rate which, if paid each day over a 365-day period, is equivalent to a 7.0% annualized distribution rate based on a purchase price of \$25.00 per share of our common stock.

The following table summarizes distributions paid in cash and pursuant to our distribution reinvestment plan for the three months ended September 30, 2015.

<b>Period</b>	<b>Cash Distribution</b>	<b>Distribution Paid Pursuant to DRP(1)</b>	<b>Total Amount of Distribution</b>	<b>Net Cash Used In Operations</b>
Third Quarter 2015 .....	\$ 16,959	\$ 5,838	\$ 22,797	\$ (5,421)
Total .....	\$ 16,959	\$ 5,838	\$ 22,797	\$ (5,421)

(1) Amount of distributions paid in shares of common stock pursuant to our distribution reinvestment plan.

For the nine months ended September 30, 2015, we paid \$22,797 in distributions, including \$5,838 in shares issued pursuant to our distribution reinvestment plan. We have paid no other distributions since inception. For the nine months ended September 30, 2015, we had a net loss of \$45,392 and our net cash used in operations was \$5,421. All distributions have been funded from offering proceeds.

### Information Regarding Redemption of Our Shares

We have received no requests to redeem shares of our common stock pursuant to our share redemption program.

## Compensation Paid to Our Advisor and its Affiliates

*The following data supplements, and should be read in conjunction with, the section of our prospectus captioned “Management Compensation Table.”*

The following table summarizes the cumulative compensation, fees and reimbursements we paid to (or incurred with respect to) our advisor, Moody National Advisor II, LLC, and its affiliates, including the dealer manager, as of September 30, 2015.

Type of Fee or Reimbursement	As of September 30, 2015
<b>Offering Stage:</b>	
Selling commissions .....	\$ 412,394
Dealer manager fees .....	116,212
Organization and offering expense reimbursement <sup>(1)</sup> .....	333,535
<b>Operational Stage:</b>	
Acquisition fee .....	—
Reimbursement of acquisition expenses to advisor .....	—
Financing coordination fee .....	—
Asset management fee .....	—
Property management fees .....	—
Property manager incentive fee .....	—
Operating expense reimbursement .....	—
<b>Disposition Stage:</b>	
Disposition fee .....	—

(1) As of September 30, 2015, our total offering costs were \$938,854, comprised of \$605,319 of offering costs incurred directly by us and \$333,535 in offering costs incurred by us and reimbursable to our advisor.

## Suitability Standards with Respect to Investors in Massachusetts and New Jersey

*The following information should be read in conjunction with the discussion contained in the “Suitability Standards” section of our prospectus beginning on page i and Appendix B: Form of Subscription Agreement.*

**Massachusetts**—Massachusetts investors may not invest more than 10% of their liquid net worth in us and in other illiquid direct participation programs.

**New Jersey**—New Jersey investors must have either (a) a minimum liquid net worth of at least \$100,000 and a minimum annual gross income of not less than \$85,000, or (b) a minimum liquid net worth of \$350,000. For these purposes, “liquid net worth” is defined as that portion of net worth (total assets exclusive of home, home furnishings, and automobiles, minus total liabilities) that consists of cash, cash equivalents and readily marketable securities. In addition, a New Jersey investor’s investment in us, our affiliates, and other non-publicly traded direct investment programs (including real estate investment trusts, business development companies, oil and gas programs, equipment leasing programs and commodity pools, but excluding unregistered, federally and state exempt private offerings) may not exceed ten percent (10%) of his or her liquid net worth.

## Update to Subscription Agreement

We have updated our subscription agreement to add the suitability standards for Massachusetts and New Jersey and to reflect the fact that we have raised the \$2,000,000 minimum offering amount. A copy of our updated form subscription agreement, which supersedes and replaces the form of subscription agreement filed as Appendix B to our prospectus, is attached to this supplement as Exhibit A.

## Clarification to “Description of Capital Stock— Meetings, Special Voting Requirements and Access To Records”

*The following disclosure is a clarification to the “Description of Capital Stock— Meetings, Special Voting Requirements and Access To Records” section on page 84 of our prospectus:*

In connection with the mailing of a stockholder list to a requesting stockholder, the copy of the stockholder list will be printed in alphabetical order, on white paper, and in a readily readable type size (in no event smaller than ten-point type). We may impose a reasonable charge for expenses incurred in reproduction pursuant to a stockholder request.

## **Update to “Plan of Distribution”**

*The following disclosure is inserted as a new subsection following the subsection entitled “Plan of Distribution—Sales Commissions and Volume Discounts” on page 117 of our prospectus:*

### **“Special Notice to Washington Investors**

We will not sell any shares to Washington investors unless we raise a minimum of \$25,000,000 in gross offering proceeds. In the event we do not raise gross offering proceeds of \$25,000,000, we will promptly return all funds held in escrow for the benefit of Washington investors (in which case, Washington investors will not be required to request a refund of their investment). Pending satisfaction of this condition, all Washington subscription payments will be placed in an account held by our escrow agent, UMB Bank, N.A., in trust for Washington subscribers’ benefit, pending release to us. Until we have raised \$25,000,000, Washington investors should make their checks payable to ‘UMB Bank, N.A., as escrow agent for Moody National REIT II, Inc.’ Once we have raised \$25,000,000, Washington investors should make their checks payable to ‘Moody National REIT II, Inc.’”

### **The Ability of Participating Dealers to Elect the Timing of Payment of Selling Commissions**

*The following should be read in conjunction with the “Plan of Distribution” section of our prospectus.*

We pay selling commissions of up to 7% of gross offering proceeds from the sale of shares in the primary offering (all of which will be reallocated to participating broker-dealers), subject to reductions based on volume and for certain categories of purchasers. On January 15, 2016, we amended our Dealer Manager Agreement to allow a participating broker-dealer to elect to receive the 7% selling commission at the time of sale or elect to have the selling commission paid on a trailing basis as agreed between the dealer manager and the participating dealer. In no event will the selling commission paid exceed 7%. The total amount of all items of compensation from any source payable to our dealer manager and the soliciting dealers will not exceed 10% of the gross proceeds from our primary offering. We will have no obligation to pay the trailing selling commission if the applicable shares are no longer outstanding or total underwriting compensation paid by us will exceed 10% of the gross offering proceeds from our primary offering.

The dealer manager fee remains 3% of the gross proceeds on sales by a participating broker-dealer in our primary offering. No sales commissions will be paid for sales pursuant to our distribution reinvestment plan.

### **Recent U.S. Federal Income Tax Legislation**

*The following disclosure should be read in conjunction with, and supplements as appropriate, the disclosures contained in the section of our prospectus titled “Federal Income Tax Considerations.”*

On December 18, 2015, President Obama signed into law the Consolidated Appropriations Act, 2016, an omnibus spending bill, with a division referred to as the Protecting Americans From Tax Hikes Act of 2015 (the “Act”), which includes a number of important provisions affecting taxation of REITs and REIT shareholders.

*Reduction in Permissible Holdings of TRS Securities.* For taxable years beginning after 2017, the percentage of a REIT’s total assets that may be represented by securities of one or more TRSs is reduced from 25% to 20%.

*Prohibited Transaction Safe Harbors.* REITs are subject to a 100% tax on net income from “prohibited transactions,” i.e., sales of dealer property (other than “foreclosure property”). These rules also contain safe harbors under which certain sales of real estate assets will not be treated as prohibited transactions. One of the requirements for the current safe harbors is that (I) the REIT does not make more than seven sales of property (subject to specified exceptions) during the taxable year at issue, or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than excepted property) sold during the taxable year does not exceed 10% of the aggregate bases in the REIT’s assets as of the beginning of the taxable year, or (III) the fair market value of property (other than excepted property) sold during the taxable year does not exceed 10% of the fair market value of the REIT’s total assets as of the beginning of the taxable year. If a REIT relies on clause (II) or (III), substantially all of the marketing and certain development expenditures with respect to the properties sold must be made through an independent contractor. A number of changes are made to the safe harbors:

- For taxable years beginning after December 18, 2015, clauses (II) and (III) are liberalized to permit the REIT to sell properties with an aggregate adjusted basis (or fair market value) of up to 20% of the aggregate bases in (or fair market value of) the REIT’s assets as long as the 10% standard is satisfied on average over the three-year period comprised of the taxable year at issue and the two immediately preceding taxable years.
- For taxable years beginning after 2015, for REITs that rely on clauses (II) or (III), a TRS may make the marketing and development expenditures that previously had to be made by independent contractors.

*Amendments To Preferential Dividend Rules.* For distributions in taxable years beginning after 2014, the preferential dividend rules do not apply to “publicly offered REITs,” i.e., REITs that are required to file annual and periodic reports with the SEC under the Securities Exchange Act of 1934. We are a publicly offered REIT.

*Limitations on Designations of Dividends by REITs.* The aggregate amount of dividends that may be designated by a REIT as qualified dividends or capital gain dividends will not exceed the dividends actually paid by the REIT. In addition, the Secretary of the Treasury is authorized to prescribe regulations or other guidance requiring proportionality of the designation of particular types of dividends. These provisions are effective for distributions in taxable years beginning after 2015.

*Debt Instruments of Publicly Offered REITs and Mortgages Treated as Real Estate Assets.* Debt instruments issued by publicly offered REITs (as defined above) will be treated as real estate assets for purposes of the 75% asset test. The application of the gross income tests to REIT debt instruments, however, will not change. For example, gain from the sale of debt of a publicly offered REIT will not be qualifying income under the 75% gross income test unless the debt is secured by real property. Under a new asset test, not more than 25% of the value of a REIT's assets may consist of debt instruments of publicly offered REITs. These provisions are effective for taxable years beginning after 2015.

*Asset and Income Test Clarification Regarding Ancillary Personal Property.* Under current law, rent attributable to personal property which is leased under, or in connection with, a lease of real property, is treated as rents from real property if the rent attributable to the personal property for the taxable year does not exceed 15% of the total rent for the taxable year for such real and personal property. Under new Section 856(c)(9)(A), to the extent rent attributable to personal property is treated as rents from real property, the personal property will be treated as a real estate asset for purposes of the 75% asset test. In the case of loans secured by both real and personal property, if the fair market value of the real property does not equal or exceed the "loan amount" at the time the REIT commits to make or acquire the loan, the loan is treated as a real estate asset only in part and interest income is treated as qualifying income for purposes of the 75% gross income test only in part. New Section 856(c)(9)(B) provides that debt obligation secured by a mortgage on both real and personal property will be treated as a real estate asset for purposes of the 75% asset test, and interest thereon will be treated as interest on an obligation secured by real property, if the fair market value of the personal property does not exceed 15% of the fair market value of all property securing the debt. Thus, there would be no apportionment for purposes of the asset tests or the gross income tests if the fair market value of personal property securing the loan does not exceed 15% of the fair market value of all property securing the loan. These provisions are effective for taxable years beginning after 2015.

*Hedging Provisions.* Under current law, income from hedging transactions that hedge certain REIT liabilities and currency risks are disregarded in applying the gross income tests. Section 856(c)(5)(G) is amended to add a new category of disregarded hedging income for taxable years beginning after 2015: income from hedging transactions entered into to hedge existing hedging positions after a portion of the hedged indebtedness or property is disposed of.

*Modification of REIT Earnings and Profits Calculation To Avoid Duplicate Taxation.* For taxable years beginning after 2015, the special earnings and profits rules in Section 857(d) are amended to ensure that shareholders will not be treated as receiving dividends from a REIT that exceed the earnings and profits of the REIT.

*Treatment of Certain Services Provided by Taxable REIT Subsidiaries.* There are several new rules relating to services provided by TRSs, all of which are effective for taxable years beginning after 2015:

- As noted above, the prohibited transaction tax safe harbors are amended to permit a TRS to provide certain services regarding development and marketing of properties that only independent contractors have been permitted to provide.
- TRSs will be permitted to operate foreclosure property without terminating the property's status as foreclosure property.
- The 100% excise tax on non-arm's length transactions between a REIT and its TRS is sometimes summarized as applying to all such non-arm's length transactions but in fact only applies to "redetermined rents," "redetermined deductions" and "excess interest." The 100% tax will also apply to "redetermined services income," i.e., non-arm's-length income of a REIT's TRS attributable to services provided to, or on behalf of, the REIT (other than services provided to REIT tenants, which are potentially taxed as redetermined rents).

*FIRPTA Changes.* A number of changes applicable to REITs are made to the FIRPTA rules for taxing non-US persons on gains from sales of US real property interests ("USRPIs").

*Exceptions from FIRPTA for Certain REIT Stock Gains and Distributions.* There are a number new exceptions to taxation under FIRPTA:

- Sales of Publicly Traded REIT Stock - While stock of equity REITs that are not domestically controlled REITs generally are USRPIs subject to tax under FIRPTA, under current law, stock of a publicly traded corporation (including a REIT) is not treated as a USRPI in the hands of a person who has not held more than 5% of the stock of corporation at any time during the applicable testing period. For dispositions on or after December 18, 2015, the more than 5% threshold is increased to more than 10%. We are not publicly traded.
- REIT Capital Gain Dividends - Similarly, for distributions on or after December 18, 2015, the current stock ownership threshold for the rule in Section 897(h)(1) recharacterizing publicly traded REIT dividends attributable to gains from dispositions of USRPIs as ordinary dividends is increased from more than 5% to more than 10%. We are not publicly traded.

- Qualified Shareholders - Stock of a REIT held (directly or through partnerships) by a “qualified shareholder” will not be a USRPI, and capital gain dividends from such a REIT will not be treated as gain from sale of a USRPI, unless a person (other than a qualified shareholder) that holds an interest (other than an interest solely as a creditor) in such qualified shareholder owns, taking into account applicable constructive ownership rules, more than 10% of the stock of the REIT. If the qualified shareholder has such an “applicable investor,” the portion of REIT stock held by the qualified shareholder indirectly owned through the qualified shareholder by the applicable investor will be treated as a USRPI, and the portion of capital gain dividends allocable to the applicable shareholder through the qualified investor will be treated as gains from sales of USRPIs. For these purposes, a “qualified shareholder” is foreign person which is in a treaty jurisdiction and satisfies certain publicly traded requirements, is a “qualified collective investment vehicle,” and maintains records on the identity of certain 5% owners. A “qualified collective investment vehicle” is a foreign person that is eligible for a reduced withholding rate with respect to ordinary REIT dividends even if such person holds more than 10% of the REIT’s stock, a publicly traded partnership that is a withholding foreign partnership that would be a US real property holding corporation if it were a US corporation, or is designated as a qualified collective investment vehicle by the Secretary of the Treasury and is either fiscally transparent within the meaning of Section 894 or required to include dividends in its gross income but entitled to a deduction for distributions to its investors. Finally, capital gain dividends and non-dividend redemption and liquidating distributions to a qualified shareholder that are not allocable to an applicable investor will be treated as ordinary dividends. These changes apply to dispositions and distributions on or after December 18, 2015.

*Determination of Domestically Controlled REIT Status.* Gain from sale of the stock of a domestically controlled qualified investment entity is not taxable under FIRPTA. A REIT is a domestically controlled qualified investment entity if throughout the applicable testing period less than 50% of its stock was held directly or indirectly by non-US persons. There has been uncertainty regarding how domestically controlled status is determined, particularly what indirect ownership is taken into account. Effective December 18, 2015, the following new rules will simplify such determination:

- In the case of a publicly traded REIT, a person holding less than 5% of a publicly traded class of stock at all times during the testing period is treated as a US person unless the REIT has actual knowledge that such person is not a US person. We are not publicly traded.
- In the case of REIT stock held by a publicly traded REIT or certain publicly traded or open-ended RICs, the REIT or RIC will be treated as a US person if the REIT or RIC is domestically controlled and will be treated as a non-US person otherwise.
- In the case of REIT stock held by a REIT or RIC not described in the previous rule, the REIT or RIC is treated as a US person or a non-US person on a look-through basis.

*FIRPTA Exception for USRPIs Held by Foreign Retirement or Pension Funds.* “Qualified foreign pension funds” and entities that are wholly owned by a qualified foreign pension fund are exempted from FIRPTA and FIRPTA withholding. For these purposes, a “qualified foreign pension fund” is any trust, corporation, or other organization or arrangement if (i) it was created or organized under foreign law, (ii) it was established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, (iii) it does not have a single participant or beneficiary with a right to more than 5% of its assets or income, (iv) it is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates, and (v) under the laws of the country in which it is established or operates, either contributions to such fund which would otherwise be subject to tax under such laws are deductible or excluded from the gross income of such fund or taxed at a reduced rate, or taxation of any investment income of such fund is deferred or such income is taxed at a reduced rate. This provision applies to dispositions and distributions after December 18, 2015.

*Increase in Rate of FIRPTA Withholding.* For sales of USRPIs occurring 60 days after December 18, 2015, the FIRPTA withholding rate for sales of USRPIs and certain distributions increases from on 10% to 15%, except with respect to a sale of a personal residence (that is otherwise subject to FIRPTA) where the amount realized is \$1 million or less.

*No “Cleansed” REITs.* The so-called FIRPTA “cleansing rule” (which applies to corporations that no longer have any USRPIs and have recognized all gain on their USRPIs) will not apply to a REIT or a RIC or a corporation if the corporation or any predecessor was a REIT or a RIC during the applicable testing period. This provision applies to dispositions on or after December 18, 2015.

### **An Update to Our Prior Performance Summary**

*The section of our prospectus entitled “Prior Performance Summary” is hereby deleted in its entirety and replaced with the following.*

## PRIOR PERFORMANCE SUMMARY

*The information presented in this section represents the historical experience of real estate programs, which we refer to as “prior real estate programs,” sponsored or advised by our sponsor, Moody National, and its affiliates. The following summary is qualified in its entirety by reference to the Prior Performance Tables, which may be found in Appendix A of this prospectus. Investors in our shares of common stock should not assume that they will experience returns, if any, comparable to those experienced by investors in such prior real estate programs. Investors who purchase our shares of common stock will not thereby acquire any ownership interest in any of the entities to which the following information relates.*

*The returns to our stockholders will depend in part on the mix of product in which we invest, the stage of investment and our place in the capital structure for our investments. As our portfolio is unlikely to mirror in any of these respects investments made by the prior real estate programs (other than Moody REIT I discussed below), the returns to our stockholders will vary from those generated by those prior real estate programs. For example, we are not currently planning to issue tenant-in-common interests as we generally have with our prior real estate programs. In addition, all of the prior privately offered real estate programs were conducted through privately held entities that were not subject to either the up-front commissions, fees and expenses associated with this offering or many of the laws and regulations to which we are subject. Other than our sponsor’s experience with Moody National REIT I, neither Moody National nor any of its affiliates has experience in operating a REIT or a publicly offered investment program. As a result, you should not assume the past performance of the prior real estate programs will be indicative of our future performance. See the Prior Performance Tables located in Appendix A.*

### Prior Investment Programs

Moody National Realty Company, L.P., or Moody National Realty Company, was formed in Texas in 1998 to sponsor public and private real estate programs. The general partner of Moody National Realty Company is Moody Realty Corporation, which is solely owned and managed by Mr. Brett C. Moody. Moody Realty Corporation is one of the companies owned by Mr. Moody that collectively make up the Moody National Companies Organization, including Moody National Mortgage Corporation, Moody Management Corporation, Moody National Development Company, L.P., Moody National Construction, LLC, and Moody National Exchange, LLC. Since 1996, the Moody National Companies Organization has become a full service real estate firm. Moody National Mortgage Corporation has completed over 150 transactions providing its customers with over \$1 billion of debt, equity and structured financings. Moody National Realty Company has provided a complete spectrum of commercial real estate brokerage services including leasing, acquisition, disposition, marketing and consulting services. Moody National Management, L.P. specializes in managing Class A, Class B and Class C multifamily properties, as well as hospitality assets. In 2005, Moody National Realty Company sponsored its first private real estate program.

Between January 1, 2005 and December 31, 2014, Moody National Realty Company, has, directly or indirectly, sponsored 46 privately offered prior real estate programs which raised approximately \$427.9 million from more than 1,308 investors and one public, non-listed REIT, Moody National REIT I, which was still engaged in a continuous public offering as of December 31, 2014. Moody National REIT I terminated its primary offering on October 12, 2015.

As of December 31, 2014, Moody National REIT I had raised approximately \$97.2 million from its initial public offering and follow-on offering and had invested primarily in hospitality properties. We will provide upon request to us, for no fee, a copy of the most recent Annual Report on Form 10-K of Moody National REIT I and for a reasonable fee, the exhibits to such Form 10-K.

The following table sets forth information on the 46 prior real estate programs sponsored by Moody National Realty Company. Each program owns or owned between one and three real estate assets.

Name of Program	Type of Program	Launch Year	Program Status
Philadelphia Airport Hampton Inn	Tenant-in-Common	2005	Operating
Lansdale Homewood Suites	Tenant-in-Common	2005	Operating
Plymouth Meeting Hampton Inn	Tenant-in-Common	2005	Operating
Great Valley Hampton Inn	Tenant-in-Common	2005	Operating
Newtown Hampton Inn & Suites	Tenant-in-Common	2005	Foreclosure
Westchase Technology Center	Tenant-in-Common	2005	Foreclosure <sup>(1)</sup>
Buffalo Speedway	Tenant-in-Common	2005	Operating
Nashville Embassy Suites	Tenant-in-Common	2005	Operating
Grapevine Hampton Inn & Suites	Tenant-in-Common	2005	Operating
Nashville Courtyard Marriott	Tenant-in-Common	2005	Closed
Orlando Radisson Inn	Tenant-in-Common	2006	Closed
Holiday Inn Memphis	Tenant-in-Common	2006	Operating
Memphis Residence Inn	Tenant-in-Common	2006	Foreclosure <sup>(2)</sup>
Northbelt Office Center II	Tenant-in-Common	2006	Closed

<b>Name of Program</b>	<b>Type of Program</b>	<b>Launch Year</b>	<b>Program Status</b>
Macon Fairfield Inn & Suites, Alpharetta Fairfield Inn & Suites and Kennesaw TownePlace Suites	Tenant-in-Common	2006	Closed
Atlanta Perimeter Center Fairfield Inn & Suites and Alpharetta TownePlace Suites	Tenant-in-Common	2006	Closed
Buckhead Fairfield Inn & Suites and Alpharetta Springhill Suites	Tenant-in-Common	2006	Closed
Homewood Suites Bedford, Hampton Inn Energy Corridor and TownePlace Suites Plano	Tenant-in-Common	2006	Operating
Springhill Suites Seattle	Tenant-in-Common	2006	Operating
Residence Inn Houston Medical Center and Comfort Suites Grapevine	Tenant-in-Common	2006	Operating
Springhill Suites Altamonte and Holiday Inn Express Orlando	Tenant-in-Common	2006	Foreclosure <sup>(3)</sup>
Residence Inn Lebanon	Tenant-in-Common	2006	Operating
200 Franklin Trust/Philips Corporate Headquarters	Delaware Statutory Trust	2006	Operating
Weatherford Plaza	Tenant-in-Common	2007	Closed
TownePlace Suites Miami Airport and TownePlace Suites Miami Lakes	Tenant-in-Common	2007	Foreclosure <sup>(4)</sup>
TownePlace Suites Mount Laurel	Tenant-in-Common	2007	Foreclosure <sup>(5)</sup>
TownePlace Suites Fort Worth	Tenant-in-Common	2007	Operating
Fairfield Inn Denver South, Fairfield Inn Aurora and Fairfield Inn Westminster	Tenant-in-Common	2007	Closed <sup>(6)</sup>
Renaissance Meadowlands	Tenant-in-Common	2007	Closed <sup>(6)</sup>
Courtyard Columbus Downtown	Tenant-in-Common	2007	Closed
Courtyard Columbus Airport	Tenant-in-Common	2007	Foreclosure <sup>(7)</sup>
Courtyard Willoughby	Tenant-in-Common	2007	Closed <sup>(6)</sup>
Newark TownePlace Suites	Tenant-in-Common	2007	Closed
Courtyard Lyndhurst New Jersey	Tenant-in-Common	2007	Closed
Springhill Suites Bothell	Tenant-in-Common	2007	Operating
Fairfield Inn Meadowlands	Tenant-in-Common	2007	Closed <sup>(6)</sup>
Springhill Suites Des Moines	Tenant-in-Common	2008	Closed <sup>(6)</sup>
Fairfield Inn & Suites West Des Moines	Tenant-in-Common	2008	Closed <sup>(6)</sup>
Residence Inn Torrance	Tenant-in-Common	2008	Closed <sup>(6)</sup>
Residence Inn Perimeter	Tenant-in-Common	2008	Closed <sup>(8)</sup>
Residence Inn Midtown Atlanta	Tenant-in-Common	2008	Foreclosure <sup>(9)</sup>
Sprinhill Suites Houston Medical Center/Reliant Park	Tenant-in-Common	2008	Operating
TownePlace Suites Portland Scarborough	Tenant-in-Common	2008	Operating
Moody National HP Grapevine Trust	Delaware Statutory Trust	2008	Operating
Springhill Suites Pittsburgh	Tenant-in-Common	2008	Operating
Moody National Financial Fund I, LLC	Private Fund	2008	Closed
Moody National REIT I	Public Fund	2010	Operating <sup>(10)</sup>

- (1) The tenant-in-common owners of the Westchase Technology Center property declined to proceed with a lender's proposed loan modifications and allowed the lender to foreclose on the Westchase Technology Center property in July 2010.
- (2) The lender of the Residence Inn Memphis filed foreclosure proceedings and one unaffiliated tenant-in-common owner of the Residence Inn Memphis filed for bankruptcy protection, which resulted in a court-ordered auction sale of the Residence Inn Memphis.
- (3) The tenant-in-common owners of the Springhill Suites Altamonte property and the Holiday Inn Express Orlando property declined to proceed with a lender's proposed loan modifications and allowed the lender to foreclose on the Springhill Suites Altamonte property and the Holiday Inn Express Orlando property in December 2010 and November 2010, respectively.
- (4) The tenant-in-common owners of the TownePlace Suites Miami Airport and the TownePlace Suites Miami Lakes declined to proceed with a lender's loan modification and allowed the lender to foreclose on the TownePlace Suites Miami Airport and the TownePlace Suites Miami Lakes in July 2011.

- (5) The tenant-in-common owners of the TownePlace Suites Mount Laurel declined to proceed with a lender's loan modification and allowed the lender to foreclose on the TownePlace Suites Mount Laurel in April 2012.
- (6) This tenant-in-common program, together with six other programs, has been restructured into a limited liability company owned by the former tenant-in-common owners and a lender affiliate.
- (7) The tenant-in-common owners of the Courtyard Columbus Airport entered into a deed in lieu of foreclosure agreement with the lender in May 2012.
- (8) On May 27, 2010, a joint venture in which Moody National REIT I indirectly owned a 75% membership interest and Brett C. Moody, our Chairman and Chief Executive Officer, indirectly owned a 25% membership interest, acquired fee simple title to the Residence Inn Perimeter property by purchasing the interests in the Residence Inn Perimeter property held by twenty-seven tenant-in-common owners. The Residence Inn property was subsequently sold to a third-party buyer on August 23, 2012.
- (9) The tenant-in-common owners of the Residence Inn Midtown Atlanta declined to infuse additional equity into the property and allowed the lender to foreclose on the property in August 2013.
- (10) As of December 31, 2014, Moody National REIT I's portfolio was comprised of investments in eight hotel properties and a joint venture interest in a mortgage note secured by a hotel property.

We intend to conduct this offering in conjunction with existing and future offerings by other public and private real estate entities sponsored by Moody National and Moody National Realty Company. To the extent that such entities have the same or similar objectives as ours or involve similar or nearby properties, such entities may be in competition with the properties we acquire or seek to acquire.

The Prior Performance Tables included in Appendix A to this prospectus set forth information as of the dates indicated regarding certain prior real estate programs regarding: annual operating results of the prior real estate programs (Table III); the operating results of prior real estate programs which have completed their operations (no longer hold properties) (Table IV); and the sale or disposition of properties in connection with the prior real estate programs (Table V).

We have not included in Appendix A to this prospectus tables regarding experience in raising and investing funds (Table I) or compensation to the sponsor (Table II) because there are no prior real estate programs which have closed during the three year period ended December 31, 2014 and therefore Tables I and II are inapplicable. In addition,

## **Liquidity Track Record**

In order to assist FINRA members in complying with FINRA Rule 2310(b)(3)(D), in this section we disclose the liquidity of prior public programs sponsored by our sponsor. Moody National REIT I, the other publicly offered program sponsored by our sponsor, is still in its acquisition stage and has not yet reached the stated date or time period by which it may consummate a liquidity event.

## **Summary Information**

### ***Capital Raising***

The total amount of funds raised from investors in the 46 prior real estate programs as of December 31, 2014 was approximately \$427.9 million. These funds were invested in real estate with an aggregate cost, including debt and investments of joint venture partners, of approximately \$1.10 billion. In addition, one of these prior real estate programs originated a loan in the amount of \$3.1 million. The total number of investors in these prior real estate programs, collectively, is more than 1,308.

As of December 31, 2014, Moody National REIT I had raised approximately \$97.2 million, had invested approximately \$50.4 million of such offering proceeds in its current portfolio of eight hotel properties and its joint venture interest in a mortgage note.

### ***Investments***

The prior privately offered real estate programs had acquired 56 properties as of December 31, 2014. Moody National REIT I owned interests in eight hospitality properties located in five states as of December 31, 2014. The table below gives further information about these properties:

## **Properties Purchased - Privately Offered Prior Real Estate Programs**

<b>Location</b>	<b>Properties Purchased (as a Percentage of Aggregate Purchase Price)</b>
United States .....	100.0%
West .....	13.1%
Plains States .....	5.0%
Southwest .....	21.3%
Southeast .....	22.8%
Northeast .....	37.9%

## Properties Purchased - Moody National REIT I

Location	Properties Purchased (as a Percentage of Aggregate Purchase Price)
United States.....	100.0%
West.....	7.0%
Southwest.....	53.7%
Southeast.....	16.1%
Northeast.....	23.2%

Moody National REIT I also owned a joint venture interest in a mortgage note secured by a hotel property located in Grapevine, Texas.

The following table gives a percentage breakdown of the aggregate amount of the acquisition and development costs of the properties purchased by the privately offered prior real estate programs, categorized by type of property, as of December 31, 2014, all of which were existing properties.

	Existing
Office Buildings.....	13.0%
Residential.....	—
Hotels.....	87.0%
Total.....	100.0%

These properties were financed with a combination of debt and offering proceeds.

### Dispositions

As of December 31, 2014, the prior privately offered real estate programs had sold the Orlando Radisson Inn, a hotel property located in Orlando, Florida, the Residence Inn Perimeter, a hotel property located in Atlanta, Georgia, the Nashville Courtyard Marriott, a hotel property located in Nashville, Tennessee, and the Courtyard Columbus Downtown, a hotel property located in Columbus, Ohio, for aggregate sale prices, excluding closing costs, of approximately \$5,600,000, \$7,350,000, \$31,000,000, and \$14,350,000, respectively. In addition, as of December 31, 2014, lenders had foreclosed on the properties, or received a deed in lieu of foreclosure on the properties, held by seven prior real estate programs.

On August 23, 2012, Moody National REIT I sold its 75% joint venture interest in a hotel property located in Atlanta, Georgia commonly known as the Residence Inn by Marriott Perimeter Center to a third party buyer for \$9,150,000.

### Three Year Summary of Acquisitions

From December 31, 2010 through December 31, 2014, the privately offered prior real estate programs did not acquire any properties.

During the three-year period ended December 31, 2014, Moody National REIT I acquired interests in eight properties for aggregate purchase prices of approximately \$143.5 million. The following table provides additional information about these acquisitions:

Property Name	Location	Purchase Price
Woodlands Hotel (Homewood Suites by Hilton)	The Woodlands, TX	\$ 12,000,000
Germantown Hotel (Hyatt Place)	Germantown, TN	11,300,000
Charleston Hotel (Hyatt Place)	North Charleston, SC	11,800,000
Austin Hotel (Hampton Inn)	Austin, TX	15,350,000
Grapevine Hotel (Residence Inn)	Grapevine, TX	20,500,000
Silicon Valley Hotel (TownePlace Suites by Marriott)	Newark, CA	10,000,000
Lyndhurst Hotel (Marriott Courtyard)	Lyndhurst, NJ	33,322,000
Austin Arboretum Hotel (Hilton Garden Inn)	Austin, TX	29,250,000
<b>Totals</b>		<b>\$ 143,522,000</b>

The total acquisition cost for the property acquisitions was approximately \$143.5 million, of which approximately \$102.4 million was financed with mortgage financing during the three years ended December 31, 2014.

As of December 31, 2014, Moody National REIT I had total outstanding indebtedness of \$112,705,196. As of December 31, 2014, its leverage ratio, or the ratio of our total debt to total purchase price plus cash and cash equivalents, was approximately 63%, and its debt-to-net asset ratio, defined as the total debt as a percentage of its total assets (other than intangibles) less total liabilities, was approximately 158%.

## Adverse Business Developments

The real estate market downturn that began several years ago adversely impacted certain prior real estate programs of our sponsor's affiliates, resulting in a decrease or deferral of distributions with respect to such programs. Moody National Management, L.P. continues to seek approval to amend its master lease agreements for certain prior real estate programs to provide for either a deferral or a waiver of a portion of lease payments to program investors, and may continue to seek further amendments in the future depending upon the then-current economic conditions. Certain prior real estate programs have also requested additional cash infusions from investors to fund outstanding debt service payments. Further such requests may be necessary in the future depending upon the then-current economic conditions. These adverse developments have resulted in a reduction in payments to investors for certain prior real estate programs.

Moody National Management, L.P. has commenced negotiations with lenders to restructure loan terms with respect to certain prior real estate programs in default under existing franchise or loan agreements and may continue to do so in the future. With respect to some of these loans, the lender is pursuing various alternatives simultaneously, including initiation of foreclosure and legal proceedings and loan modifications, and the borrowers are actively working toward loan modifications. However, there is no assurance that final loan modifications will be achieved.

With respect to two tenant-in-common programs sponsored by Moody National Realty, the initial lender sold the loans, and the purchaser of the loans initiated foreclosure proceedings resulting in the filing for protection from these proceedings in the United States Bankruptcy Court by an affiliate of Moody National Realty owning an original equity investment in one property of approximately \$10,000 and approximately \$10,039 in the other property. These affiliates received court approval of a confirmation plan under which an agreement was reached with the lender and the loans were reinstated. With respect to one of these properties, the 28 tenant-in-common owners of the Residence Inn Atlanta Midtown, which originally acquired the project with a \$7.475 million equity investment, recently allowed the lender to foreclose on the hotel which secured the loan.

An affiliate of Moody National Realty and tenant-in-common owners in eight tenant-in-common programs collectively had initiated legal proceedings against a lender. Currently, seven of these tenant-in-common programs have been restructured into a limited liability company owned by the former tenant-in-common owners and a lender affiliate, and the legal proceedings have been dismissed with respect to such programs. The lender and borrowers in one of the tenant-in-common programs entered into a settlement and reinstatement of the loan, and the legal proceedings have been dismissed with respect to such program.

The 19 tenant-in-common owners of the Westchase Technology Center property, who originally acquired the property with a \$4 million equity investment, declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on an office building which secured the loan. The 28 tenant-in-common owners of a two-hotel project (consisting of the Springhill Suites Altamonte and the Holiday Inn Express Orlando) who originally acquired the project with a \$10.2 million equity investment declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the two hotels which secured the loan. The 14 tenant-in-common owners of a two-hotel project (consisting of the TownePlace Suites Miami Airport and TownePlace Suites Miami Lakes) who originally acquired the project with a \$5.9 million equity investment declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the two hotels which secured the loan. The 16 tenant-in-common owners of the TownePlace Suites Mount Laurel, who originally acquired the property with a \$5.6 million equity investment, declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the hotel which secured the loan. Additionally, the 35 tenant-in-common owners of the Courtyard Columbus Airport, who originally acquired the property with an \$11.1 million equity investment, entered into a deed in lieu of foreclosure agreement with the lender. Further, the lender for the Residence Inn Memphis filed foreclosure proceedings and one unaffiliated tenant-in-common owner of the Residence Inn Memphis filed for bankruptcy protection, which resulted in a court-ordered auction sale of the property and a loss of the original \$6.93 million equity investment for the 17 tenant-in-common owners. In addition, the 31 tenant-in-common owners of the Northbelt II Office Building, who originally acquired the property with a \$9.3 million equity investment, allowed the lender to acquire the property in an uncontested foreclosure. Further, the 21 tenant-in-common owners of the Newtown Hampton Inn & Suites, who originally acquired the property with a \$6.725 million equity investment, allowed the lender to acquire the property in an uncontested foreclosure.

## **An Update to Our Prior Performance Tables**

*Appendix A of our prospectus entitled “Prior Performance Tables” is hereby deleted in its entirety and replaced with Appendix A attached hereto.*

### **APPENDIX A:**

#### **PRIOR PERFORMANCE TABLES**

The following prior performance tables provide information relating to the real estate investment programs sponsored by Moody National and its affiliates, collectively referred to herein as the “prior real estate programs.” These programs were not prior programs of Moody National REIT II, Inc. Moody National and its affiliates provide commercial real estate services, which focus on identifying and developing institutional quality real estate products and programs for individual and institutional investors. Each individual prior real estate program has its own specific investment objectives; however, the general investment objectives common to all prior real estate programs include providing investors with (1) exposure to investment in real estate as an asset class and (2) current income. Accordingly, each of the prior real estate programs has similar investment objectives to those of Moody National REIT II, Inc.

This information should be read together with the summary information included in the “Prior Performance Summary” section of this prospectus.

INVESTORS SHOULD NOT CONSTRUE INCLUSION OF THE FOLLOWING TABLES AS IMPLYING, IN ANY MANNER, THAT WE WILL HAVE RESULTS COMPARABLE TO THOSE REFLECTED IN SUCH TABLES. DISTRIBUTABLE CASH FLOW, FEDERAL INCOME TAX DEDUCTIONS OR OTHER FACTORS COULD BE SUBSTANTIALLY DIFFERENT. INVESTORS SHOULD NOTE THAT, BY ACQUIRING OUR SHARES, THEY WILL NOT BE ACQUIRING ANY INTEREST IN ANY PRIOR PROGRAM.

#### **Description of the Tables**

All information contained in the Tables in this Appendix A is as of December 31, 2014. The following tables are included herein:

Table III—Annual Operating Results of Prior Real Estate Programs

Table IV—Operating Results of Prior Real Estate Programs Which Have Completed Operations

Table V—Sale or Disposition of Properties by Prior Real Estate Programs

We have not included in this Appendix A Table I (Experience in Raising and Investing Funds) or Table II (Compensation to Sponsor) because there are no prior real estate programs the offering of which closed during the three years ended December 31, 2014 and therefore Tables I and II are inapplicable.

**TABLE III**  
**ANNUAL OPERATING RESULTS OF PRIOR PROGRAMS**  
**(UNAUDITED)**

Table III sets forth the annual operating results of prior real estate programs that closed during the five years ended December 31, 2014. All figures are as of December 31, 2014.

**Moody National Financial Fund I, LLC**

	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>
<b>Summary Balance Sheet Data:</b>					
Total Assets (before depreciation) .....	\$ —	\$ —	\$ 1,781,493	\$ 1,782,575	\$ 1,780,268
Total Assets (after depreciation) .....	—	—	1,781,493	1,782,575	1,780,268
Liabilities .....	—	—	361,186	363,989	363,738
Estimated Per Share Value .....	N/A	N/A	N/A	N/A	N/A
<b>Summary Income Statement Data:</b>					
Gross Revenues .....	—	\$ 63,426	\$ 257,630	\$ 257,413	\$ 449,929.00
Operating Expenses .....	—	—	—	—	—
Operating Income .....	—	\$ 63,426	\$ 257,630	\$ 257,413	\$ 449,929
Interest Expense .....	—	—	—	—	—
Net Income (GAAP basis) .....	—	\$ 63,426	257,630	257,413	449,929
<b>Summary Cash Flows Data:</b>					
Cash Generated from Operating Activities <sup>(1)</sup> ..	—	\$ 63,426	257,630	257,413	449,929
Cash Generated from Investing Activities ....	—	—	—	—	—
Cash Generated from Financing Activities ....	—	—	—	—	—
Total Cash Generated .....	—	\$ 63,426	257,630	257,413	449,929
<b>Amount and Source of Distributions</b> .....					
Total Distributions Paid to Investors .....	—	63,426	257,630	257,413	449,929
Distribution Data Per \$1,000 Invested:					
Total Cash Distributions to Investors .....	—	145	148	148	172
From Operations .....	—	145	148	148	172
From all other sources (financing or other sources) .....	—	—	—	—	—

(1) Cash Generated From Operating Activities reflects payments to investors pursuant to a master lease on the property and does not reflect the cash generated at the property level.

**TABLE IV**  
**OPERATING RESULTS OF COMPLETED PRIOR PROGRAMS**  
**(UNAUDITED)**

Table IV presents information regarding the operating results of prior real estate programs that have completed operations (i.e., that no longer hold properties) during the five years ended December 31, 2014. All amounts presented are as of December 31, 2014.

	Westchase Technology Center <sup>(1)</sup>	Orlando Radisson Inn	Springhill Suites Altamonte and Holiday Inn Express Orlando <sup>(2)</sup>	Residence Inn Perimeter	Springhill Suites Des Moines	Residence Inn Torrance	Fairfield Inn Denver South, Fairfield Inn Aurora and Fairfield Inn Westminster	Courtyard Willoughby	TownePlace Suites Miami Airport and TownePlace Suites Miami Lakes	Fairfield Inn & Suites West Des Moines
Aggregate Dollar										
Amount Raised . . . .	\$4,000,000	\$2,895,000	\$10,210,000	\$7,080,000	\$4,310,000	\$23,015,000	\$11,500,000	\$5,985,000	\$5,915,000	\$6,555,000
Number of Properties										
Purchased . . . . .	1	1	2	1	1	1	3	1	2	1
Duration of Program										
(Months) . . . . .	60	52	49	30	41	40	45	44	51	48
Date of Program	July	May	December	May	March	March	March	June	July	October
Closing . . . . .	6, 2010 <sup>(1)</sup>	13, 2010	9, 2010 <sup>(2)</sup>	27, 2010	10, 2011	10, 2011	21, 2011	1, 2011	1, 2011	27, 2011
Total Compensation										
Paid to Sponsor <sup>(3)</sup> . . .	\$ 551,633	\$ 916,226	\$ 1,601,280	\$3,672,453	\$ 998,682	\$ 7,957,234	\$ 3,504,649	\$1,100,453	\$2,971,880	\$1,205,210
Median Annual										
Leverage . . . . .	65%	56%	60%	59%	66%	61%	58%	61%	74%	53%
Annualized Return on										
Investment . . . . .	-13%	-11%	-21%	-20%	-23%	-23%	-21%	-23%	-21%	-23%

	Renaissance Meadowlands	Nashville Marriott Courtyard	TownePlace Suites Mt. Laurel	Courtyard Columbus Airport	Memphis Residence Inn	Fairfield Inn Meadowlands	Courtyard by Marriott Columbus Downtown	Residence Inn Midtown Atlanta
Aggregate Dollar								
Amount Raised . . . \$	22,385,000	\$ 12,140,000	\$ 5,595,000	\$ 11,110,000	\$ 6,930,000	\$ 11,695,000	\$ 5,845,000	\$ 7,475,000
Number of								
Properties								
Purchased . . . . .	1	1	1	1	1	1	1	1
Duration of								
Program								
(Months) . . . . .	56	74	60	59	83	56	68	66
Date of Program	January	February	April	May	December	December	February	August
Closing . . . . .	6, 2012	15, 2012	5, 2012	11, 2012	27, 2012	28, 2012	8, 2013	6, 2013
Total								
Compensation								
Paid to Sponsor <sup>(3)</sup> \$	4,276,919	\$ 2,091,318	\$ 1,528,436	\$ 1,974,267	\$ 1,096,750	\$ 1,972,430	\$ 1,974,267	\$ 1,195,580
Median Annual								
Leverage . . . . .	58%	60%	58%	58%	53%	61%	49%	58%
Annualized Return								
on Investment . . .	-17%	5%	-17%	-16%	-13%	-17%	-5%	-15%

	Hampton Inn- Newtown	Weatherford Office Building	Northbelt Office Center II	TownPlace Suites Newark	Courtyard by Marriott Lyndhurst
Aggregate Dollar Amount Raised . . . . .	\$ 6,725,000	\$ 9,525,000	\$ 9,300,000	\$ 5,039,016	\$ 20,125,000
Number of Properties Purchased . . . . .	1	1	1	1	1
Duration of Program (Months) . . . . .	July 8, 2005	December 18, 2006	February 27, 2006	May 18, 2007	August 1, 2007
Date of Program Closing . . . . .	October 9, 2014	May 2, 2014	May 6, 2014	June 24, 2014	September 30, 2014
Total Compensation Paid to Sponsor <sup>(3)</sup> . . . . .	\$ 1,006,900	\$ 1,345,119	\$ 1,436,735	\$ 471,353	\$ 3,303,584
Median Annual Leverage . . . . .	66%	72%	60%	50%	61%
Annualized Return on Investment . . . . .	-7%	-6%	-8%	4%	-12%

- (1) In July 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the Westchase Technology Center property.
- (2) In November 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on the Holiday Inn Express Orlando property. In December 2010, tenant-in-common owners declined to proceed with a lender's loan modification proposal and allowed the lender to foreclose on Springhill Suites Altamonte property.
- (3) Includes financing fees, acquisition fees, deposits, prepaid items and funds for the acquisition of personal property based on asset class.

**TABLE V**  
**SALE OR DISPOSITION OF PROPERTIES**  
**(UNAUDITED)**

Table V sets forth summary information on the results of the sale or disposal of properties since December 31, 2011 by prior real estate programs.

Property	Location	Date Acquired	Date of Sale	Selling Price, Net of Closing Costs and GAAP Adjustments						Cost of Properties Including Closing and Soft Costs			
				Cash Received Net of Closing Costs	Mortgage Balance at Time of Sale	Closing Costs	Purchase Money Mortgage Taken Back By Program	Adjustments Resulting From Application of GAAP	Total	Original Mortgage Financing	Total Acquisition Cost, Capital Improvements, Closing and Soft Cost	Total	Excess (Deficiency) of Property Operating Cash Receipts Over Cash Expenditures
Renaissance Meadowslands	Rutherford, New Jersey	August 31, 2007	January 6, 2012	31,495,869	31,495,869	—	—	—	—	32,000,000	22,385,000	54,385,000	3,139,700
Nashville Marriott Courtyard	Nashville, Tennessee	March 3, 2006	February 15, 2012	29,907,681	18,940,623	1,092,319	—	—	10,967,058	20,580,000	12,140,000	32,720,000	4,707,104
TownePlace Suites Mt. Laurel	Mount Laurel, New Jersey	May 18, 2007	April 5, 2012	7,800,646	7,800,646	—	—	—	—	7,835,000	5,595,000	13,430,000	895,200
Courtyard Columbus Airport	Columbus, Ohio	August 31, 2007	May 11, 2012	15,378,000	15,378,000	—	—	—	—	15,378,000	11,110,000	26,488,000	1,955,154
Memphis Residence Inn	Memphis, Tennessee	March 24, 2006	December 27, 2012	7,805,003	7,805,003	—	—	—	—	8,440,000	6,930,000	15,370,000	1,663,200
Fairfield Inn Meadowslands	East Rutherford, New Jersey	August 31, 2007	December 28, 2012	18,675,000	18,675,000	—	—	—	—	18,675,000	11,695,000	30,370,000	1,740,000
Courtyard by Marriott Columbus Downtown	Columbus, Ohio	August 31, 2007	February 8, 2013	13,778,243	10,725,879	571,757	—	—	3,052,364	11,202,000	5,845,000	17,047,000	1,116,047
Residence Inn Midtown Atlanta	Atlanta, Georgia	August 31, 2007	August 6, 2013	10,478,926	10,478,926	—	—	—	—	10,932,000	7,475,000	18,407,000	778,301
Hampton Inn - Newtown	Yardley, Pennsylvania	July 8, 2005	October 9, 2014	13,772,784	13,772,784	—	—	—	—	15,300,465	6,725,000	22,025,465	2,575,055
Weatherford Office Building	Houston, Texas	December 18, 2006	May 2, 2014	25,018,070	24,202,611	1,481,930	—	—	815,459	24,400,000	9,525,000	33,925,000	4,502,146
Northbelt Office Center II	Houston, Texas	February 27, 2006	May 6, 2014	13,899,795	13,899,795	—	—	—	—	14,500,000	9,300,000	23,800,000	3,405,848
TownPlace Suites Newark	Newark, California	May 18, 2007	June 24, 2014	9,978,611	5,060,493	1,421,389	—	—	4,918,118	5,932,857	5,039,016	10,971,873	1,551,918
Courtyard by Marriott Lyndhurst	Lyndhurst, New Jersey	August 1, 2007	September 30, 2014	32,095,074	32,095,074	—	—	—	—	34,350,000	20,125,000	54,475,000	2,753,800

**Experts**

*The “Experts” section on page 119 of our prospectus is hereby amended by adding the following:*

The financial statements of Mueller Hospitality, LP contained in our Current Report on Form 8-K/A filed with the SEC on December 30, 2015 have been audited by Frazier & Deeter, LLC, an independent auditor, as stated in their report included therein. A copy of that Current Report on Form 8-K/A is attached to this supplement. Such financial statements have been so included in reliance upon the report of such firm given upon its authority as experts in accounting and auditing.

**Current Report on form 8-K/A**

On December 30, 2015, we filed with the Securities and Exchange Commission a Current Report on Form 8-K/A containing the financial statements of Mueller Hospitality, LP and our pro forma financial information, a copy of which is attached to this supplement as Exhibit B.

**Quarterly Report on Form 10-Q**

On November 16, 2015, we filed with the Securities and Exchange Commission our Quarterly Report on Form 10-Q for the period ended September 30, 2015, a copy of which is attached to this supplement as Exhibit C (without exhibits).

**EXHIBIT A**

**FORM OF SUBSCRIPTION AGREEMENT**



**APPENDIX B**  
**FORM OF SUBSCRIPTION AGREEMENT**  
**SUBSCRIPTION AGREEMENT INSTRUCTIONS**  
**FOR THE PROSPECTUS DATED JANUARY 20, 2015**

Please refer to the following instructions in completing the attached Signature Page. Failure to follow these instructions may result in the rejection of your subscription.

Individuals desiring to purchase shares of common stock (the "Shares") in Moody National REIT II, Inc., a Maryland corporation (the "Company"), must sign and deliver a copy of the attached subscription agreement signature page ("Signature Page") along with the acknowledgement of receipt of the prospectus in Section 5 of this Subscription Agreement. If this subscription is accepted, it will be held, together with the accompanying payment, on the terms described in the Company's prospectus dated January 20, 2015 (the "Prospectus"). Subscriptions may be rejected in whole or in part by the Company in its sole and absolute discretion. Upon completion of this transaction, investors will receive a confirmation of purchase, subject to acceptance by the Company, within 30 days from the date the subscription is received. In no event may a subscription for Shares be accepted until at least five business days after the date the subscriber receives the final Prospectus.

- 1. INVESTMENT:** A minimum investment of \$2,500 is required. A check for the full purchase price of the shares subscribed for should be made payable to "Moody National REIT II, Inc." Shares may be purchased only by persons meeting the standards set forth under the Section of the Prospectus entitled "Suitability Standards." Please indicate the state in which the sale was made in Section 1 of this Subscription Agreement. If this is an initial investment, please check the box indicating it as such. Otherwise, please check the "Additional Investment" box. The "Additional Investment" box must be checked in order for this subscription to be combined with another subscription for purposes of a volume discount. A completed Subscription Agreement is required for each initial and additional investment.
- 2. FORM OF OWNERSHIP:** Please check the appropriate box to indicate the type of entity or type of individuals subscribing.
- 3. CUSTODIAL OWNERSHIP ACCOUNTS:** If applicable, please provide the information requested for Custodial Accounts in this Section. Please enter the exact name in which the Shares are to be held and the mailing address and telephone numbers of the registered owner of this investment. In the case of a qualified plan or trust, this will be the address of the trustee.
- 4. REGISTRATION INFORMATION AND ADDRESS:** Please enter the exact name in which the Shares are to be held. For joint tenants with a right of survivorship or tenants-in-common, include the names of both investors. In the case of partnerships or corporations, include the name of an individual to whom correspondence will be addressed. Trusts should include the name of the trustee. All investors must complete the space provided for taxpayer identification number or social security number. By signing in Section 11, the investor(s) is/are certifying that the taxpayer or social security number(s) is/are correct. Enter the mailing address and telephone numbers of the registered owner of this investment. In the case of a qualified plan or trust, this will be the address of the trustee.
- 5. INVESTOR ACKNOWLEDGMENT:** Please separately initial each representation made by the investor where indicated. Except in the case of fiduciary accounts, the investor may not grant any person a power of attorney to make such representations on such investor's behalf.
- 6. SUITABILITY ACKNOWLEDGEMENT:** Please complete this Section so that the Company and your broker-dealer can assess whether your subscription is suitable given your financial condition.
- 7. DISTRIBUTION REINVESTMENT PLAN:** By electing the distribution reinvestment plan, the investor elects to reinvest 100% of cash distributions otherwise payable to such investor in common stock of the Company. If cash distributions are to be sent to an address other than that provided in Section 4 (such as a bank, brokerage firm or savings and loan, etc.), please provide the name, account number and address.
- 8. FINANCIAL ADVISOR:** This Section is to be completed by the Registered Investment Advisor (RIA), or the registered representative and the broker-dealer.
- 9. PAYMENT INSTRUCTIONS:** Please indicate the method of payment for your subscription in this Section.
- 10. SUBSCRIBER SIGNATURES:** The subscription agreement Signature Page must be signed by an authorized representative. The subscription agreement Signature Page, which has been delivered with the Prospectus, together with a check for the full purchase price, should be delivered or mailed to your broker-dealer. Only original, completed copies of subscription agreements may be accepted. Photocopied or otherwise duplicated subscription agreements cannot be accepted by the Company.

## **MAILING INSTRUCTIONS**

The completed subscription agreement, including the executed subscription agreement signature page and payment (if sent by mail), should be sent to:

### **Via Mail**

Moody National REIT II, Inc.  
c/o DST Services, Inc.  
P.O. Box 219280  
Kansas City, MO 64121-9280

### **Via Overnight Delivery**

Moody National REIT II, Inc.  
c/o DST Services, Inc.  
430 West 7<sup>th</sup> Street  
Kansas City, MO 64105-1407

**IF YOU NEED FURTHER ASSISTANCE IN COMPLETING THIS SUBSCRIPTION AGREEMENT SIGNATURE PAGE, PLEASE CALL (888) 457-2358.**

**SUBSCRIPTION  
AGREEMENT**

**Moody National REIT II, Inc.**  
**P.O. Box 219280**  
**Kansas City, MO 64121-9280**  
**Telephone: (888) 457-2358**  
**Website: www.moodynationalreit.com**

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**1. INVESTMENT – See payment instructions in Section 9 below**

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**Minimum investment is \$2,500.** Total Dollar

Total Number of Shares Purchased:

Amount Invested: \_\_\_\_\_

**State of Sale (if different from State of Residence):** \_\_\_\_\_

☐ Initial Investment; or ☐ Additional Investment      ☐ Check Enclosed; or ☐ Funds Wired

☐ **NET OF COMMISSION PURCHASE.** Check this box if you are purchasing Shares from a registered investment advisor (RIA), or if you are an investment participant in a wrap account or fee in lieu of commissions account approved by the broker-dealer, RIA, or a bank acting as a trustee or fiduciary, or similar entity.

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**2. FORM OF OWNERSHIP – Non-Custodial Accounts**

---

☐ **Individual**                                      ☐ **Joint Tenants with Rights of Survivorship**                                      ☐ **Tenants in Common**

☐ **Corporation** – Authorized signature required. *Copies of corporate resolutions designating executive officer as the person authorized to sign on behalf of corporation and authorizing the investment are required*

☐ **Partnership** – Authorized signature required. *A copy of the Partnership Agreement is required*

Identify whether General or Limited Partnership: \_\_\_\_\_

☐ **Estate** – Personal representative signature required. *A copy of the court appointment dated within 90 days is required.*

Name of Executor: \_\_\_\_\_

☐ **Trust** – Trustee signature required in Section 11 below. *A copy of the title and signature pages of the trust are required.*

Name of Trust: \_\_\_\_\_

Name of Trustee(s): \_\_\_\_\_

☐ **Qualified Pension Plan or Profit Sharing Plan (Non-Custodian)** – Trustee signature required in Section 11 below. *A copy of the title and signature pages of the plan are required.*

Name of Trustee(s): \_\_\_\_\_

☐ **Other Non-Custodial Ownership Account**

(Specify): \_\_\_\_\_

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**3. CUSTODIAL OWNERSHIP ACCOUNTS – Custodian signature required in section 10**

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Moody National REIT Sponsor, LLC does not provide custodial services; therefore, if this is a custodial account, a custodian must be indicated below. For custodial accounts, a completed copy of this Subscription Agreement should be sent directly to the custodian. The custodian will forward the subscription documents and wire the appropriate funds pursuant to the payment instructions in Section 9 below.

☐ **Traditional IRA**

☐ **KEOGH Plan**

☐ **Pension or Profit-Sharing Plan**

☐ **Other Custodial Ownership Account**  
(Specify): \_\_\_\_\_

☐ **Roth IRA**

☐ **Simplified Employee Pension/Trust (SEP)**

☐ **Uniform Gift to Minors Act**

**Required for all Custodial Ownership Accounts:**

Name of \_\_\_\_\_ Trustee: \_\_\_\_\_ Other  
Custodian: \_\_\_\_\_ Administrator: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Custodian Telephone Number: \_\_\_\_\_  
Custodian Tax Identification  
Number: \_\_\_\_\_  
Custodian Account Number: \_\_\_\_\_

**4. REGISTRATION INFORMATION AND ADDRESS – Please complete the following applicable information**

Name of Investor/Trustee in which Shares are to  
be Registered

(Please print clearly): \_\_\_\_\_

Name of Joint Investor/Joint Trustee in which  
Shares are to be Registered (if applicable): \_\_\_\_\_

Name of Trust in which Shares are to be  
Registered

(if applicable): \_\_\_\_\_

Taxpayer Identification Number

(Trust & Custodial Accounts must provide TIN  
and SSN): \_\_\_\_\_

Social Security

Number(s) Investor/Trustee: \_\_\_\_\_

Joint Investor/Trustee: \_\_\_\_\_

Physical Address of Investor (may not be a  
P.O. Box): \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Mailing Address of Investor

(If different from above. P.O. Box is acceptable): \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Daytime Telephone Number: \_\_\_\_\_

Evening Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**Citizenship Status of Investor/Trustee**

☐ U.S. Citizen

☐ Resident Alien

☐ Non-Resident Alien

**Citizenship Status of Joint Investor/Trustee**

☐ U.S. Citizen

☐ Resident Alien

☐ Non-Resident Alien

Investor/Trustee Driver's

License No./State of Issue: \_\_\_\_\_

Date of Birth

(MM/DD/YYYY): \_\_\_\_\_

Joint Investor/Trustee Driver's

License No./State of Issue: \_\_\_\_\_

Date of Birth

(MM/DD/YYYY): \_\_\_\_\_

**5. INVESTOR ACKNOWLEDGEMENT**

Please separately initial each of the representations below. In the case of joint investors, each investor must initial. Except in the case of fiduciary accounts, you may not grant any person power of attorney to make such representations on your behalf. In order to induce the Company to accept this subscription, I (we) hereby represent and warrant that:

	Investor	Co-Investor
(a) I (we) received a final Prospectus for the Company relating to the Shares, wherein the terms and conditions of the offering are described, five business days in advance of the date hereof.	Initials _____	Initials _____

		Investor		Co-Investor
(b)	I (we) accept the terms and conditions of the Company's charter.	Initials _____	Initials _____	_____
(c)	I am (we are) purchasing Shares for my (our) own account and acknowledge that the investment is not liquid.	Initials _____	Initials _____	_____
(d)	I (we) acknowledge that the assignability and transferability of the Shares is restricted and will be governed by the Company's charter and bylaws and all applicable laws as described in the Prospectus.	Initials _____	Initials _____	_____
(e)	I (we) acknowledge that there is no public market for the Shares and, accordingly, it may not be possible to readily liquidate an investment in the Company.	Initials _____	Initials _____	_____

## 6. SUITABILITY ACKNOWLEDGEMENT

Please separately initial ALL that apply:

		Investor		Co-Investor
•	I (we) have a net worth (exclusive of home, home furnishings and automobiles) of \$250,000 or more.	Initials _____	Initials _____	_____
•	I (we) have a net worth (exclusive of home, home furnishings and automobiles) of at least \$70,000 and had during the last year or that I (we) will have during the current tax year a minimum of \$70,000 annual gross income.	Initials _____	Initials _____	_____
•	If an <b>Alabama</b> investor, I (we) have a liquid net worth of at least 10 times my (our) investment in the Company and its affiliates.	Initials _____	Initials _____	_____
•	If an <b>Iowa</b> investor, my (our) maximum in the Company and affiliated programs cannot exceed 10% of my (our) liquid net worth. "Liquid net worth" shall be defined as that portion of net worth (total assets, exclusive of home, auto and home furnishings minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.	Initials _____	Initials _____	_____
•	If a <b>Kansas</b> investor, my (our) aggregate investment in this offering and other similar investments does not exceed 10% of my (our) liquid net worth. "Liquid net worth" shall be defined as that portion of my (our) total net worth that is comprised of cash, cash equivalents, and readily marketable securities, as determined in conformity with GAAP.	Initials _____	Initials _____	_____
•	If a <b>Kentucky</b> investor, my (our) investment in this offering does not exceed ten percent (10%) of my (our) liquid net worth.	Initials _____	Initials _____	_____
•	If a <b>Maine</b> investor, my (our) aggregate investment in this offering and similar direct participation investments not exceed 10% of my (our) liquid net worth. For this purpose, "liquid net worth" is defined as that portion of net worth that consists of cash, cash equivalents and readily marketable securities.	Initials _____	Initials _____	_____
•	If a <b>Nebraska</b> investor, my (our) investment in this offering and the securities of other direct participation programs (including REITs, oil and gas programs, equipment leasing programs, business development companies and commodity pools) does not exceed 10% of my (our)	Initials _____	Initials _____	_____

	Investor	Co-Investor
net worth (excluding the value of my (our) home, home furnishings, and automobiles).	_____	_____
<ul style="list-style-type: none"> <li>If a <b>New Jersey</b> investor, I (we) have either (a) a minimum liquid net worth of at least \$100,000 and a minimum annual gross income of not less than \$85,000, or (b) a minimum liquid net worth of \$350,000. For these purposes, “liquid net worth” is defined as that portion of net worth (total assets exclusive of home, home furnishings, and automobiles, minus total liabilities) that consists of cash, cash equivalents and readily marketable securities. In addition, my (our) investment in the Company, its affiliates, and other non-publicly traded direct investment programs (including real estate investment trusts, business development companies, oil and gas programs, equipment leasing programs and commodity pools, but excluding unregistered, federally and state exempt private offerings) does not exceed ten percent (10%) of my (our) liquid net worth.</li> </ul>	Initials _____	Initials _____
<ul style="list-style-type: none"> <li>If a <b>New Mexico</b> investor, my (our) investment in the Company, shares of its affiliates and in other real estate investment trusts may not exceed ten percent (10%) of my (our) liquid net worth. “Liquid net worth” shall be defined as that portion of net worth (total assets exclusive of primary residence, home furnishings and automobiles minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.</li> </ul>	Initials _____	Initials _____
<ul style="list-style-type: none"> <li>If a <b>North Dakota</b> investor, my (our) net worth is at least ten times my (our) investment in the Company.</li> </ul>	Initials _____	Initials _____
<ul style="list-style-type: none"> <li>If an <b>Ohio</b> investor, my (our) aggregate investment in the Company, its affiliates and other non-traded real estate investment programs cannot exceed 10% of my (our) liquid net worth. “Liquid net worth” shall be defined as that portion of net worth (total assets exclusive of home, home furnishings, and automobiles minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities.</li> </ul>	Initials _____	Initials _____
<ul style="list-style-type: none"> <li>If an <b>Oregon</b> investor, my (our) aggregate investment in the Company does not exceed 10% of my (our) liquid net worth.</li> </ul>	Initials _____	Initials _____
<ul style="list-style-type: none"> <li>If a <b>Tennessee</b> investor, my (our) investment in the Company must not exceed 10% of my (our) liquid net worth (exclusive of home, home furnishings and automobile).</li> </ul>	Initials _____	Initials _____
<ul style="list-style-type: none"> <li>If a non-accredited <b>Vermont</b> investor, my (our) investment in the Company cannot exceed 10% of my (our) liquid net worth. For these purposes, “liquid net worth” is defined as an investor’s total assets (not including home, home furnishings, or automobiles) minus total liabilities.</li> </ul>	Initials _____	Initials _____

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## 7. DISTRIBUTION REINVESTMENT PLAN

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### Non-Custodial Ownership

☐ I prefer to participate in the Distribution Reinvestment Plan (DRIP). In the event that the DRIP is not offered for a distribution, your distribution will be sent by check to the address in Section 4 above.

☐ I prefer that my distribution be paid by check to the address in Section 4 above.

☐ I prefer that my distribution be deposited directly into the account listed as follows:

Name of Financial Institution: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Name(s) on Account: \_\_\_\_\_

☐ Checking/Savings Account *(voided check is required)*

☐ Brokerage Account

Bank Routing Number: \_\_\_\_\_ Account Number: \_\_\_\_\_

### Custodial Ownership

☐ I prefer to participate in the Distribution Reinvestment Plan (DRIP). In the event that the DRIP is not offered for a distribution, your distribution will be sent to your Custodian for deposit into your Custodial account cited in Section 3 above.

☐ I prefer that my distribution be sent to my Custodian for deposit into my Custodial account identified in Section 3 above.

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## 8. FINANCIAL ADVISOR – To be completed by the RIA or Registered Representative and the Broker-Dealer

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The Financial Advisor and in the case of a Broker-Dealer, an authorized principal of the Broker-Dealer must sign below to complete the order. The Financial Advisor and/or Broker-Dealer hereby warrant that each is duly licensed and may lawfully conduct business in the state designated as the subscriber's legal residence or the state in which the sale was made, if different.

Name of Broker-Dealer or  
Registered Investment Advisory Firm: \_\_\_\_\_  
Firm Home Office Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
**Name of Financial Advisor:** \_\_\_\_\_  
Financial Advisor Branch Code: \_\_\_\_\_ Financial Advisor Rep Number: \_\_\_\_\_  
Financial Advisor Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Financial Advisor Authorized E-Mail Address: \_\_\_\_\_  
Shares Sold NAV: \_\_\_\_\_ Purchase Volume Discount: \_\_\_\_\_

The undersigned confirm that they (i) have reasonable grounds to believe that the information and representations concerning the investors identified herein are true, correct and complete in all respects; (ii) have discussed such investor's prospective purchase of Shares with such investor; (iii) have advised such investor of all pertinent facts with regard to the lack of liquidity and marketability of the Shares; (iv) have delivered a current Prospectus and related supplements, if any, to such investor; (v) have reasonable grounds to believe that the investor is purchasing these Shares for its own account; and (vi) have reasonable grounds to believe that the purchase of Shares is a suitable investment for such investor, that such investor meets the suitability standards applicable to such investor set forth in the Prospectus and related supplements, if any, and that such investor is in a financial position to enable such investor to realize the benefits of such an investment and to suffer any loss that may occur with respect thereto. The undersigned attest that the Financial Advisor and the Broker-Dealer are subject to the USA PATRIOT Act. In accordance with Section 326 of the Act, the registered representative and the Broker-Dealer have performed a Know Your Customer review of each investor who has signed this Subscription Agreement in accordance with the requirements of the Customer Identification Program.

Signature of Financial Advisor\*: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Broker-Dealer (Authorized Principal)\*: \_\_\_\_\_ Date: \_\_\_\_\_

**\*SIGNATURES OF THE FINANCIAL ADVISOR AND AN AUTHORIZED FIRM PRINCIPAL ARE REQUIRED FOR PROCESSING.**

E-Mail Address: \_\_\_\_\_

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**9. PAYMENT INSTRUCTIONS**

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☐ **By Mail** – Checks should be made payable to “Moody National REIT II, Inc.” You should consult with your registered representative if you are unsure how to make your check payable. Forward the subscription agreement to the address set forth in the instructions to this Subscription Agreement.

☐ **By Wire Transfer** – If paying by wire transfer, please request that the wire reference the subscriber’s name in order to assure that the wire is credited to the proper account. Wire transfers should be made to the Company. You should consult with your registered representative to confirm wiring instructions for your subscription.

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**10. SUBSCRIBER SIGNATURES**

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I (we) declare that the information supplied is true and correct and may be relied upon by the Company.

**TAXPAYER IDENTIFICATION NUMBER CERTIFICATION (required).** Each invest signing below, under penalties of perjury, certifies that:

1. The number shown in the Investor Social Security Number/Taxpayer Identification Number field in Section 4 of this form is my correct Social Security Number/Taxpayer Identification Number (or I am waiting for a number to be issued to me);
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding;
3. I am a U.S. person (including a non-resident alien).

**NOTE: You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.**

The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

The Company is required by law to obtain, verify and record certain personal information from you or persons on your behalf in order to establish the account. Required information includes name, date of birth, permanent residential address and social security/taxpayer identification number. We may also ask to see other identifying documents. If you do not provide the information, the Company may not be able to open your account. By signing the Subscription Agreement, you agree to provide this information and confirm that this information is true and correct. If we are unable to verify your identity, or that of another person(s) authorized to act on your behalf, or if we believe we have identified potentially criminal activity, we reserve the right to take action as we deem appropriate which may include closing your account.

**Signature of Individual Owner:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print or Type Name:** \_\_\_\_\_

**Signature of Joint Account Owner:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print or Type Name:** \_\_\_\_\_

**Signature of Custodian Trustee, Officer, General Partner or other** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Authorized Person:** \_\_\_\_\_

**Print or Type Name:** \_\_\_\_\_

**Signature of Additional Person (if required):** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print or Type Name:** \_\_\_\_\_

**EXHIBIT B**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 8-K/A**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**Date of report (Date of earliest event reported):  
December 30, 2015 (October 15, 2015)**

**Moody National REIT II, Inc.**

**(Exact Name of Registrant as Specified in Charter)**

**Maryland  
(State or Other Jurisdiction  
of Incorporation)**

**333-198305  
(Commission File Number)**

**47-1436295  
(IRS Employer  
Identification No.)**

**6363 Woodway Drive, Suite 110  
Houston, Texas 77057  
(Address of Principal Executive Offices, including Zip Code)**

**Registrant's telephone number, including area code: (713) 977-7500**

**Not applicable**

**(Former Name or Former Address, if Changed Since Last Report)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 9.01 Financial Statements and Exhibits.**

On October 21, 2015, Moody National REIT II, Inc. (the “Company”) filed a Current Report on Form 8-K reporting the Company’s acquisition of a hotel property located in Austin, Texas, commonly known as the Residence Inn Austin University Area (the “Residence Inn Austin Hotel”). The Company is filing this Current Report on Form 8-K/A in order to amend the Current Report on Form 8-K filed on October 21, 2015 to provide the required financial information related to the Company’s acquisition of the Residence Inn Austin Hotel.

(a) Financial Statements of Business Acquired

**Mueller Hospitality, LP**

Independent Auditors’ Report.....	F-1
Balance Sheets as of September 30, 2015 and December 31, 2014.....	F-2
Statements of Operations for the nine months ended September 30, 2015 and the year ended December 31, 2014.....	F-3
Statements of Owners’ Equity for the nine months ended September 30, 2015 and the year ended December 31, 2014.....	F-4
Statements of Cash Flows for the nine months ended September 30, 2015 and the year ended December 31, 2014.....	F-5
Notes to Financial Statements.....	F-6

(b) Pro Forma Financial Information

**Moody National REIT II, Inc.**

Unaudited Pro Forma Consolidated Financial Information.....	F-11
Unaudited Pro Forma Consolidated Balance Sheet as of September 30, 2015.....	F-12
Unaudited Pro Forma Consolidated Statement of Operations for the nine months ended September 30, 2015.....	F-13
Unaudited Pro Forma Consolidated Statement of Operations for the year ended December 31, 2014.....	F-14
Notes to Unaudited Pro Forma Consolidated Financial Information.....	F-15

(c) Shell Company Transactions

Not applicable

(d) Exhibits

None

## INDEPEPENDENT AUDITORS' REPORT

To the Board of Directors  
Moody National REIT II, Inc.

We have audited the accompanying financial statements of Mueller Hospitality, LP, which comprise the balance sheets as of September 30, 2015 and December 31, 2014, and the related statements of operations, owners' equity, and cash flows for the nine months ended September 30, 2015 and the year ended December 31, 2014 and the related notes to the financial statements.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditors' Responsibility***

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Mueller Hospitality, LP as of September 30, 2015 and December 31, 2014, and the results of its operations and its cash flows for the nine months ended September 30, 2015 and the year ended December 31, 2014 in accordance with U.S. generally accepted accounting principles.

/s/ Frazier & Deeter, LLC  
Atlanta, Georgia

December 30, 2015

MUELLER HOSPITALITY, LP  
BALANCE SHEETS  
SEPTEMBER 30, 2015 AND DECEMBER 31, 2014

	September 30, 2015	December 31, 2014
<b>ASSETS</b>		
Investments in hotel property, net.....	\$ 14,627,421	\$ 15,046,623
Cash and cash equivalents .....	1,149,211	600,789
Guest receivables .....	33,163	27,487
Tenant receivables .....	335,850	82,000
Prepaid expenses and other assets .....	12,489	23,595
Deferred costs, net of accumulated amortization of \$21,328 as of September 30, 2015 and \$10,827 as of December 31, 2014 .....	288,797	299,298
<b>TOTAL ASSETS.....</b>	<b><u>\$ 16,446,931</u></b>	<b><u>\$ 16,079,792</u></b>
<b>LIABILITIES AND OWNERS' EQUITY</b>		
<b>LIABILITIES</b>		
Accounts payable and accrued expenses .....	\$ 855,527	\$ 727,983
Due to partners .....	805,874	875,926
Notes payable .....	<u>11,281,173</u>	<u>11,461,643</u>
Total liabilities .....	12,942,574	13,065,552
<b>OWNERS' EQUITY.....</b>	<b><u>3,504,357</u></b>	<b><u>3,014,240</u></b>
<b>TOTAL LIABILITIES AND OWNERS' EQUITY .....</b>	<b><u>\$ 16,446,931</u></b>	<b><u>\$ 16,079,792</u></b>

See accompanying notes to financial statements.

MUELLER HOSPITALITY, LP  
STATEMENTS OF OPERATIONS  
NINE MONTHS ENDED SEPTEMBER 30, 2015 AND  
YEAR ENDED DECEMBER 31, 2014

	Nine months ended September 30, 2015	Year ended December 31, 2014
REVENUE		
Rooms .....	\$ 3,850,016	\$ 4,013,888
Other .....	65,650	78,673
Total revenue .....	<u>3,915,666</u>	<u>4,092,561</u>
EXPENSES		
Salaries and wages .....	540,583	673,415
Rooms .....	187,733	297,992
Food and beverage .....	96,278	115,504
Franchise fees .....	304,873	327,872
Administrative and general .....	255,801	303,653
Management fee .....	117,470	186,735
Repair and maintenance .....	131,195	110,984
Utilities .....	148,805	192,342
Taxes, insurance, and rentals .....	216,483	349,862
Depreciation and amortization .....	695,502	886,987
Total expenses .....	<u>2,694,723</u>	<u>3,445,346</u>
OPERATING INCOME .....	1,220,943	647,215
OTHER EXPENSES		
Interest expense .....	<u>(508,947)</u>	<u>(793,072)</u>
NET INCOME (LOSS) .....	<u>\$ 711,996</u>	<u>\$ (145,857)</u>

See accompanying notes to financial statements.

MUELLER HOSPITALITY, LP  
STATEMENTS OF OWNERS' EQUITY  
NINE MONTHS ENDED SEPTEMBER 30, 2015 AND  
YEAR ENDED DECEMBER 31, 2014

BALANCE, December 31, 2013 .....	\$ 3,475,334
Capital contributions .....	101,374
Capital distributions.....	(416,611)
Net loss.....	<u>(145,857)</u>
BALANCE, December 31, 2014 .....	3,014,240
Capital distributions.....	(221,879)
Net income .....	<u>711,996</u>
BALANCE, September 30, 2015 .....	<u>\$ 3,504,357</u>

See accompanying notes to financial statements.

MUELLER HOSPITALITY, LP  
STATEMENTS OF CASH FLOWS  
NINE MONTHS ENDED SEPTEMBER 30, 2015 AND  
YEAR ENDED DECEMBER 31, 2014

	Nine months ended September 30, 2015	Year ended December 31, 2014
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income (loss) .....	\$ 711,996	\$ (145,857)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation .....	692,982	872,129
Amortization of deferred loan costs .....	10,501	10,827
Changes in assets and liabilities:		
Guest receivables .....	(5,676)	(27,487)
Tenant receivables .....	(253,850)	(82,000)
Prepaid expenses and other assets .....	11,106	(21,584)
Accounts payable and accrued expenses .....	127,544	560,930
Net cash provided by operating activities .....	<u>1,294,603</u>	<u>1,166,958</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Proceeds from sale of property .....	—	41,272
Investment in hotel property .....	(273,780)	(225,880)
Net cash used in investing activities .....	<u>(273,780)</u>	<u>(184,608)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds of notes payable .....	—	11,562,629
Repayments of notes payable .....	(180,470)	(10,426,513)
Payment of deferred financing costs .....	—	(96,926)
Due to partners .....	(70,052)	(1,125,666)
Capital contributions .....	—	101,374
Capital distributions .....	(221,879)	(416,611)
Net cash used in financing activities .....	<u>(472,401)</u>	<u>(401,713)</u>
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS .....</b>	<b>548,422</b>	<b>580,637</b>
<b>CASH AND CASH EQUIVALENTS, beginning of period .....</b>	<b><u>600,789</u></b>	<b><u>20,152</u></b>
<b>CASH AND CASH EQUIVALENTS, end of period .....</b>	<b><u>\$ 1,149,211</u></b>	<b><u>\$ 600,789</u></b>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>		
Cash paid during the period for interest .....	<u>\$ 499,885</u>	<u>\$ 764,668</u>

See accompanying notes to financial statements.

MUELLER HOSPITALITY, LP  
NOTES TO FINANCIAL STATEMENTS

1. ORGANIZATION

The Residence Inn Austin University Area (the “Residence Inn Austin Hotel”) is a 112-room hotel property located in Austin, Texas which began principal operations on January 14, 2014. The Residence Inn Austin Hotel was developed, constructed and, until October 15, 2015, owned by Mueller Hospitality, LP, a Texas limited partnership (the “Partnership”).

These financial statements of the Partnership have been prepared for the purpose of complying with the provisions of Article 8-04 of Regulation S-X promulgated by the Securities and Exchange Commission (the “SEC”), which requires certain information with respect to acquired businesses to be included with certain filings with the SEC.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”).

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. Significant estimates include the valuation of guest receivables and useful lives of real estate assets for purposes of determining depreciation. Actual results could differ from those estimates.

Investments in Hotel Property

Investments in hotel property are stated at cost. Major renovations and purchases of equipment are capitalized. Maintenance and repairs are charged to expense as incurred.

Depreciation of investments in hotel property is computed using the straight-line and accelerated methods over the estimated useful lives of the related assets as follows:

Building and improvements	15 – 39 years
Furniture and fixtures	5 years

Depreciation expense for the nine months ended September 30, 2015 was \$692,982 and for the year ended December 31, 2014 was \$872,129.

Impairment of Long-Lived Assets

Management monitors events and changes in circumstances indicating that the carrying amounts of the real estate assets may not be recoverable. When such events or changes in circumstances are present, management assesses potential impairment by comparing estimated future undiscounted cash flows expected to be generated over the life of the asset and from its eventual disposition, to the carrying amount of the asset. In the event that the carrying amount exceeds the estimated future undiscounted cash flows, the Partnership recognizes an impairment loss to adjust the carrying amount of the asset to its estimated fair value for assets held for use and fair value less costs to sell for assets held for sale. Fair values are determined by management utilizing cash flow models and market discount rates, or by obtaining third-party broker estimates or appraisals in accordance with the fair value measurements policy. There were no such impairment losses for the nine months ended September 30, 2015 or the year ended December 31, 2014.

Deferred Costs

Deferred costs consist of deferred loan costs and franchise costs. Deferred financing fees are recorded at cost and are amortized to interest expense using a method that approximates the effective interest method over the life of the related debt. The deferred franchise costs are recorded at cost and amortized over the term of the franchise contract on a straight-line basis. Accumulated amortization of deferred costs was \$21,328 and \$10,827 as of September 30, 2015 and December 31, 2014, respectively. Expected future amortization of deferred loan costs and franchise costs is as follows:

Twelve Months ending September 30,	Total	Loan Costs	Franchise Costs
2016.....	\$ 14,092	\$ 10,592	\$ 3,500
2017.....	14,092	10,592	3,500
2018.....	14,092	10,592	3,500
2019.....	14,092	10,592	3,500
Thereafter.....	232,429	183,283	49,146
Total .....	<u>\$ 288,797</u>	<u>\$ 225,651</u>	<u>\$ 63,146</u>

#### Cash and Cash Equivalents

All highly liquid investments with original maturities of three months or less are considered to be cash equivalents.

#### Revenue Recognition

Hotel revenues, including room and ancillary revenues such as long-distance telephone service and laundry, are recognized when services have been rendered.

The Partnership is required to collect certain taxes from customers on behalf of government agencies and remit these back to the applicable governmental entity on a periodic basis. These taxes are collected from customers at the time of purchase, but are not included in revenue. The Partnership records a liability upon collection from the customer and relieves the liability when payments are remitted to the applicable governmental agency.

#### Guest Receivables

Guest receivables include hotel guests and corporate customers. Management maintains an allowance for doubtful accounts for estimated losses resulting from the inability of customers to make required payments. Balances that remain outstanding after the Partnership has used reasonable collection efforts are written off through a charge to the allowance for doubtful accounts and a credit to accounts receivable. There was no allowance for doubtful accounts as of September 30, 2015 and December 31, 2014.

#### Tenant Receivables

Tenant receivables consist of amounts due from retail tenants of the Residence Inn Austin Hotel. Management maintains an allowance for doubtful accounts for estimated losses resulting from the inability of the tenant to make required payments. Balances that remain outstanding after the Partnership has used reasonable collection efforts are written off through a charge to the allowance for doubtful accounts and a credit to accounts receivable. There was no allowance for doubtful accounts as of September 30, 2015 and December 31, 2014. Retail tenants have been provided tenant improvement allowances to build out their leased spaces. The tenants had not moved into the premises as of September 30, 2015.

#### Income Taxes

The Partnership is organized using a limited partnership structure. Taxable income and deductions are reported by the partners. The partners are not tax paying entities under the existing provisions of the Internal Revenue Code of 1986, as amended. Income and losses of the Partnership flow through to the partners. Accordingly, no provision has been made for federal and state income taxes in the accompanying financial statements.

Management has reviewed tax positions under GAAP guidance that clarify the relevant criteria and approach for the recognition and measurement of uncertain tax positions. The guidance prescribes a recognition threshold and measurement attribute for the financial statement recognition of a tax position taken, or expected to be taken, in a tax return. A tax position may only be recognized in the financial statements if it is more likely than not that the tax position will be sustained upon examination. The Partnership has no material uncertain tax positions as of September 30, 2015 and December 31, 2014.

#### Franchise Fees

As of September 30, 2015, the Residence Inn Austin Hotel operated under a franchise agreement with Marriott International, Inc. ("Marriott") with an initial term of 20 years. The franchise agreement allowed the Residence Inn Austin Hotel to operate under the Residence Inn brand. Pursuant to the franchise agreement, the Partnership paid Marriott a franchise fee of 5.5% of gross room revenues and a marketing fee of 2.5% of gross room revenues. The Partnership incurred franchise fee expense of \$304,873 for the nine months ended September 30, 2015 and \$327,872 for the year ended December 31, 2014.

## Fair Value of Financial Assets and Liabilities

Financial assets and liabilities with carrying amounts approximating fair value include cash and cash equivalents, guest receivables, tenant receivables and accounts payable. The carrying amounts of these financial assets and liabilities approximate fair value because of their short maturities. The carrying amount of the Partnership's notes payable approximate their fair value. The fair values of the notes payable were based upon management's best estimate of interest rates that would be available for similar debt obligations as of September 30, 2015 and December 31, 2014.

The accounting guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The accounting standard establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include Level 1, defined as observable inputs, such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. The fair value of notes payable was determined using Level 2 inputs.

### 3. INVESTMENTS IN HOTEL PROPERTY

Investment in hotel property consists of the following:

	September 30, 2015	December 31, 2014
Land .....	\$ 1,923,523	\$ 1,923,523
Building and improvements .....	11,250,010	11,050,010
Furniture and fixtures .....	3,019,000	2,945,220
Investments in hotel property .....	16,192,533	15,918,753
Less accumulated depreciation .....	(1,565,112)	(872,130)
Investments in hotel property, net .....	<u>\$ 14,627,421</u>	<u>\$ 15,046,623</u>

### 4. NOTES PAYABLE

As of September 30, 2015 and December 31, 2014, the Partnership's notes payable consisted of the following:

	Principal as of September 30, 2015	Principal as of December 31, 2014	Interest Rate at September 30, 2015	Maturity Date
Wells Fargo Bank <sup>(1)</sup> .....	\$ 3,325,737	\$ 3,422,790	5.52%	March 1, 2034
Toyota Finance Trust .....	32,609	38,853	5.03%	September 2, 2019
Herring Bank <sup>(2)</sup> .....	7,922,827	8,000,000	5.50%	October 1, 2039
Total .....	<u>\$ 11,281,173</u>	<u>\$ 11,461,643</u>		

(1) The Wells Fargo Bank loan is guaranteed by the Small Business Administration, secured by the Residence Inn Austin Hotel, and due in monthly installments of principal and interest of \$25,953.

(2) Interest only was payable on the Herring Bank loan through April 1, 2015. Thereafter, the loan is due in monthly installments of principal and interest of \$49,987. The interest rate adjusts on April 1, 2021 and the note is secured by the Residence Inn Austin Hotel.

Maturities of notes payable as of September 30, 2015 are as follows:

	Twelve Months ending September 30,
2016 .....	\$ 303,039
2017 .....	323,723
2018 .....	341,048
2019 .....	359,753
2020 .....	372,129
Thereafter .....	9,581,481
Total .....	<u>\$ 11,281,173</u>

### 5. DUE TO PARTNERS

The Partnership owed two partners \$805,874 and \$875,926 as of September 30, 2015 and December 31, 2014, respectively, for amounts advanced to the Partnership. The advances were primarily for excess construction costs incurred. The interest rate at September 30, 2015 was approximately 6.50%. The advances are payable on demand.

## 6. MANAGEMENT FEES

Under a management agreement with Intermountain Management, L.L.C. (the “Management Agreement”), the Partnership incurred property management fees totaling \$117,470 for the nine months ended September 30, 2015 and \$186,735 for the year ended December 31, 2014, which amounts were equal to 3.0% of the Partnership’s gross revenues (as defined in the Management Agreement) and \$1,500 per month for accounting and payroll services. The Management Agreement had a term that expired in 2019. The owner of the Residence Inn Austin Hotel had the right to terminate the Management Agreement upon the sale of the hotel and would be liable for a termination payment equal to the sum of the management fees for the prior twelve-month period. The Management Agreement was terminated on October 15, 2015 and no termination fee was payable.

The Partnership also paid Gentry Mills Capital, LLC and NT Capital, LLC, related entities, asset management fees of \$0 for the nine months ended September 30, 2015 and \$60,000 for the year ended December 31, 2014.

## 7. COMMITMENTS AND CONTINGENCIES

The Partnership is subject to various legal proceedings and claims that arise in the ordinary course of business. The Partnership believes that the final outcome of known matters will not have a material adverse effect on the financial position, results of operations, or cash flows of the Partnership.

## 8. SIGNIFICANT CONCENTRATIONS

Financial instruments that potentially subject the Partnership to concentrations of credit risk consist principally of cash deposits resulting from daily operations. The Partnership has a concentration of credit risk represented by cash balances in certain large commercial banks in amounts that occasionally exceed current federal deposit insurance limits. The financial condition of the institutions are periodically assessed and management believes the risk of loss is minimal.

## 9. SUBSEQUENT EVENTS

On October 15, 2015, Moody National REIT II, Inc. (“Moody REIT”) acquired the Residence Inn Austin Hotel from third-party owners through Moody National Lancaster-Austin Holding, LLC, Moody REIT’s indirect wholly owned subsidiary (“Moody Holding”). Moody REIT owns a 100% interest in Moody Holding through Moody REIT’s operating partnership. The aggregate purchase price paid by Moody Holding for the Residence Inn Austin Hotel was \$25,500,000, excluding closing costs. Moody Holding financed the purchase price for the Residence Inn Austin Hotel with (1) proceeds from Moody REIT’s ongoing public stock offering, and (2) the proceeds of a mortgage loan with an original principal amount of \$16,575,000 secured by the Residence Inn Austin Hotel. The notes payable described in Note 4 were paid in full and the Management Agreement described in Note 5 was terminated at the close of the sale of the Residence Inn Austin Hotel.

## **MOODY NATIONAL REIT II, INC.**

### **Unaudited Pro Forma Consolidated Financial Information**

On October 15, 2015, Moody National REIT II, Inc. (the “Company”) acquired the Residence Inn Austin, a 112-room hotel property located in Austin, Texas (the “Residence Inn Austin Hotel”) through Moody National Lancaster-Austin Holding, LLC, the Company’s wholly-owned subsidiary (“Moody Holding”). The Company owns a 100% interest in Moody Holding through the Company’s operating partnership. The aggregate purchase price paid by Moody Holding for the Residence Inn Austin Hotel was \$25,500,000, plus closing costs. The Company funded the purchase price of the Residence Inn Austin Hotel with proceeds from the Company’s ongoing public stock offering and a mortgage loan of \$16,575,000 secured by the Residence Inn Austin Hotel.

The following unaudited pro forma consolidated statements of operations for the nine months ended September 30, 2015 and the year ended December 31, 2014 are presented as if the Company had acquired the Residence Inn Austin Hotel on January 1, 2014. This unaudited pro forma consolidated financial information should be read in conjunction with the Company’s historical financial statements and notes thereto as filed in the Company’s quarterly report on Form 10-Q for the nine months ended September 30, 2015 and the Company’s Registration Statement on Form S-11 (file no. 333-198305) declared effective by the Securities and Exchange Commission on January 20, 2015 (the “Registration Statement”) for the year ended December 31, 2014. This pro forma information is not necessarily indicative of what the Company’s actual results of operations would have been had the Company’s acquisition of the Residence Inn Austin Hotel occurred on or been in effect during the periods indicated, nor is it necessarily indicative of the Company’s future results. In the Company’s opinion, all material adjustments necessary to reflect the effects of the above transaction have been made.

**MOODY NATIONAL REIT II, INC.**  
**UNAUDITED PRO FORMA CONSOLIDATED BALANCE SHEET**  
**SEPTEMBER 30, 2015**

	September 30, 2015 (a)	Pro Forma Adjustments (b)	Pro Forma September 30, 2015
<b>ASSETS</b>			
Investment in hotel properties, net .....	\$ —	\$ 25,500,000	\$ 25,500,000
Cash and cash equivalents .....	4,335,774	(4,045,195)	290,579
Earnest money and deposits .....	1,778,250	(1,778,250)	—
Deferred costs .....	—	325,000	325,000
<b>Total Assets</b> .....	<u>\$ 6,114,024</u>	<u>\$ 20,001,555</u>	<u>\$ 26,115,579</u>
<b>LIABILITIES AND EQUITY</b>			
<b>Liabilities:</b>			
Note payable .....	\$ —	\$ 16,575,000	\$ 16,575,000
Accounts payable and accrued expenses .....	1,509	—	1,509
Due to related parties .....	823,445	3,426,555	4,250,000
Dividends payable .....	32,442	—	32,442
<b>Total Liabilities</b> .....	<u>857,396</u>	<u>20,001,555</u>	<u>20,858,951</u>
<b>Special Limited Partnership Interests</b> .....	1,000	—	1,000
<b>Stockholders' equity:</b>			
Preferred stock, \$0.01 par value per share; 100,000,000 shares authorized; no shares issued and outstanding .....	—	—	—
Convertible stock, \$0.01 par value per share; 1,000 shares authorized; no shares issued and outstanding .....	—	—	—
Common stock, \$0.01 par value per share; 999,999,000 shares authorized, 260,373 and 8,000 shares issued and outstanding at September 30, 2015 and December 31, 2014, respectively .....	2,604	—	2,604
Additional paid-in capital .....	5,356,031	—	5,356,031
Accumulated deficit and distributions .....	(103,007)	—	(103,007)
<b>Total stockholders' equity</b> .....	<u>5,255,628</u>	<u>—</u>	<u>5,255,628</u>
<b>TOTAL LIABILITIES AND EQUITY</b> .....	<u>\$ 6,114,024</u>	<u>\$ 20,001,555</u>	<u>\$ 26,115,579</u>

See accompanying notes to unaudited pro forma consolidated financial statements.

**MOODY NATIONAL REIT II, INC.**  
**UNAUDITED PRO FORMA CONSOLIDATED STATEMENT OF OPERATIONS**  
**NINE MONTHS ENDED SEPTEMBER 30, 2015**

	<b>Historical Moody National REIT II, Inc. As Reported (a)</b>	<b>Acquisition of Residence Inn Austin Hotel (b)</b>	<b>Pro Forma Adjustments</b>	<b>Pro Forma</b>
<b>Revenue</b>				
Room revenue .....	\$ —	\$ 3,850,016	\$ —	\$ 3,850,016
Other hotel revenue .....	—	65,650	—	65,650
Total revenue .....	—	3,915,666	—	3,915,666
<b>Expenses</b>				
Hotel operating expenses .....	—	1,782,738	—	1,782,738
Property taxes, insurance and other .....	—	216,483	—	216,483
Depreciation and amortization .....	—	695,502	(195,690) (c)	499,812
Property acquisition .....	—	—	— (d)	—
Corporate general and administrative .....	45,392	—	—	45,392
Total expenses .....	45,392	2,694,723	(195,690)	2,544,425
<b>Operating income (loss) .....</b>	(45,392)	1,220,943	195,690	1,371,241
Interest expense and amortization of deferred loan costs .....	—	508,947	70,204 (e)	579,151
<b>Net income (loss) attributable to common stockholders .....</b>	<u>\$ (45,392)</u>	<u>\$ 711,996</u>	<u>\$ 125,486</u>	<u>\$ 792,090</u>
<b>Net income (loss) per share attributable to common stockholders, basic and diluted ...</b>	\$ (0.81)			\$ 3.58
<b>Weighted average common shares outstanding – basic and diluted .....</b>	55,856		165,544 (f)	221,400

See accompanying notes to unaudited pro forma consolidated financial statements.

**MOODY NATIONAL REIT II, INC.**  
**UNAUDITED PRO FORMA CONSOLIDATED STATEMENT OF OPERATIONS**  
**YEAR ENDED DECEMBER 31, 2014**

	<b>Historical Moody National REIT II, Inc. As Reported (a)</b>	<b>Acquisition of Residence Inn Austin Hotel (b)</b>	<b>Pro Forma Adjustments</b>	<b>Pro Forma</b>
<b>Revenue</b>				
Room revenue .....	\$ —	\$ 4,013,888	\$ —	\$ 4,013,888
Other hotel revenue .....	—	78,673	—	78,673
Total revenue .....	—	4,092,561	—	4,092,561
<b>Expenses</b>				
Hotel operating expenses .....	—	2,208,497	—	2,208,497
Property taxes, insurance and other .....	—	349,862	—	349,862
Depreciation and amortization .....	—	886,987	(220,570) (c)	666,417
Property acquisition .....	—	—	450,000 (d)	450,000
Corporate general and administrative .....	2,376	—	—	2,376
Total expenses .....	2,376	3,445,346	229,430	3,677,152
<b>Operating income (loss) .....</b>	(2,376)	647,215	(229,430)	415,409
Interest expense and amortization of deferred loan costs .....	—	793,072	(18,750) (e)	774,322
<b>Net loss attributable to common stockholders .....</b>	<u>\$ (2,376)</u>	<u>\$ (145,857)</u>	<u>\$ (210,680)</u>	<u>\$ (358,913)</u>
<b>Net loss per share attributable to common stockholders, basic and diluted .....</b>	\$ (0.30)			\$ (1.62)
<b>Weighted average common shares outstanding – basic and diluted .....</b>	8,000		213,400 (f)	221,400

See accompanying notes to unaudited pro forma consolidated financial statements.

**MOODY NATIONAL REIT II, INC.**

**NOTES TO UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION**

Unaudited Pro Forma Consolidated Balance Sheet

- a. Reflects the Company's historical unaudited balance sheet as of September 30, 2015 derived from the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2015, as filed with the Securities and Exchange Commission on November 16, 2015.
- b. Reflects the acquisition of a 100% interest in the Residence Inn Austin Hotel on October 15, 2015 for \$25,500,000. The acquisition was funded with proceeds from the Company's ongoing public offering and \$16,575,000 of debt secured by the Residence Inn Austin Hotel and advances from affiliates.
- c. Depreciation and amortization are computed using the straight-line method based upon the following estimated useful lives:

<u>Description</u>	<u>Allocation</u>	<u>Estimated Useful Life</u>
Land .....	\$ 4,310,000	—
Buildings and improvements .....	19,690,000	40 years
Furniture, fixtures, and equipment .....	1,500,000	9 years
	<u>\$ 25,500,000</u>	

Other assets and liabilities were not acquired.

**MOODY NATIONAL REIT II, INC.**

**NOTES TO UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION**

Unaudited Pro Forma Consolidated Statement of Operations for the nine months ended September 30, 2015

- a. Reflects the Company's historical operations for the nine months ended September 30, 2015 derived from the Company's Quarterly Report on Form 10-Q as filed with the Securities and Exchange Commission on November 16, 2015.
- b. Reflects historical operations of the Residence Inn Austin Hotel for the nine months ended September 30, 2015.
- c. Reflects the removal of historical depreciation and amortization expense of \$695,502 and the recognition of pro forma depreciation and amortization expense of \$499,812. Depreciation for the building is computed using the straight-line method over the estimated useful life of 40 years and for furniture and fixtures is computed using the straight-line method over the useful life of 9 years.
- d. Reflects the recognition of all acquisition costs as if they were incurred as of January 1, 2014.
- e. Reflects the removal of historical interest expense of \$508,947 and the recognition of pro forma interest expense \$579,151 on purchase money debt of \$16,575,000 and amortization of deferred loan costs.
- f. Reflects pro-forma sales of shares necessary to fund purchase of Residence Inn Austin Hotel.

**MOODY NATIONAL REIT II, INC.**

**NOTES TO UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION**

Unaudited Pro Forma Consolidated Statement of Operations for the year ended December 31, 2014

- a. Reflects the Company's historical operations for the period from July 25, 2014, the date it was formed, through December 31, 2014 derived from the Company's Registration Statement.
- b. Reflects historical operations of the Residence Inn Austin Hotel for the year ended December 31, 2014.
- c. Reflects the removal of historical depreciation and amortization expense of \$886,987 and recognition of pro forma depreciation and amortization expense of \$666,417. Depreciation for the building is computed using the straight-line method over the estimated useful life of 40 years and for furniture and fixtures is computed using the straight-line method over the useful life of 9 years.
- d. Reflects the recognition of all acquisition costs for the acquisition of the Residence Inn Austin Hotel as if they were incurred as of January 1, 2014.
- e. Reflects the removal of historical interest expense of \$793,072 and the recognition of pro forma interest expense \$774,322 on purchase money debt of \$16,575,000 and amortization of deferred loan costs.
- f. Reflects pro-forma sales of shares necessary to fund purchase of the Residence Inn Austin Hotel.

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

MOODY NATIONAL REIT II, INC.

Date: December 30, 2015

By: /s/ Brett C. Moody

Brett C. Moody

Chief Executive Officer and President

**EXHIBIT C**

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

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**FORM 10-Q**

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(Mark One)

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

For the quarterly period ended September 30, 2015

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 333-198305

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**MOODY NATIONAL REIT II, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Maryland**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**6363 Woodway Drive, Suite 110**  
**Houston, Texas**  
(Address of Principal Executive Offices)

**47-1436295**  
(I.R.S. Employer  
Identification No.)

**77057**  
(Zip Code)

**(713) 977-7500**

(Registrant's Telephone Number, Including Area Code)

---

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated filer ☐

Accelerated filer ☐

Non-Accelerated filer ☐

Smaller reporting company ☒

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

As of November 9, 2015, there were 319,735 shares of the Registrant's common stock issued and outstanding.

# MOODY NATIONAL REIT II, INC.

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# **PART I — FINANCIAL INFORMATION**

## **ITEM 1. FINANCIAL STATEMENTS**

### **MOODY NATIONAL REIT II, INC. CONSOLIDATED BALANCE SHEETS (unaudited)**

	<b>September 30, 2015</b>	<b>December 31, 2014</b>
<b>ASSETS</b>		
Cash and cash equivalents .....	\$ 4,335,774	\$ 198,624
Earnest money and deposits .....	1,778,250	—
<b>Total Assets</b> .....	<u>\$ 6,114,024</u>	<u>\$ 198,624</u>
<b>LIABILITIES AND EQUITY</b>		
<b>Liabilities:</b>		
Accounts payable and accrued expenses .....	\$ 1,509	\$ —
Due to related parties .....	823,445	—
Dividends payable .....	<u>32,442</u>	<u>—</u>
<b>Total Liabilities</b> .....	857,396	—
<b>Special Limited Partnership Interests</b> .....	1,000	1,000
<b>Stockholders' equity:</b>		
Preferred stock, \$0.01 par value per share; 100,000,000 shares authorized; no shares issued and outstanding .....	—	—
Convertible stock, \$0.01 par value per share; 1,000 shares authorized; no shares issued and outstanding .....	—	—
Common stock, \$0.01 par value per share; 999,999,000 shares authorized, 260,373 and 8,000 shares issued and outstanding at September 30, 2015 and December 31, 2014, respectively .....	2,604	80
Additional paid-in capital .....	5,356,031	199,920
Accumulated deficit and distributions .....	<u>(103,007)</u>	<u>(2,376)</u>
<b>Total stockholders' equity</b> .....	<u>5,255,628</u>	<u>197,624</u>
<b>TOTAL LIABILITIES AND EQUITY</b> .....	<u>\$ 6,114,024</u>	<u>\$ 198,624</u>

See accompanying notes to consolidated financial statements.

**MOODY NATIONAL REIT II, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited)

	Three months ended September 30, 2015	Nine months ended September 30, 2015	Period from July 25, 2014 through September 30, 2014
<b>Revenue</b>			
Interest income .....	\$ —	\$ 18	\$ —
Total revenue .....	<u>—</u>	<u>18</u>	<u>—</u>
<b>Expenses</b> .....			
General and administrative .....	44,876	45,410	2,376
Total expenses .....	<u>44,876</u>	<u>45,410</u>	<u>2,376</u>
<b>Net loss attributable to common stockholders</b> .....	<u>\$ (44,876)</u>	<u>\$ (45,392)</u>	<u>\$ (2,376)</u>
<b>Net loss per share attributable to common stockholders – basic and diluted</b> .....	<u>\$ (0.30)</u>	<u>\$ (0.81)</u>	<u>\$ (0.30)</u>
<b>Weighted average common shares outstanding – basic and diluted</b> .....	<u>150,008</u>	<u>55,856</u>	<u>8,000</u>

See accompanying notes to consolidated financial statements.

**MOODY NATIONAL REIT II, INC.**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
**Nine months ended September 30, 2015**  
**(unaudited)**

	<u>Preferred Stock</u>		<u>Convertible Stock</u>		<u>Common Stock</u>				
	<u>Number of Shares</u>	<u>Par Value</u>	<u>Number of Shares</u>	<u>Par Value</u>	<u>Number of Shares</u>	<u>Par Value</u>	<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit and Distributions</u>	<u>Total Stockholders' Equity</u>
Balance at December 31, 2014 . . . . .	—	\$ —	—	\$ —	8,000	\$ 80	\$ 199,920	\$ (2,376)	\$ 197,624
Issuance of common stock, net of offering costs . . . . .	—	—	—	—	242,127	2,422	5,111,913	—	5,114,335
Issuance of common stock pursuant to dividend reinvestment plan . . . . .	—	—	—	—	246	2	5,836	—	5,838
Stock-based compensation . . . . .	—	—	—	—	10,000	100	38,362	—	38,462
Net loss . . . . .	—	—	—	—	—	—	—	(45,392)	(45,392)
Dividends declared . . . . .	—	—	—	—	—	—	—	(55,239)	(55,239)
Balance at September 30, 2015 . . . . .	<u>—</u>	<u>\$ —</u>	<u>—</u>	<u>\$ —</u>	<u>260,373</u>	<u>\$ 2,604</u>	<u>\$ 5,356,031</u>	<u>\$ (103,007)</u>	<u>\$ 5,255,628</u>

See accompanying notes to consolidated financial statements.

# MOODY NATIONAL REIT II, INC.

## CONSOLIDATED STATEMENTS OF CASH FLOWS (unaudited)

	Nine months ended September 30, 2015	Period from July 25, 2014 through September 30, 2014
<b>Cash flows from operating activities</b>		
Net loss .....	\$ (45,392)	\$ (2,376)
Stock-based compensation .....	38,462	—
Adjustments to reconcile net loss to net cash used in operating activities:		
Accounts payable and accrued expenses .....	1,509	—
Net cash used in operating activities .....	<u>(5,421)</u>	<u>(2,376)</u>
<b>Cash flows from investing activities</b>		
Earnest money and deposits .....	(1,778,250)	—
Due to related parties .....	489,910	—
Net cash used in investing activities .....	<u>(1,288,340)</u>	<u>—</u>
<b>Cash flows from financing activities</b>		
Proceeds from issuance of common stock .....	6,053,189	200,000
Proceeds from issuance of Special Limited Partnership Interests .....	—	1,000
Offering costs paid .....	(605,319)	—
Dividends paid .....	(16,959)	—
Net cash provided by financing activities .....	<u>5,430,911</u>	<u>201,000</u>
Net change in cash and cash equivalents .....	4,137,150	198,624
Cash and cash equivalents at beginning of period .....	198,624	—
Cash and cash equivalents at end of period .....	<u>\$ 4,335,774</u>	<u>\$ 198,624</u>
<b>Supplemental Disclosure of Non-Cash Financing Activity</b>		
Increase in accrued offering costs due to related party .....	\$ 333,535	\$ —
Issuance of common stock from dividend reinvestment plan .....	\$ 5,838	\$ —
Dividends payable .....	<u>\$ 32,442</u>	<u>\$ —</u>

See accompanying notes to consolidated financial statements.

**MOODY NATIONAL REIT II, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**September 30, 2015**  
**(unaudited)**

**1. Organization**

Moody National REIT II, Inc. (the “Company”) was formed on July 25, 2014, as a Maryland corporation and intends to qualify as a real estate investment trust (“REIT”) beginning with the year ended December 31, 2015. The Company expects to use the proceeds from its initial public offering to invest in a portfolio of hospitality properties focusing primarily on the premier-brand, select-service segment of the hospitality sector. To a lesser extent, the Company may also invest in hospitality-related real estate securities and debt investments. As discussed in Note 3, the Company was initially capitalized by Moody National REIT Sponsor, LLC (the “Sponsor”). The Company’s fiscal year end is December 31. As of September 30, 2015, the Company did not own any real estate assets.

The Company is offering a maximum of 40,000,000 shares of its common stock to the public in its primary offering (the “offering”) at \$25.00 per share, with discounts available to certain purchasers, and 4,210,526 shares of its common stock pursuant to its distribution reinvestment plan (the “DRP”) at \$23.75 per share. The Company may reallocate the shares between the offering and the DRP. In addition, the Company’s board of directors may, from time to time, in its sole discretion, change the price at which the Company offers shares to the public in the offering or to its stockholders pursuant to the DRP to reflect changes in the Company’s estimated value per share and other factors that the Company’s board of directors deems relevant.

Pursuant to the terms of the offering, the Company was required to deposit all subscription proceeds in escrow pursuant to the terms of the Company’s escrow agreement with UMB Bank, N.A. until the earlier of the date that the Company received subscriptions aggregating at least \$2,000,000 (including shares of the Company’s common stock purchased by the Company’s sponsor, its affiliates and the Company’s directors and officers) or January 20, 2016. On July 2, 2015, the Company received subscriptions aggregating \$2,000,000, and the subscription proceeds held in escrow were released to the Company. As of September 30, 2015, the Company had received and accepted investors’ subscriptions for and issued 242,373 shares of the Company’s common stock in the offering, including 246 shares of common stock pursuant to the DRP, resulting in gross offering proceeds of \$6,053,189. As of September 30, 2015, there were a total of 260,373 shares of the Company’s common stock issued and outstanding, including 8,000 shares sold to Sponsor and 10,000 shares of restricted stock discussed in Note 5.

The Company’s advisor is Moody National Advisor II, LLC (“Advisor”), a Delaware limited liability company and an affiliate of Sponsor. Subject to certain restrictions and limitations, Advisor is responsible for managing the Company’s affairs on a day-to-day basis and for identifying and making acquisitions and investments on behalf of the Company.

Substantially all of the Company’s business is conducted through Moody National Operating Partnership II, LP, a Delaware limited partnership (the “OP”). The Company is the sole general partner of the OP. The initial limited partners of the OP are Moody OP Holdings II, LLC, a Delaware limited liability company and a wholly-owned subsidiary of the Company (“Moody Holdings”), and Moody National LPOP II, LLC (“Moody LPOP II”), an affiliate of Advisor. Moody Holdings has invested \$1,000 in the OP in exchange for limited partner interests, and Moody LPOP II has invested \$1,000 in the OP in exchange for a separate class of limited partnership interests (the “Special Limited Partnership Interests”). As the Company accepts subscriptions for shares, it will transfer substantially all of the net proceeds of the offering to the OP as a capital contribution. The partnership agreement provides that the OP will be operated in a manner that will enable the Company to (1) satisfy the requirements for being classified as a REIT for tax purposes, (2) avoid any federal income or excise tax liability, and (3) ensure that the OP will not be classified as a “publicly traded partnership” for purposes of Section 7704 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), which classification could result in the OP being taxed as a corporation, rather than as a partnership. In addition to the administrative and operating costs and expenses incurred by the OP in acquiring and operating real properties, the OP will pay all of the Company’s administrative costs and expenses, and such expenses will be treated as expenses of the OP.

**2. Summary of Significant Accounting Policies**

***Consolidation***

The Company’s consolidated financial statements include the Company’s accounts and the accounts of subsidiaries over which the Company has control, including the OP and Moody Holdings. All intercompany balances and transactions are eliminated in consolidation.

***Organization and Offering Costs***

Organization and offering costs of the Company are paid directly by the Company or may be incurred by Advisor on behalf of the Company. Under the terms of the advisory agreement with Advisor, upon the sale of shares of common stock to the public, the Company is obligated to reimburse Advisor for organization and offering costs incurred by Advisor in connection with the offering. The amount of the reimbursement to Advisor for cumulative organization and offering costs is limited to a maximum amount of up to 15% of the

aggregate gross proceeds from the sale of the shares of common stock sold in the Company's public offerings. Such costs shall include legal, accounting, printing and other offering expenses, including marketing, salaries and direct expenses of Advisor's employees and employees of Advisor's affiliates and others. Any such reimbursement will not exceed actual expenses incurred by Advisor.

As of September 30, 2015, total offering costs were \$938,854, comprised of \$605,319 of offering costs incurred directly by the Company and \$333,535 in offering costs incurred by and reimbursable to Advisor. As of September 30, 2015, the Company had \$333,535 payable to Advisor for reimbursable offering costs.

### ***Income Taxes***

The Company intends to make an election to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code, commencing in the taxable year ended December 31, 2015. If the Company qualifies for taxation as a REIT, the Company generally will not be subject to federal corporate income tax to the extent it distributes its REIT taxable income to its stockholders, so long as it distributes at least 90 percent of its REIT taxable income (which is computed without regard to the dividends paid deduction or net capital gain and which does not necessarily equal net income as calculated in accordance with accounting principles generally accepted in the United States of America ("GAAP")). REITs are subject to a number of other organizational and operational requirements. Even if the Company qualifies for taxation as a REIT, it may be subject to certain state and local taxes on its income and property, and federal income and excise taxes on its undistributed income.

In order for the income from any hotel property investments to constitute "rents from real properties" for purposes of the gross income test required for REIT qualification, the income the Company earns cannot be derived from the operation of any of these hotels. Therefore, the Company will lease each hotel property to a subsidiary of the OP, which the Company intends to be treated as a taxable REIT subsidiary (a "TRS").

### ***Cash and Cash Equivalents***

Cash and cash equivalents consists of cash on hand and highly liquid investments purchased with original maturities of three months or less.

### ***Earnest Money and Deposits***

Earnest money and deposits includes earnest money, rate-lock deposits and expense deposits for future acquisitions.

## **3. Capitalization**

### ***Capitalization***

Under the Company's Articles of Amendment and Restatement (the "Charter"), the Company has the authority to issue 999,999,000 shares of common stock, 100,000,000 shares of preferred stock, and 1,000 shares of non-participating, non-voting convertible stock. All shares of such stock have a par value of \$0.01 per share. On August 15, 2014, the Company sold 8,000 shares of common stock to Sponsor at a purchase price of \$25.00 per share for an aggregate purchase price of \$200,000, which was paid in cash. The Company's board of directors is authorized to amend its Charter, without the approval of the stockholders, to increase the aggregate number of authorized shares of capital stock or the number of shares of any class or series that the Company has authority to issue.

### ***Distributions***

The Company's board of directors has authorized and declared a distribution to its stockholders that (1) accrues daily to the Company's stockholders of record as of the close of business on each day; (2) is payable in cumulative amounts on or before the 15<sup>th</sup> day of each calendar month; and (3) is calculated at a rate of \$0.00479 per share of the Company's common stock per day, which, if paid each day over a 365-day period, is equivalent to an 7.0% annualized distribution rate based on a purchase price of \$25.00 per share of common stock.

The following table summarizes distributions paid in cash and pursuant to the DRP for the nine months ended September 30, 2015.

<b>Period<sup>(1)</sup></b>	<b>Cash Distribution<sup>(1)</sup></b>	<b>Distribution Paid Pursuant to DRP<sup>(1)(2)</sup></b>	<b>Total Amount of Distribution<sup>(1)</sup></b>
Third Quarter 2015 .....	\$ 16,959	\$ 5,838	\$ 22,797
Total .....	\$ 16,959	\$ 5,838	\$ 22,797

(1) Distributions are paid on a monthly basis. Distributions for all record dates in a given month are paid approximately 15 days following the end of such month.

(2) Amount of distributions paid in shares of common stock pursuant to our distribution reinvestment plan.

#### 4. Related Party Arrangements

Advisor and certain affiliates of Advisor will receive fees and compensation in connection with the offering, and the acquisition, management and sale of the Company's real estate investments. In addition, in exchange for \$1,000 and in consideration of services to be provided by Advisor, the OP has issued an affiliate of the Advisor, Moody LPOP II, a separate, special limited partnership interest, in the form of Special Limited Partnership Interests. For further detail, please see Note 6 ("Subordinated Participation Interest") below.

##### *Sales Commissions and Dealer Manager Fees*

Moody National Securities, LLC ("Moody Securities"), the dealer manager of the offering and an affiliate of the Advisor, will receive a commission of up to 7.0% of gross offering proceeds. Moody Securities may reallocate all or a portion of such sales commissions earned to participating broker-dealers. In addition, the Company will pay Moody Securities a dealer manager fee of up to 3.0% of gross offering proceeds, a portion of which may be reallocated to participating broker-dealers. No selling commissions or dealer manager fee are paid for sales under the DRP. As of September 30, 2015, the Company had paid Moody Securities \$412,394 in selling commissions related to the offering and \$116,212 in dealer manager fees related to the offering, which has been recorded as a reduction to additional paid-in capital in the consolidated balance sheets.

##### *Organization and Offering Expenses*

Advisor will receive reimbursement for organizational and offering expenses incurred on the Company's behalf, but only to the extent that such reimbursements do not exceed actual expenses incurred by Advisor and do not cause the cumulative sales commission, the dealer manager fee and other organization and offering expenses borne by the Company to exceed 15.0% of gross offering proceeds from the sale of shares in its public offering as of the date of reimbursement.

As of September 30, 2015, total offering costs were \$938,854, comprised of \$605,319 of offering costs incurred directly by the Company and \$333,535 in offering costs incurred by and reimbursable to Advisor. As of September 30, 2015, the Company had \$333,535 payable to Advisor for reimbursable offering costs.

##### *Acquisition Fees*

Advisor, or its affiliates, will also receive an acquisition fee equal to 1.5% of (1) the cost of all investments the Company acquires (including the Company's pro rata share of any indebtedness assumed or incurred in respect of the investment and exclusive of acquisition and financing coordination fees), (2) the Company's allocable cost of investments acquired in a joint venture (including the Company's pro rata share of the purchase price and the Company's pro rata share of any indebtedness assumed or incurred in respect of that investment and exclusive of acquisition fees and financing coordination fees) or (3) the amount funded by the Company to acquire or originate a loan or other investment, including mortgage, mezzanine or bridge loans (including any third-party expenses related to such investment and exclusive of acquisition fees and financing coordination fees). Once the proceeds from the offering have been fully invested, the aggregate amount of acquisition fees and financing coordination fees shall not exceed 1.9% of the contract purchase price and the amount advanced for a loan or other investment, as applicable, for all the assets acquired. As of September 30, 2015, the Company had not paid any acquisition fees to Advisor.

##### *Financing Coordination Fee*

Advisor will also receive financing coordination fees of 1% of the amount available under any loan or line of credit made available to the Company and 0.75% of the amount available or outstanding under any refinanced loan or line of credit. Advisor will pay some or all of these fees to third parties with whom it subcontracts to coordinate financing for the Company. As of September 30, 2015, the Company had not paid any financing coordination fees to Advisor.

##### *Property Management Fee*

The Company will pay Moody National Hospitality Management, LLC ("Property Manager") a monthly hotel management fee equal to 4.0% of the monthly gross receipts from the properties managed by Property Manager for services it provides in connection with operating and managing properties. Property Manager may pay some or all of the compensation it receives from the Company to a third-party property manager for management or leasing services. In the event that the Company contracts directly with a non-affiliated third-party property manager, the Company will pay Property Manager a market-based oversight fee. The Company will reimburse the costs and expenses incurred by Property Manager on the Company's behalf, including legal, travel and other out-of-pocket expenses that are directly related to the management of specific properties, but the Company will not reimburse Property Manager for general overhead costs or personnel costs other than employees or subcontractors who are engaged in the on-site operation, management, maintenance or access control of the properties.

The Company will also pay an annual incentive fee to Property Manager. Such annual incentive fee is equal to 15% of the amount by which the operating profit from the properties managed by Property Manager for such fiscal year (or partial fiscal year) exceeds 8.5% of the total investment of such properties. Property Manager may pay some or all of this annual fee to third-party sub-property managers for management services. For purposes of this fee, "total investment" means the sum of (i) the price paid to acquire a property, including

closing costs, conversion costs, and transaction costs; (ii) additional invested capital; and (iii) any other costs paid in connection with the acquisition of the property, whether incurred pre- or post-acquisition. As of September 30, 2015, the Company had not paid any property management fees to Property Manager.

#### *Asset Management Fee*

The Company will pay Advisor a monthly asset management fee of one-twelfth of 1.0% of the cost of investment of all real estate investments the Company acquires. As of September 30, 2015, the Company had not paid any asset management fees to Advisor.

#### *Disposition Fee*

Advisor or its affiliates will also receive a disposition fee in an amount of up to one-half of the brokerage commission paid but in no event greater than 3.0% of the contract sales price of each property or other investment sold; provided, however, in no event may the aggregate disposition fees paid to the Advisor and any real estate commissions paid to unaffiliated third parties exceed 6.0% of the contract sales price. As of September 30, 2015, the Company had not paid any disposition fees to Advisor.

#### *Operating Expense Reimbursement*

The Company will reimburse Advisor for all expenses paid or incurred by Advisor in connection with the services provided to the Company, subject to the limitation that the Company will not reimburse Advisor for any amount by which its operating expenses (including the asset management fee) at the end of the four preceding fiscal quarters exceeds the greater of: (1) 2% of its average invested assets, or (2) 25% of its net income determined without reduction for any additions to reserves for depreciation, bad debts or other similar non-cash reserves and excluding any gain from the sale of the Company's assets for that period (the "2%/25% Limitation"). Notwithstanding the above, the Company may reimburse Advisor for expenses in excess of this limitation if a majority of the independent directors determines that such excess expenses are justified based on unusual and non-recurring factors. For the four fiscal quarters ended September 30, 2015, total operating expenses of the Company were \$248,234, which included \$45,410 in operating expenses incurred directly by the Company and \$202,824 incurred by Advisor on behalf of the Company. Of the \$202,824 in operating expenses incurred by Advisor during the four fiscal quarters ended September 30, 2015, \$202,234 exceeded the 2%/25% Limitation. The Company reimbursed Advisor \$0 in operating expenses during the four fiscal quarters ended September 30, 2015.

### **5. Incentive Award Plan**

The Company has adopted an incentive plan (the "Incentive Award Plan") that provides for the grant of equity awards to its employees, directors and consultants and those of the Company's affiliates. The Incentive Award Plan authorizes the grant of non-qualified and incentive stock options, restricted stock awards, restricted stock units, stock appreciation rights, dividend equivalents and other stock-based awards or cash-based awards. Shares of common stock will be authorized and reserved for issuance under the Incentive Award Plan. The Company has adopted an independent directors compensation plan (the "Independent Directors Compensation Plan") pursuant to which each of the Company's independent directors is entitled, subject to the plan's conditions and restrictions, to receive an initial grant of 5,000 shares of restricted stock when the Company raises the minimum offering amount of \$2,000,000 in the offering. Each new independent director that subsequently joins the Company's board of directors will receive a grant of 5,000 shares of restricted stock upon his or her election to the Company's board of directors. In addition, on the date of each of the first four annual meetings of the Company's stockholders at which an independent director is re-elected to the Company's board of directors, he or she will receive an additional grant of 2,500 shares of restricted stock. Subject to certain conditions, the non-vested shares of restricted stock granted pursuant to the Independent Directors Compensation Plan will vest and become non-forfeitable in four equal quarterly installments beginning on the first day of the first quarter following the date of grant; provided, however, that the restricted stock will become fully vested on the earlier to occur of (1) the termination of the independent director's service as a director due to his or her death or disability, or (2) a change in control of the Company.

10,000 shares of restricted stock were granted pursuant to the Independent Directors Compensation Plan during the three and nine months ended September 30, 2015. The weighted average grant date fair value of the shares of restricted stock was \$25.00 per share, which was based on observable market transactions occurring near the date of the grants. The Company recorded compensation expense related to such shares of restricted stock ratably from the grant date to the date the shares become fully vested based on the fair market value of such shares at the date they were granted. The Company recorded compensation expense related to such shares of restricted stock of \$38,462 for the three and nine months ended September 30, 2015 and \$0 for the period from July 25, 2014 through September 30, 2014. As of September 30, 2015, there were 10,000 non-vested shares of restricted common stock granted pursuant to the Independent Directors Compensation Plan on August 12, 2015. The remaining unrecognized compensation expense of \$211,538 will be recognized during the fourth quarter of 2015 and the first, second and third quarters of 2016.

### **6. Subordinated Participation Interest**

Pursuant to the Limited Partnership Agreement for the OP, Moody LPOP II, the holder of the Special Limited Partnership Interests, is entitled to receive distributions equal to 15.0% of the OP's net cash flows, whether from continuing operations, the repayment of loans, the disposition of assets or otherwise, but only after the Company's stockholders have received, in the aggregate,

cumulative distributions equal to their total invested capital plus a 6.0% cumulative, non-compounded annual pre-tax return on such aggregated invested capital. In addition, the Special Limited Partnership Interest holder is entitled to a separate payment if it redeems its Special Limited Partnership Interests. The Special Limited Partnership Interests may be redeemed upon: (1) the listing of the Company's common stock on a national securities exchange; or (2) the occurrence of certain events that result in the termination or non-renewal of the Company's advisory agreement, in each case for an amount that Moody LPOP II would have been entitled to receive had the OP disposed of all of its assets at the enterprise valuation as of the date of the event triggering the redemption.

## **7. Subsequent Events**

### ***Distributions Declared***

On September 30, 2015, the Company declared a distribution in the aggregate amount of \$32,442, of which \$22,257 was paid in cash on October 15, 2015 and \$10,185 was paid pursuant to the DRP in the form of additional shares of the Company's common stock. On October 31, 2015, the Company declared a distribution in the aggregate amount of \$43,159 which was paid in cash and through the DRP in the form of additional shares of the Company's common stock on November 13, 2015.

### ***Residence Inn Austin***

On October 15, 2015, the Company, through a wholly owned subsidiary, acquired the Residence Inn University Area Austin (the "Residence Inn Austin") from a third-party seller for an aggregate purchase price of \$25,500,000, excluding acquisition costs. The Company financed the acquisition of the Residence Inn Austin with a portion of the proceeds from its public offering and financing, in the aggregate amount of \$16,575,000, secured by the Residence Inn Austin.

### ***Determination of Estimated Value Per Share***

On November 12, 2015, the Company's Board of Directors determined that the estimated value of the Company's common stock, as of October 31, 2015, was \$25.03 per share. More information about the determination of the Company's estimated value per share can be found in the Company's Current Report on Form 8-K filed with the SEC on November 16, 2015.

## **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.**

The following discussion and analysis should be read in conjunction with the accompanying financial statements of Moody National REIT II, Inc. and the notes thereto. As used herein, the terms "we," "our" and "us" refer to Moody National REIT II, Inc., a Maryland corporation, and, as required by context, Moody National Operating Partnership II, L.P., a Delaware limited partnership, which we refer to as our "operating partnership," and to their subsidiaries.

### **Forward-Looking Statements**

Certain statements included in this Quarterly Report on Form 10-Q that are not historical facts (including any statements concerning investment objectives, other plans and objectives of management for future operations or economic performance, or assumptions or forecasts related thereto) are forward-looking statements. These statements are only predictions. We caution that forward-looking statements are not guarantees. Actual events or our investments and results of operations could differ materially from those expressed or implied in any forward-looking statements. Forward-looking statements are typically identified by the use of terms such as "may," "should," "expect," "could," "intend," "plan," "anticipate," "estimate," "believe," "continue," "predict," "potential" or the negative of such terms and other comparable terminology.

The forward-looking statements included in this quarterly report are based upon our current expectations, plans, estimates, assumptions and beliefs, which involve numerous risks and uncertainties. Assumptions relating to the foregoing involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond our control. Although we believe that the expectations reflected in such forward-looking statements are based on reasonable assumptions, our actual results and performance could differ materially from those set forth in the forward-looking statements. Factors which could have a material adverse effect on our operations and future prospects include, but are not limited to:

- our ability to raise capital in our ongoing public offering;
- our ability to effectively deploy the proceeds raised in our public offering;
- our ability to obtain financing on acceptable terms;
- our levels of debt and the terms and limitations imposed on us by our debt agreements;
- our ability to identify and acquire real estate and real estate-related assets on terms that are favorable to us;

- risks inherent in the real estate business, including the lack of liquidity for real estate and real estate-related assets on terms that are favorable to us;
- our ability to compete in the hotel industry;
- adverse developments affecting our sponsor and its affiliates;
- the availability of cash flow from operating activities for distributions;
- changes in economic conditions generally and the real estate and debt markets specifically;
- conflicts of interest arising out of our relationship with our advisor and its affiliates;
- legislative or regulatory changes (including changes to the laws governing the taxation of REITs);
- the availability of capital; and
- interest rates.

Any of the assumptions underlying the forward-looking statements included herein could be inaccurate, and undue reliance should not be placed upon any forward-looking statements included herein. All forward-looking statements are made as of the date this Quarterly Report on Form 10-Q is filed with the Securities and Exchange Commission, or the SEC, and the risk that actual results will differ materially from the expectations expressed herein will increase with the passage of time. Except as otherwise required by the federal securities laws, we undertake no obligation to publicly update or revise any forward-looking statements made herein, whether as a result of new information, future events, changed circumstances or any other reason.

## Overview

We were formed on July 25, 2014 as a Maryland corporation that intends to qualify as a real estate investment trust, or REIT. We intend to use substantially all of the net proceeds from our initial public offering to invest in and manage a portfolio of hospitality properties focusing primarily on the select-service segment of the hospitality sector with premier brands including, but not limited to, Marriott, Hilton and Hyatt. We intend to acquire hotel properties in major metropolitan markets in the East Coast, West Coast and Sunbelt regions of the United States. We may also invest in real estate securities and debt-related investments related to the hospitality sector.

On January 20, 2015, the SEC declared our registration statement on Form S-11 effective and we commenced our initial public offering of up to \$1,100,000,000 in shares of common stock, including up to \$1,000,000,000 in shares to be offered to the public at an initial price of \$25.00 per share (subject to certain discounts) and up to \$100,000,000 in shares to be offered to our stockholders pursuant to our distribution reinvestment plan at an initial price of \$23.75 per share. Our board of directors may, in its sole discretion and from time to time, change the price at which we offer shares to the public in the primary offering or pursuant to our distribution reinvestment plan to reflect changes in our estimated value per share and other factors that our board of directors deems relevant. If we revise the price at which we offer our shares of common stock based upon changes in our estimated value per share, we do not anticipate that we will do so more frequently than quarterly. Our estimated value per share will be approved by our board of directors and calculated by our advisor based upon current available information which may include valuations of our assets obtained by independent third party appraisers or qualified independent valuation experts.

Pursuant to the terms of our initial public offering, offering proceeds were held in an escrow account until we met the minimum offering amount of \$2,000,000. On July 2, 2015, we received subscriptions aggregating \$2,000,000, and the subscription proceeds held in escrow were released to us. As of September 30, 2015, we had received and accepted investors' subscriptions for and issued 242,373 shares of our common stock in the offering, including 246 shares of common stock pursuant to our distribution reinvestment plan, resulting in gross offering proceeds of \$6,053,189. We will continue to offer shares of our common stock on a continuous basis until January 20, 2017, unless extended. However, in certain states the offering may continue for only one year unless we renew the offering period for an additional year. We reserve the right to terminate our initial public offering at any time.

Moody National Advisor II, LLC is our advisor. Subject to certain restrictions and limitations, our advisor manages our day-to-day operations and our portfolio of properties and real estate-related assets. Our advisor sources and presents investment opportunities to our board of directors. Our advisor also provides investment management, marketing, investor relations and other administrative services on our behalf.

Substantially all of our business will be conducted through Moody National Operating Partnership II, LP, our operating partnership. We are the sole general partner of our operating partnership and our subsidiary, Moody OP Holdings II, LLC, and Moody National LPOP II, LLC, an affiliate of our advisor, are the initial limited partners of our operating partnership. As we accept subscriptions for shares, we will transfer substantially all of the net proceeds of the offering to our operating partnership as a capital contribution. The limited partnership agreement of our operating partnership provides that our operating partnership will be operated

in a manner that will enable us to (1) satisfy the requirements for being classified as a REIT for federal income tax purposes, (2) avoid any federal income or excise tax liability and (3) ensure that our operating partnership will not be classified as a “publicly traded partnership” for purposes of Section 7704 of the Internal Revenue Code, which classification could result in our operating partnership being taxed as a corporation, rather than as a partnership. In addition to the administrative and operating costs and expenses incurred by our operating partnership in acquiring and operating our investments, our operating partnership pays all of our administrative costs and expenses, and such expenses will be treated as expenses of our operating partnership. We will experience a relative increase in liquidity as additional subscriptions for shares of our common stock are received and a relative decrease in liquidity as offering proceeds are used to acquire and operate our assets.

We do not anticipate establishing a general working capital reserve out of the proceeds of our public offering during the initial stages of the offering; however, we may establish capital reserves from offering proceeds with respect to particular investments as required by our lenders or as determined by our advisor. We also may, but are not required to, establish annual cash reserves out of cash flow generated by our investments or out of net cash proceeds from the sale of our investments.

To the extent that any working capital reserve is insufficient to satisfy our cash requirements, additional funds may be provided from cash generated from operations or through short-term borrowing. In addition, subject to the limitations described herein, we may incur indebtedness in connection with the acquisition of any investment property, refinance the debt thereon, arrange for the leveraging of any previously unfinanced property or reinvest the proceeds of financing or refinancing in additional properties.

If we qualify as a REIT for federal income tax purposes, we generally will not be subject to federal income tax on income that we distribute to our stockholders. If we fail to qualify as a REIT in any taxable year after the taxable year in which we initially elect to be taxed as a REIT, we will be subject to federal income tax on our taxable income at regular corporate rates and will not be permitted to qualify for treatment as a REIT for federal income tax purposes for four years following the year in which qualification is denied. Failing to qualify as a REIT could materially and adversely affect our net income.

## **Factors Which May Influence Results of Operations**

### ***Economic Conditions Affecting Our Target Portfolio***

Adverse economic conditions affecting the hospitality sector, the geographic regions in which we plan to invest or real estate generally may have a material impact on our capital resources and the revenue or income to be derived from the operation of our hospitality investments.

### ***Offering Proceeds***

Our ability to make investments will depend upon the net proceeds raised in our offering and our ability to finance the acquisition of our investments. If we raise substantially less than the maximum offering amount, we will make fewer investments resulting in less diversification in terms of the number of investments owned, resulting in fewer sources of income. In such event, the likelihood of our profitability being affected by the performance of any one of our investments will increase. In addition, if we are unable to raise substantial funds, our fixed operating expenses, as a percentage of gross income, would be higher, which could affect our net income and results of operations.

## **Results of Operations**

During the period from our inception (July 25, 2014) to December 31, 2014, we had not yet commenced real estate operations, as we had not yet commenced our initial public offering. As a result, we had no material results of operations for that period. For the six months ended June 30, 2015, we had raised the minimum offering amount of \$2,000,000 in our public offering, but funds had not been released from escrow and no shares had been issued. On July 2, 2015, we received subscriptions aggregating \$2,000,000, and the subscription proceeds held in escrow were released to us. No properties had been purchased and we had not commenced real estate operations as of September 30, 2015.

Pursuant to our advisory agreement with our advisor and the dealer manager agreement with our dealer manager, we are obligated to reimburse our advisor, our dealer manager or their affiliates, as applicable, for organization and offering costs associated with our initial public offering, provided that our advisor is obligated to reimburse us to the extent selling commissions, the dealer manager fee and other organization and offering costs incurred by us exceed 15% of our gross offering proceeds. As of September 30, 2015, our advisor and its affiliates have incurred organization costs of approximately \$0 and offering costs of approximately \$1,433,601 on our behalf.

## **Critical Accounting Policies**

### ***General***

Below is a discussion of the accounting policies that we believe will be critical once we commence real estate operations. We consider these policies critical because they involve significant judgments and assumptions, require estimates about matters that are inherently uncertain and because they are important for understanding and evaluating our reported financial results. These judgments

affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. If management’s judgment or interpretation of the facts and circumstances relating to various transactions is different, it is possible that different accounting policies will be applied or different amounts of assets, liabilities, revenues and expenses will be recorded, resulting in a different presentation of the financial statements or different amounts reported in the financial statements. Additionally, other companies may utilize different estimates that may impact the comparability of our results of operations to those of companies in similar businesses.

**Valuation and Allocation of Real Property — Acquisition**

Upon acquisition, the purchase price of real property is allocated to the tangible assets acquired, consisting of land, buildings and tenant improvements, any assumed debt, identified intangible assets and asset retirement obligations based on their fair values. Identified intangible assets consist of above-market and below-market leases, in-place leases, in-place contracts, tenant relationships and any goodwill or gain on purchase.

The fair value of the tangible assets acquired consists of land, buildings, furniture, fixtures and equipment. Land values are derived from appraisals, and building values are calculated as replacement cost less depreciation or our estimates of the relative fair value of these assets using discounted cash flow analyses or similar methods.

We determine the fair value of assumed debt by calculating the net present value of the scheduled mortgage payments using interest rates for debt with similar terms and remaining maturities that we believe we could obtain. Any difference between the fair value and stated value of the assumed debt is recorded as a discount or premium and amortized over the remaining life of the loan.

In allocating the purchase price of each of our acquired properties, our advisor makes assumptions and uses various estimates, including, but not limited to, the estimated useful lives of the assets, the cost of replacing certain assets, discount rates used to determine present values, market rental rates per square foot and the period required to lease the property up to its occupancy at acquisition as if it were vacant. Many of these estimates are obtained from independent third-party appraisals. However, we are responsible for the source and use of these estimates. These estimates are judgmental and subject to being imprecise; accordingly, if different estimates and assumptions were derived, the valuation of the various categories of our real estate assets or related intangibles, if any, could in turn result in a difference in the depreciation or amortization expense recorded in our financial statements. These variances could be material to our results of operations and financial condition.

**Valuation and Allocation of Real Property — Ownership**

Depreciation or amortization expense will be computed using the straight-line and accelerated methods based upon the following estimated useful lives:

	Years
Buildings and improvements .....	39-40
Exterior improvements .....	10-20
Equipment and fixtures .....	5-10

**Investment Impairments**

For real estate we may wholly own or otherwise control, our management will monitor events and changes in circumstances indicating that the carrying amounts of the real estate assets may not be recoverable. When such events or changes in circumstances are present, we will assess potential impairment by comparing estimated future undiscounted cash flows expected to be generated over the life of the asset and from its eventual disposition, to the carrying amount of the asset. In the event that the carrying amount exceeds the estimated future undiscounted cash flows, we will recognize an impairment loss to adjust the carrying amount of the asset to estimated fair value.

For real estate we may own through an investment in a joint venture or other similar investment structure, at each reporting date we will compare the estimated fair value of our investment to the carrying value. An impairment charge will be recorded to the extent the fair value of our investment is less than the carrying amount and the decline in value is determined to be other than a temporary decline.

In evaluating our investments for impairment, our advisor will make several estimates and assumptions, including, but not limited to, the projected date of disposition of the investments, the estimated future cash flows of the investments during our ownership and the projected sales price of each of the investments. A change in these estimates and assumptions could result in understating or overstating the book value of our investments which could be material to our financial statements.

**Liquidity and Capital Resources**

Our principal use of funds will be to acquire investments in accordance with our investment strategy, to pay operating expenses and interest on our outstanding indebtedness and to make distributions to our stockholders. Over time, we intend to generally fund our cash needs for items, other than asset acquisitions, from operations. Otherwise, we expect that our principal sources of working capital will include:

- public or private offerings;
- current cash balances;

- various forms of secured financing;
- equity capital from joint venture partners;
- proceeds from our distribution reinvestment plan; and
- cash from operations.

Over the short term, we believe that our sources of capital, specifically our cash balances, cash flow from operations, our ability to raise equity capital from our public equity offering and joint venture partners and our ability to obtain various forms of secured financing will be adequate to meet our liquidity requirements and capital commitments.

Over the longer term, in addition to the same sources of capital we will rely on to meet our short-term liquidity requirements, we may also utilize additional secured and unsecured financings and equity capital from joint venture partners. We may also conduct additional public or private offerings. We expect these sources of capital will be adequate to fund our operating activities, debt service and distributions, and our ongoing acquisition activities, as well as providing capital for investment in future development and other joint ventures along with potential forward purchase commitments.

If we raise substantially fewer funds in our current public equity offering than the maximum offering amount, we will make fewer investments resulting in less diversification. The value of an investment in us will fluctuate with the performance of the specific assets we acquire, so the value of such an investment may fluctuate more if we own fewer assets. Further, we will have certain fixed operating expenses, including certain expenses as a public REIT, regardless of whether we are able to raise substantial funds in our current public equity offering. Our inability to raise substantial funds would increase our fixed operating expenses as a percentage of gross income, reducing our net income and limiting our ability to make distributions.

As of September 30, 2015, we had no outstanding debt. Under our charter, we are prohibited from borrowing in excess of 300% of the value of our net assets, which generally approximates to 75% of the aggregate cost of our assets, though we may exceed this limit under certain circumstances.

In addition to making investments in accordance with our investment objectives, we expect to use our capital resources to make certain payments to our advisor and dealer manager. During our organization and offering stage, these payments will include payments to the dealer manager for sales commissions and the dealer manager fee and payments to our advisor for reimbursement of certain organization and offering expenses. However, our advisor has agreed to reimburse us to the extent that sales commissions, the dealer manager fee and other organization and offering expenses incurred by us exceed 15% of our gross offering proceeds. During our operating stage, we expect to make payments to our advisor in connection with the acquisition of investments, the management of our assets and costs incurred by our advisor in providing services to us.

## **Inflation**

Operators of hotels generally can adjust room rates daily to reflect the effects of inflation. Competitive pressures may, however, limit the operators' ability to do so.

With respect to other real estate investments, with the exception of leases with tenants in multifamily properties, we expect to include provisions in our tenant leases designed to protect us from the impact of inflation. These provisions will include reimbursement billings for operating expense pass-through charges, real estate tax and insurance reimbursements, or in some cases annual reimbursement of operating expenses above a certain allowance. Due to the generally long-term nature of these leases, annual rent increases may not be sufficient to cover inflation and rent may be below market. Leases in multifamily properties generally turn over on an annual basis and do not typically present the same issue regarding inflation protection due to their short-term nature. As of September 30, 2015, we have not entered into any leases.

## **REIT Compliance**

To qualify as a REIT for tax purposes, we will be required to distribute at least 90% of our REIT taxable income to our stockholders. We must also meet certain asset and income tests, as well as other requirements. We will monitor the business and transactions that may potentially impact our REIT status. If we fail to qualify as a REIT in any taxable year, we will be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates and generally will not be permitted to qualify for treatment as a REIT for federal income tax purposes for the four taxable years following the year during which our REIT qualification is lost unless the Internal Revenue Service grants us relief under certain statutory provisions. Such an event could materially adversely affect our net income and net cash available for distribution to our stockholders.

## Distributions

Our board of directors has authorized distributions to our stockholders that (1) accrue daily to our stockholders of record on each day; (2) are payable in cumulative amounts on or before the 15th day of each calendar month; and (3) are calculated at a rate of \$0.00479 per share of our common stock per day, which, if paid each day over a 365-day period, is equivalent to an 7.0% annualized distribution rate based on a purchase price of \$25.00 per share of our common stock.

The following table summarizes distributions paid in cash and pursuant to the DRP for the nine months ended September 30, 2015.

Period <sup>(1)</sup>	Cash Distribution <sup>(1)</sup>	Distribution Paid Pursuant to DRP <sup>(1)(2)</sup>	Total Amount of Distribution <sup>(1)</sup>
Third Quarter 2015 .....	\$ 16,959	\$ 5,838	\$ 22,797
Total .....	<u>\$ 16,959</u>	<u>\$ 5,838</u>	<u>\$ 22,797</u>

(1) Distributions are paid on a monthly basis. Distributions for all record dates in a given month are paid approximately 15 days following the end of such month.

(2) Amount of distributions paid in shares of common stock pursuant to our distribution reinvestment plan.

## Related Party Transactions and Agreements

We have entered into agreements with our advisor and its affiliates whereby we will pay certain fees to, or reimburse certain expenses of, our advisor or its affiliates for acquisition and advisory fees and expenses, financing coordination fees, organization and offering costs, sales commissions, dealer manager fees, asset and property management fees and expenses, leasing fees and reimbursement of certain operating costs. See Note 4 (Related Party Arrangements) to the consolidated financial statements included in this quarterly report for a discussion of the various related-party transactions, agreements and fees.

## Off-Balance Sheet Arrangements

As of September 30, 2015, we had no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

## Subsequent Events

### *Distributions Declared*

On September 30, 2015, we declared a distribution in the aggregate amount of \$32,442, of which \$22,257 was paid in cash on October 15, 2015 and \$10,185 was paid pursuant to the DRP in the form of additional shares of our common stock. On October 31, 2015, we declared a distribution in the aggregate amount of \$43,159 which was paid in cash and through the DRP in the form of additional shares of our common stock on November 13, 2015.

### *Residence Inn Austin*

On October 15, 2015, we, through a wholly owned subsidiary, acquired Residence Inn University Area Austin (the “Residence Inn Austin”) from a third-party seller for an aggregate purchase price of \$25,500,000, excluding acquisition costs. We financed the acquisition of the Residence Inn Austin with a portion of the remaining proceeds from our public offering and financing, in the aggregate amount of \$16,575,000, secured by the Residence Inn Austin.

### *Determination of Estimated Value Per Share*

On November 12, 2015, our Board of Directors determined that the estimated value of our common stock, as of October 31, 2015, was \$25.03 per share. More information about the determination of our estimated value per share can be found in our Current Report on Form 8-K filed with the SEC on November 16, 2015.

## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

We may be exposed to interest rate changes. Market fluctuations in real estate financing may affect the availability and cost of funds needed to expand our investment portfolio. In addition, restrictions upon the availability of real estate financing or high interest rates for real estate loans could adversely affect our ability to dispose of our real estate assets in the future. We will seek to limit the impact of interest rate changes on earnings and cash flows and to reduce our overall borrowing costs. We may use derivative financial instruments to hedge exposures to changes in interest rates on loans secured by our real estate assets. Also, we will be exposed to both credit risk and market risk. Credit risk is the failure of the counterparty to perform under the terms of the derivative contract. If the fair value of a derivative contract is positive, the counterparty will owe us, which creates credit risk for us. If the fair value of a derivative contract is negative, we will owe the counterparty and, therefore, do not have credit risk. We will seek to minimize the credit risk in

derivative instruments by entering into transactions with high-quality counterparties. Market risk is the adverse effect on the value of a financial instrument that results from a change in interest rates. The market risk associated with interest-rate contracts is managed by establishing and monitoring parameters that limit the types and degree of market risk that may be undertaken. With regard to variable rate financing, our advisor will assess our interest rate cash flow risk by continually identifying and monitoring changes in interest rate exposures that may adversely impact expected future cash flows and by evaluating hedging opportunities. Our advisor will maintain risk management control systems to monitor interest rate cash flow risk attributable to both our outstanding and forecasted debt obligations as well as our potential offsetting hedge positions. While this hedging strategy will be designed to minimize the impact on our net income and funds from operations from changes in interest rates, the overall returns on your investment may be reduced. Our board of directors has not yet established formal policies and procedures regarding our use of derivative financial instruments for hedging or other purposes. Because we have not commenced real estate operations, we currently have limited exposure to financial market risks. As of September 30, 2015, an increase or decrease in interest rates would have no effect on our interest expense as we had no outstanding debt as of that date.

#### **ITEM 4. CONTROLS AND PROCEDURES.**

##### **Evaluation of Disclosure Controls and Procedures**

As of the end of the period covered by this Quarterly Report, management, including our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 13d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act). Based upon, and as of the date of, the evaluation, our Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures were effective as of the end of the period covered by this Quarterly Report to ensure that information required to be disclosed in the reports we file and submit under the Exchange Act is recorded, processed, summarized and reported as and when required. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports we file and submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

##### **Changes in Internal Control over Financial Reporting**

There have been no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2015 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II—OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS.

None.

### ITEM 1A. RISK FACTORS.

None.

### ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

On January 20, 2015, our Registration Statement on Form S-11 (File No. 333-198305), registering our initial public offering of up to \$1,100,000,000 in shares of our common stock, was declared effective under the Securities Act of 1933, as amended, or the Securities Act, and we commenced our initial public offering. We are offering up to \$1,000,000,000 in shares of our common stock to the public in our primary offering at \$25.00 per share and up to \$100,000,000 of shares of our common stock pursuant to our dividend reinvestment plan at \$23.75 per share.

The terms of our public offering required us to deposit all subscription proceeds in escrow pursuant to the terms of our escrow agreement with UMB Bank, N.A., our escrow agent, until the earlier of the date that we receive subscriptions aggregating at least \$2,000,000 (including shares purchased by our sponsor, its affiliates and our directors and officers) or January 20, 2016. On July 2, 2015, we received subscriptions aggregating \$2,000,000, and the subscription proceeds held in escrow were released to us. Our public offering will terminate no later than January 20, 2017, unless extended.

As of September 30, 2015, we had accepted subscriptions for, and issued, 242,373 shares of our common stock in our public offering, including 246 shares of our common stock pursuant to our distribution reinvestment plan, resulting in gross offering proceeds from our public offering of \$6,053,189.

As of September 30, 2015, we had incurred selling commissions, dealer manager fees and organization and other offering costs in our public offering in the amounts set forth in the table below. Moody Securities, LLC, our dealer manager, reallocated all of the selling commissions and a portion of the dealer manager fees to participating broker-dealers.

Type of Expense	Amount	Estimated/Actual
Selling commissions and dealer manager fees .....	\$ 528,606	Actual
Finders' fees .....	—	—
Expenses paid to or for underwriters .....	—	—
Other organization and offering costs .....	410,247	Actual
Total expenses .....	<u>\$ 938,853</u>	

The net offering proceeds to us from our public offering, after deducting the total expenses incurred as described above, were approximately \$5,114,335, excluding \$5,838 in offering proceeds from shares of our common stock issued pursuant to the DRIP.

As of September 30, 2015, we had not used any of the net proceeds from our public offering to fund real estate operations. For more information regarding how we used our net offering proceeds through September 30, 2015, see our financial statements included in this quarterly report.

During the three months ended September 30, 2015, we did not sell any equity securities that were not registered under the Securities Act.

During the three months ended September 30, 2015, we did not redeem any shares of our common stock.

### ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

### ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

### ITEM 5. OTHER INFORMATION.

None.

**ITEM 6.****EXHIBITS.**

- 3.1 Articles of Amendment and Restatement of Moody National REIT II, Inc. (filed as Exhibit 3.1 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305) and incorporated herein by reference)
- 3.2 Bylaws of Moody National REIT II, Inc. (filed as Exhibit 3.2 to the Company's Registration Statement on Form S-11 (No. 333-198305) and incorporated herein by reference)
- 4.1 Form of Subscription Agreement (included as Appendix B to prospectus, incorporated by reference to Exhibit 4.1 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
- 4.2 Moody National REIT II, Inc. Distribution Reinvestment Plan (included as Appendix C to prospectus, incorporated by reference to Exhibit 4.2 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
- 10.1 Advisory Agreement, dated January 12, 2015, by and among Moody National REIT II, Inc., Moody National Operating Partnership II, LP and Moody National Advisor II, LLC (incorporated by reference to Exhibit 10.1 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
- 10.2 Limited Partnership Agreement of Moody National Operating Partnership II, LP (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-11 (No. 333-198305))
- 10.3 Escrow Agreement, dated January 12, 2015, by and among Moody National REIT II, Inc., Moody Securities, LLC and UMB Bank, N.A. (incorporated by reference to Exhibit 10.3 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
- 10.4 Moody National REIT II, Inc. 2015 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.4 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
- 10.5 Moody National REIT II, Inc. Independent Directors Compensation Plan (incorporated by reference to Exhibit 10.5 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
- 10.6 Assignment Agreement, dated September 25, 2015, by and between Moody National REIT I, Inc. and Moody National REIT II, Inc.
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 32.2 Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema Document
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF XBRL Taxonomy Extension Definition Linkbase Document
- 101.LAB XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

MOODY NATIONAL REIT II, INC.

Date: November 16, 2015

By: /s/ Brett C. Moody  
Brett C. Moody  
Chairman of the Board, Chief Executive Officer and President  
(Principal Executive Officer)

Date: November 16, 2015

By: /s/ Robert W. Engel  
Robert W. Engel  
Chief Financial Officer and Treasurer  
(Principal Financial and Accounting Officer)

## EXHIBIT INDEX

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4.1	Form of Subscription Agreement (included as Appendix B to prospectus, incorporated by reference to Exhibit 4.1 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
4.2	Moody National REIT II, Inc. Distribution Reinvestment Plan (included as Appendix C to prospectus, incorporated by reference to Exhibit 4.2 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
10.1	Advisory Agreement, dated January 12, 2015, by and among Moody National REIT II, Inc., Moody National Operating Partnership II, LP and Moody National Advisor II, LLC (incorporated by reference to Exhibit 10.1 to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form S-11 (No. 333-198305))
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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### **Item 31. Other Expenses of Issuance and Distribution.**

	<b>Amount</b>
SEC registration fee .....	\$ 141,680
FINRA filing fee .....	165,500
Accounting fees and expenses .....	1,000,000
Legal fees and expenses .....	582,380
Sales and advertising expenses .....	6,000,000
Blue Sky fees and expenses .....	115,000
Printing expenses .....	5,000,000
Miscellaneous .....	6,995,440
<b>Total</b> .....	<b>\$ 20,000,000</b>

#### **Item 32. Sales to Special Parties.**

Our executive officers and directors and their immediate family members, as well as officers and employees of our advisor and our advisor's affiliates and their immediate family members, and, if approved by our board of directors, joint venture partners, consultants and other service providers, may purchase shares of our common stock in this offering and may be charged a reduced rate for certain fees and expenses in respect of such purchases. We expect that a limited number of shares of our common stock will be sold to such persons. However, except for certain share ownership and transfer restrictions contained in our charter, there is no limit on the number of shares of our common stock that may be sold to such persons. The amount of net proceeds to us will not be affected by reducing or eliminating the sales commissions or the dealer manager fee payable in connection with sales to such investors and affiliates. Our advisor and its affiliates will be expected to hold their shares of our common stock purchased as stockholders for investment and not with a view towards distribution.

Certain institutional investors and our affiliates may also agree with a participating broker-dealer selling shares of our common stock (or with our dealer manager if no participating broker-dealer is involved in the transaction) to reduce or eliminate the sales commission. The amount of net proceeds to us will not be affected by reducing or eliminating commissions payable in connection with sales to such institutional investors and affiliates.

In connection with sales of over \$500,000 or more to a qualifying purchaser, a participating broker-dealer may offer such qualifying purchaser a volume discount by reducing the amount of its sales commissions. Such reduction would be credited to the qualifying purchaser by reducing the total purchase price of the shares payable by the qualifying purchaser.

We will not pay any sales commissions in connection with the sale of shares to investors whose contracts for investment advisory and related brokerage services include a fixed or "wrap" fee feature. Investors may agree with their participating brokers to reduce the amount of sales commissions payable with respect to the sale of their shares down to zero if (1) the investor has engaged the services of a registered investment advisor or other financial advisor who will be paid compensation for investment advisory services or other financial or investment advice or (2) the investor is investing through a bank trust account with respect to which the investor has delegated the decision-making authority for investments made through the account to a bank trust department. The net proceeds to us will not be affected by reducing the sales commissions payable in connection with such transaction.

#### **Item 33. Recent Sales of Unregistered Securities.**

On August 15, 2014, we issued 8,000 shares of common stock at \$25.00 per share to Moody National REIT Sponsor, LLC, our sponsor, in exchange for \$200,000 in cash. We relied on Section 4(2) of the Securities Act for the exemption from the registration requirements of the Securities Act. Our sponsor, by virtue of its affiliation with us, had access to information concerning our proposed operations and the terms and conditions of its investment.

On August 15, 2014, our operating partnership issued limited partnership interests to the limited partner for \$1,000 and issued special limited partnership interests to the special limited partnership interest holder for \$1,000. Our operating partnership relied on Section 4(2) of the Securities Act for the exemption from the registration requirements of the Securities Act. We, the limited partner and the special limited partnership interest holder, by virtue of our affiliation with our operating partnership, had access to information concerning our operating partnership's proposed operations and the terms and conditions of its investment.

Pursuant to our independent directors' compensation plan, upon raising \$2,000,000 in gross offering proceeds in our public offering, each of our two independent directors, Douglas Y. Bech and Charles L. Horn, received an initial grant of 5,000 shares of our restricted common stock. The shares of restricted common stock vest in four equal quarterly installments beginning on the first day of the first quarter following the date of grant; provided, however, that the restricted stock will become fully vested on the earlier to occur of (1) the termination of the independent director's service as a director due to death or disability, or (2) a change in control of our company.

### **Item 34. Indemnification of Directors and Officers.**

Subject to certain limitations, our charter limits the personal liability of our stockholders, directors and officers for monetary damages and provides that we will indemnify and pay or reimburse reasonable expenses in advance of final disposition of a proceeding to our directors, officers and advisor and our advisor's affiliates. In addition, we have obtained directors and officers' liability insurance.

The Maryland General Corporation Law, or the MGCL, permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages, except for liability resulting from (1) actual receipt of an improper benefit or profit in money, property or services or (2) active and deliberate dishonesty established by a final judgment and which is material to the cause of action.

The MGCL requires a Maryland corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made or threatened to be made a party by reason of his service in that capacity. The MGCL allows directors and officers to be indemnified against judgments, penalties, fines, settlements and expenses actually incurred in a proceeding unless the following can be established:

- an act or omission of the director or officer was material to the cause of action adjudicated in the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- with respect to any criminal proceeding, the director or officer had reasonable cause to believe his act or omission was unlawful.

However, indemnification for an adverse judgment in a suit by us or in our right, or for a judgment of liability on the basis that personal benefit was improperly received, may not be made unless ordered by a court and then only for expenses.

The MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon receipt of a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification and a written undertaking by him or on his behalf to repay the amount paid or reimbursed if it is ultimately determined that the standard of conduct was not met.

However, our charter provides that we may indemnify our directors and our advisor and its affiliates for loss or liability suffered by them or hold them harmless for loss or liability suffered by us only if all of the following conditions are met:

- our directors and our advisor or its affiliates have determined, in good faith, that the course of conduct that caused the loss or liability was in our best interests;
- our directors and our advisor or its affiliates were acting on our behalf or performing services for us;
- in the case of affiliated directors and our advisor or its affiliates, the liability or loss was not the result of negligence or misconduct;
- in the case of our independent directors, the liability or loss was not the result of gross negligence or willful misconduct; and
- the indemnification or agreement to hold harmless is recoverable only out of our net assets and not from our stockholders.

Additionally, we have agreed to indemnify and hold harmless our advisor and its affiliates performing services for us from specific claims and liabilities arising out of the performance of their obligations under the advisory agreement, subject to the limitations set forth above. As a result, we and our stockholders may be entitled to a more limited right of action than we would otherwise have if these indemnification rights were not included in the advisory agreement.

The general effect to investors of any arrangement under which any of our controlling persons, directors or officers are insured or indemnified against liability is a potential reduction in distributions resulting from our payment of premiums associated with insurance or any indemnification for which we do not have adequate insurance.

The SEC takes the position that indemnification against liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, is against public policy and unenforceable. Indemnification of our directors and our advisor or its affiliates will not be allowed for liabilities arising from or out of a violation of state or federal securities laws, unless one or more of the following conditions are met:

- there has been a successful adjudication on the merits of each count involving alleged material securities law violations;
- such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction; or

- a court of competent jurisdiction approves a settlement of the claims against the indemnitee and finds that indemnification of the settlement and the related costs should be made and the court considering the request for indemnification has been advised of the position of the SEC and of the published position of any state securities regulatory authority in which the securities were offered as to indemnification for violations of securities laws.

We may advance funds to our directors, our advisor and its affiliates for legal expenses and other costs incurred as a result of legal action for which indemnification is being sought only if all of the following conditions are met:

- the legal proceeding relates to acts or omissions with respect to the performance of duties or services on behalf of us;
- the party seeking indemnification has provided us with written affirmation of his good faith belief that he has met the standard of conduct necessary for indemnification;
- the legal proceeding is initiated by a third party who is not a stockholder or the legal proceeding is initiated by a stockholder acting in his capacity as such and a court of competent jurisdiction specifically approves such advancement; and
- the party seeking indemnification provides us with a written agreement to repay the advanced funds to us, together with the applicable legal rate of interest thereon, in cases in which he is found not to be entitled to indemnification.

Indemnification may reduce the legal remedies available to us and our stockholders against the indemnified individuals.

The aforementioned charter provisions do not reduce the exposure of directors and officers to liability under federal or state securities laws, nor do they limit a stockholder's ability to obtain injunctive relief or other equitable remedies for a violation of a director's or an officer's duties to us or our stockholders, although the equitable remedies may not be an effective remedy in some circumstances. We have entered into indemnification agreements with each of our executive officers and directors. The indemnification agreements will require, among other things, that we indemnify our executive officers and directors and advance to the executive officers and directors all related expenses, subject to reimbursement if it is subsequently determined that indemnification is not permitted. In accordance with these agreements, we must indemnify and advance all expenses incurred by executive officers and directors seeking to enforce their rights under the indemnification agreements. We will also cover officers and directors under our directors' and officers' liability insurance.

**Item 35. *Treatment of Proceeds from Securities Being Registered.***

Not applicable.

**Item 36. *Financial Statements and Exhibits.***

(a) Financial Statements:

Prospectus Dated January 20, 2015

- 1) Report of Independent Registered Public Accounting Firm
- 2) Consolidated Balance Sheet as of December 31, 2014
- 3) Consolidated Statement of Operations for the period from July 25, 2014 (date of inception) through December 31, 2014
- 4) Consolidated Statement of Equity for the period from July 25, 2014 (date of inception) through December 31, 2014
- 5) Consolidated Statement of Cash Flows for the period from July 25, 2014 (date of inception) through December 31, 2014
- 6) Notes to Consolidated Financial Statements

Supplement No. 9 dated January 15, 2016

- 1) The unaudited financial statements of Moody National REIT II, Inc. contained in its Quarterly Report on Form 10-Q for the period ended September 30, 2015, a copy of which is filed as Exhibit B to Supplement No. 9.
- 2) The financial statements of Mueller Hospitality LP and the pro forma financial information of Moody National REIT II, Inc. contained in Moody National REIT II, Inc.'s Current Report on Form 8-K/A filed on December 30, 2015.

(b) Exhibits:

See the Exhibit Index on the page immediately preceding the exhibits for a list of exhibits filed as part of this Registration Statement on Form S-11, which Exhibit Index is incorporated herein by reference.

### Item 37. Undertakings

The registrant undertakes:

- (1) to file during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) to include any prospectuses required by Section 10(a)(3) of the Securities Act;
  - (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
  - (iii) to include any material information with respect to the plan of distribution not previously disclosed on the registration statement or any material change to such information in the registration statement;
- (2) that, for the purpose of determining any liability under the Securities Act each such post-effective amendment may be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;
- (3) each prospectus filed pursuant to Rule 424(b) as part of this registration statement shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness; provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use;
- (4) to remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering;
- (5) that all post-effective amendments will comply with the applicable forms, rules and regulations of the SEC in effect at the time such post-effective amendments are filed;
- (6) that in a primary offering of securities of the registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
  - (i) any preliminary prospectus or prospectus of the registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) any free writing prospectus relating to the offering prepared by or on behalf of the registrant or used or referred to by the registrant;
  - (iii) the portion of any other free writing prospectus relating to the offering containing material information about the registrant or its securities provided by or on behalf of the registrant; and
  - (iv) any other communication that is an offer in the offering made by the registrant to the purchaser;
- (7) to send to each stockholder, at least on an annual basis, a detailed statement of any transactions with the registrant's advisor or its affiliates, and of fees, commissions, compensations and other benefits paid or accrued to the advisor or its affiliates, for the fiscal year completed, showing the amount paid or accrued to each recipient and the services performed;
- (8) to provide to the stockholders the financial statements required by Form 10-K for the first full fiscal year of operations;
- (9) to file a sticker supplement pursuant to Rule 424(c) under the Securities Act during the distribution period describing each significant property that has not been identified in the prospectus whenever a reasonable probability exists that a property will be acquired and to consolidate all stickers into a post-effective amendment filed at least once every three months during the distribution period, with the information contained in such amendment provided simultaneously to existing stockholders. Each sticker supplement shall disclose all compensation and fees received by the advisor and its affiliates in connection with any such acquisition. The post-effective amendment shall include or incorporate by reference audited financial statements in the format described in Rule 3-14 of Regulation S-X that have been filed or are required to be filed on Form 8-K for all significant property acquisitions that have been consummated;

(10) to file, after the end of the distribution period, a current report on Form 8-K containing the financial statements and any additional information required by Rule 3-14 of Regulation S-X, as appropriate based on the type of property acquired and the type of lease to which such property will be subject, for each significant property acquired and to provide the information contained in such report to the stockholders at least once per quarter after the distribution period of the offering has ended; and

(11) insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any such action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-11 and has duly caused this amended registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Houston, State of Texas, on January 15, 2016.

### Moody National REIT II, Inc.

By: /s/ BRETT C. MOODY

Brett C. Moody

Chief Executive Officer and President

Pursuant to the requirements of the Securities Act of 1933, this amended registration statement has been signed by the following persons in the following capacities and on January 15, 2016.

<u>Signature</u>	<u>Title</u>
<u>/s/ BRETT C. MOODY</u> Brett C. Moody	Chief Executive Officer, President and Chairman of the Board (Principal Executive Officer)
<u>/s/ ROBERT W. ENGEL</u> Robert W. Engel	Treasurer, Chief Financial Officer and Secretary (Principal Financial Officer and Principal Accounting Officer)
<u>*</u> Douglas Y. Bech	Independent Director
<u>*</u> Charles L. Horn	Independent Director
<u>* By: /s/ BRETT C. MOODY</u> Brett C. Moody	Attorney-in-Fact

## EXHIBIT INDEX

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
1.1*	Amended and Restated Dealer Manager Agreement, dated January 15, 2016, by and among Moody National REIT II, Inc., Moody National Operating Partnership II, LP and Moody Securities, LLC
1.2*	Participating Dealer Agreement (included as Exhibit A to Exhibit 1.1)
3.1	Articles of Amendment and Restatement of Moody National REIT II, Inc. (incorporated by reference to Exhibit 3.1 to Pre-Effective Amendment No. 3 to the Registration Statement (defined below) filed January 12, 2015 (“Pre-Effective Amendment No.3”))
3.2	Bylaws of Moody National REIT II, Inc. (incorporated by reference to Exhibit 3.3 to the Registration Statement on Form S-11 (File No. 333-198305) filed on August 22, 2014 (the “Registration Statement”))
4.1	Form of Subscription Agreement (included in the Prospectus as Appendix B and incorporated herein by reference)
4.2	Distribution Reinvestment Plan (included in the Prospectus as Appendix C and incorporated herein by reference)
5.1	Opinion of Venable LLP as to the legality of the securities being registered (incorporated by reference to Exhibit 5.1 to Pre-Effective Amendment No. 3)
8.1	Opinion of Alston & Bird LLP regarding certain federal income tax considerations relating to Moody National REIT II, Inc. (incorporated by reference to Exhibit 8.1 to Pre-Effective Amendment No. 3)
10.1	Advisory Agreement, dated January 12, 2015, by and among Moody National REIT II, Inc., Moody National Operating Partnership II, LP and Moody National Advisor II, LLC (incorporated by reference to Exhibit 10.1 to Pre-Effective Amendment No. 3)
10.2	Limited Partnership Agreement of Moody National Operating Partnership II, LP (incorporated by reference to Exhibit 10.2 to the Registration Statement)
10.3	Escrow Agreement, dated January 12, 2015, by and among Moody National REIT II, Inc., Moody Securities, LLC and UMB Bank, N.A. (incorporated by reference to Exhibit 10.3 to Pre-Effective Amendment No. 3)
10.4	Moody National REIT II, Inc. 2015 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.4 to Pre-Effective Amendment No. 3)
10.5	Moody National REIT II, Inc. Independent Directors Compensation Plan (incorporated by reference to Exhibit 10.5 to Pre-Effective Amendment No. 3)
10.6	Assignment Agreement, dated September 25, 2015, by and between Moody National REIT I, Inc. and Moody National REIT II, Inc. (incorporated by reference to the Company’s Quarterly Report on Form 10-Q filed with the SEC on November 16, 2015)
10.7*	Agreement of Purchase and Sale, made as of May 11, 2015, by and between Mueller Hospitality, LP and Moody National REIT I, Inc.
10.8*	Assignment and Assumption of Agreement of Purchase and Sale, dated as of October 15, 2015, by and between Moody National REIT II, Inc. Moody National Lancaster-Austin Holding, LLC and Moody National Lancaster-Austin MT, LLC
10.9*	Hotel Lease Agreement, effective October 15, 2015, between Moody National Lancaster-Austin Holding, LLC and Moody National Lancaster-Austin MT, LLC
10.10*	Hotel Management Agreement, effective October 15, 2015, between Moody National Lancaster-Austin, LLC and Moody National Hospitality Management, LLC
10.11*	Relicensing Franchise Agreement, dated October 15, 2015, between Marriott International, Inc. and Moody National Lancaster-Austin MT, LLC
10.12*	Loan Agreement, dated as of October 15, 2015 between Moody National Lancaster-Austin Holdings, LLC and Keybank National Association

**Exhibit  
Number**

**Description**

10.13*	Guarantee Agreement, dated as of October 15, 2015 by and among Brett C. Moody, Moody National REIT II, Inc. and Keybank National Association
10.14*	Environmental Indemnity Agreement, dated as of October 15, 2015, by and among Moody National Lancaster-Austin Holding, LLC, Brett C. Moody, Moody National REIT II, Inc. and Keybank National Association
21*	Subsidiaries of the Company
23.1*	Consent of Frazier & Deeter, LLC
23.2.	Consent of Venable LLP (included in Exhibit 5.1)
23.3	Consent of Alston & Bird LLP (included in Exhibit 8.1)
24	Power of Attorney (incorporated by reference to the signature page of the Registration Statement)

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\* Filed herewith

## MOODY NATIONAL REIT II, INC.

AMENDED AND RESTATED DEALER MANAGER AGREEMENT  
Up to \$1,100,000,000 in Shares of Common Stock, \$0.01 par value per share

January 15, 2016

Moody Securities, LLC  
6363 Woodway Drive  
Suite 110  
Houston, Texas 77057

Ladies and Gentlemen:

This Amended and Restated Dealer Manager Agreement (the “Agreement”) by and among Moody National REIT II, Inc., a Maryland corporation (the “Company”), Moody National Operating Partnership II, L.P., a Delaware limited partnership and the Company’s operating partnership subsidiary (the “Operating Partnership”), and Moody Securities, LLC, a Delaware limited liability company (the “Dealer Manager”), shall become effective as of the day the Securities and Exchange Commission (the “Commission”) declares the Company’s Post-Effective Amendment No. 2 to the Registration Statement on Form S-11 effective.

The Company has registered for public sale (the “Offering”) a maximum of \$1,100,000,000 in shares of its common stock, \$0.01 par value per share (the “Common Stock”), of which amount: (a) up to \$1,000,000,000 in shares of Common Stock are being offered to the public pursuant to the Company’s primary offering (the “Primary Shares”); and (b) up to \$100,000,000 in shares of Common Stock are being offered to stockholders of the Company pursuant to the Company’s distribution reinvestment plan (the “DRIP Shares” and, together with the Primary Shares, the “Offered Shares”). The Primary Shares are to be issued and sold to the public on a “best efforts” basis through you (the “Dealer Manager”) as the managing dealer and the broker-dealers participating in the Offering (the “Participating Dealers”) at an initial offering price of \$25.00 per share (subject in certain circumstances to discounts based upon the volume of shares purchased and for certain categories of purchasers). The DRIP Shares are to be issued and sold to stockholders at an initial price of \$23.75 per share. The Company has reserved the right to (i) change the offering price per share in the Offering, including the price of DRIP Shares as described in the Prospectus (as defined herein), and (ii) reallocate the Offered Shares between the Primary Shares and the DRIP Shares. The Company, the Operating Partnership and the Dealer Manager previously entered into a Dealer Manager Agreement, dated January 12, 2015 (the “Original Agreement”), with respect to the Offering and desire to amend and restate the Original Agreement as set forth herein.

The Company is the sole general partner of the Operating Partnership. The Company and the Operating Partnership hereby jointly and severally agree with you, the Dealer Manager, as follows:

1. Representations and Warranties of the Company and the Operating Partnership. The Company and the Operating Partnership hereby jointly and severally represent and warrant to the Dealer Manager and each Participating Dealer with whom the Dealer Manager has entered into or will enter into a Participating Dealer Agreement (the “Participating Dealer Agreement”) substantially in the form attached as Exhibit A to this Dealer Manager Agreement (this “Agreement”), as of the date hereof and at all times during the Offering Period, as that term is defined in Section 5.1 (provided that, to the extent such representations and warranties are given only as of a specified date or dates, the Company and the Operating Partnership only make such representations and warranties as of such date or dates) as follows:

1.1 Compliance with Registration Requirements.

(a) A registration statement on Form S-11 (File No. 333-198305), including a preliminary prospectus, for the registration of the Offered Shares has been prepared by the Company in accordance with applicable requirements of the Securities Act of 1933, as amended (the “Securities Act”), and the applicable rules and regulations of the Securities and Exchange Commission (the “Commission”) promulgated thereunder (the “Securities Act Regulations”), and was initially filed with the Commission on August 22, 2014 (the “Registration Statement”). The Company has prepared and filed such amendments thereto, if any, and such amended preliminary prospectuses, if any, as may have been required to the date hereof and will file such additional amendments and supplements thereto as may hereafter be required. As used in this Agreement, the term “Registration Statement” means the Registration Statement, as amended through the Effective Date, except that, if the Company files any post-effective amendments to the Registration Statement, “Registration Statement” shall refer to the Registration Statement as so amended by the last post-effective amendment declared effective; the term “Effective Date” means the applicable date upon which the Registration Statement or any post-effective amendment thereto is or was first declared effective by the Commission; the term “Prospectus” means the prospectus, as amended or supplemented, on file with the Commission at the Effective Date of the Registration Statement (including financial statements, exhibits and all other documents related thereto filed as a part thereof or incorporated therein), except that if the Prospectus is amended or supplemented after the Effective

Date, the term “Prospectus” shall refer to the Prospectus as amended or supplemented to date, and if the Prospectus filed by the Company pursuant to Rule 424(b) or 424(c) of the Securities Act Regulations shall differ from the Prospectus on file at the time the Registration Statement or any post-effective amendment to the Registration Statement shall become effective, the term “Prospectus” shall refer to the Prospectus filed pursuant to either Rule 424(b) or 424(c) of the Securities Act Regulations from and after the date on which it shall have been filed with the Commission; and the term “Filing Date” means the applicable date upon which the initial Prospectus or any amendment or supplement thereto is filed with the Commission.

(b) The Registration Statement and the Prospectus, and any further amendments or supplements thereto, will, as of the applicable Effective Date or Filing Date, as the case may be, comply in all material respects with the Securities Act and the Securities Act Regulations; the Registration Statement does not, and any amendments thereto will not, in each case as of the applicable Effective Date, contain an untrue statement of material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; and the Prospectus does not, and any amendment or supplement thereto will not, as of the applicable Filing Date, contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Company and the Operating Partnership make no warranty or representation with respect to any statement contained in the Registration Statement or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information furnished in writing to the Company by the Dealer Manager or any Participating Dealer expressly for use in the Registration Statement or the Prospectus, or any amendments or supplements thereto.

#### 1.2 Good Standing of the Company and the Operating Partnership.

(a) The Company is a corporation duly organized and validly existing under the laws of the State of Maryland, and is in good standing with the State Department of Assessments and Taxation of Maryland, with full power and authority to conduct its business as described in the Registration Statement and the Prospectus and to enter into this Agreement and to perform the transactions contemplated hereby; this Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally, and by general equitable principles, and except to the extent that the enforceability of the indemnity provisions and the contribution provisions contained in Sections 7 and 8 of this Agreement, respectively, may be limited under applicable securities laws.

(b) The Operating Partnership is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to conduct its business as described in the Registration Statement and the Prospectus and to enter into this Agreement and to perform the transactions contemplated hereby; as of the date hereof the Company is the sole general partner of the Operating Partnership; this Agreement has been duly authorized, executed and delivered by the Operating Partnership and is a legal, valid and binding agreement of the Operating Partnership enforceable against the Operating Partnership in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally, and by general equitable principles, and except to the extent that the enforceability of the indemnity provisions and the contribution provisions contained in Sections 7 and 8 of this Agreement, respectively, may be limited under applicable securities laws.

(c) Each of the Company and the Operating Partnership has qualified to do business and is in good standing in every jurisdiction in which the ownership or leasing of its properties or the nature or conduct of its business, as described in the Prospectus, requires such qualification, except where the failure to do so would not have a material adverse effect on the condition, financial or otherwise, results of operations or cash flows of the Company and the Operating Partnership taken as a whole (a “Material Adverse Effect”).

1.3 Authorization and Description of Securities. The issuance and sale of the Offered Shares have been duly authorized by the Company, and, when issued and duly delivered against payment therefor as contemplated by this Agreement, will be validly issued, fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or other claim, and the issuance and sale of the Offered Shares by the Company are not subject to preemptive or other similar rights arising by operation of law, under the charter or bylaws of the Company or under any agreement to which the Company is a party or otherwise. The Offered Shares conform in all material respects to the description of the Common Stock contained in the Registration Statement and the Prospectus. The authorized, issued and outstanding shares of Common Stock as of the Effective Date are as set forth in the Prospectus under the caption “Description of Capital Stock.” All offers and sales of the Common Stock prior to the date hereof were at all relevant times duly registered under the Securities Act or were exempt from the registration requirements of the Securities Act and were duly registered or the subject of an available exemption from the registration requirements of the applicable state securities or blue sky laws. As of the date hereof, the Operating Partnership has not issued any security or other equity interest other than units of partnership interest (“Units”) as set forth in the Prospectus, and none of such outstanding Units has been issued in violation of any preemptive right, and all of such Units have been issued by the Operating Partnership in compliance with applicable federal and state securities laws.

#### 1.4 Absence of Defaults and Conflicts.

(a) The Company is not in violation of its charter or its bylaws and the execution and delivery of this Agreement, the issuance, sale and delivery of the Offered Shares, the consummation of the transactions herein contemplated and compliance with the terms of this Agreement by the Company will not violate the terms of or constitute a breach or default under: (i) its charter or bylaws; (ii) any indenture, mortgage, deed of trust, lease, or other material agreement to which the Company is a party or to which its properties are bound; (iii) any law, rule or regulation applicable to the Company; or (iv) any writ, injunction or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Company except, in the cases of clauses (ii), (iii) and (iv), for such violations or defaults that, individually or in the aggregate, would not result in a Material Adverse Effect.

(b) The Operating Partnership is not in violation of its certificate of limited partnership or its limited partnership agreement and the execution and delivery of this Agreement, the consummation of the transactions herein contemplated and compliance with the terms of this Agreement by the Operating Partnership will not violate the terms of or constitute a breach or default under: (i) its certificate of limited partnership; (ii) its limited partnership agreement; (iii) any indenture, mortgage, deed of trust, lease or other material agreement to which the Operating Partnership is a party or to which its properties are bound; (iv) any law, rule or regulation applicable to the Operating Partnership; or (v) any writ, injunction or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Operating Partnership except, in the cases of clauses (ii), (iii), (iv) and (v), for such violations or defaults that, individually or in the aggregate, would not result in a Material Adverse Effect.

1.5 REIT Compliance. The Company is organized in a manner that conforms with the requirements for qualification and taxation as a real estate investment trust (“REIT”) under the Internal Revenue Code of 1986, as amended (the “Code”), and the Company’s intended method of operation, as set forth in the Prospectus, would enable it to meet the requirements for qualification and taxation as a REIT under the Code. The Company intends to make a timely election to be subject to taxation as a REIT pursuant to Sections 856 through 860 of the Code commencing with the taxable year ending December 31, 2015. The Operating Partnership will be treated as a partnership for federal income tax purposes and not as a corporation or association taxable as a corporation.

1.6 No Operation as an Investment Company. The Company is not and does not currently intend to conduct its business so as to be, an “investment company” as that term is defined in the Investment Company Act of 1940, as amended (the “1940 Act”), and the rules and regulations thereunder, and it will exercise reasonable diligence to ensure that it does not become an “investment company” within the meaning of the 1940 Act.

1.7 Absence of Further Requirements. As of the date hereof, no filing with, or consent, approval, authorization, license, registration, qualification, order or decree of any court, governmental authority or agency is required for the performance by the Company or the Operating Partnership of their respective obligations under this Agreement or in connection with the issuance and sale by the Company of the Offered Shares, except such as may be required under the Securities Act, the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) or applicable state securities laws or where the failure to obtain such consent, approval, authorization, license, registration, qualification, order or decree of any court, governmental authority or agency would not have a Material Adverse Effect.

1.8 Absence of Proceedings. As of the date hereof, there are no actions, suits or proceedings pending or, to the knowledge of the Company or the Operating Partnership, threatened against either the Company or the Operating Partnership at law or in equity or before or by any federal or state commission, regulatory body or administrative agency or other governmental body, domestic or foreign, which would have a Material Adverse Effect.

1.9 Financial Statements. The financial statements of the Company included in the Registration Statement and the Prospectus, together with the related notes, present fairly the financial position of the Company, as of the date specified, in conformity with generally accepted accounting principles applied on a consistent basis and in conformity with Regulation S-X of the Commission. No other financial statements or schedules are required by Form S-11 or under the Securities Act Regulations to be included in the Registration Statement, the Prospectus or any preliminary prospectus.

1.10 Independent Accountants. Frazier & Deeter, LLC, or such other independent accounting firm that has audited and is reporting upon any financial statements included or to be included in the Registration Statement or the Prospectus or any amendments or supplements thereto, shall be as of the applicable Effective Date or Filing Date, and shall have been during the periods covered by their report included in the Registration Statement or the Prospectus or any amendments or supplements thereto, independent public accountants with respect to the Company within the meaning of the Securities Act and the Securities Act Regulations.

1.11 No Material Adverse Change in Business. Since the respective dates as of which information is provided in the Registration Statement and the Prospectus or any amendments or supplements thereto, except as otherwise stated therein, there has been no material adverse change in the condition, financial or otherwise, or in the earnings or business affairs of the Company or the Operating Partnership, whether or not arising in the ordinary course of business.

1.12 Material Agreements. There are no contracts or other documents required by the Securities Act or the Securities Act Regulations to be described in or incorporated by reference into the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement which have not been accurately described in all material respects in the Prospectus or incorporated or filed as required. Each document incorporated by reference into the Registration Statement or the Prospectus complied, as of the date filed, in all material respects with the requirements as to form of the Exchange Act, and the rules and regulations promulgated thereunder (the “Exchange Act Regulations”).

1.13 Reporting and Accounting Controls. Each of the Company and the Operating Partnership has implemented controls and other procedures that are designed to ensure that information required to be disclosed by the Company in supplements to the Prospectus and amendments to the Registration Statement under the Securities Act and the Securities Act Regulations, the reports that it files or submits under the Exchange Act and the Exchange Act Regulations and the reports and filings that it is required to make under the applicable state securities laws in connection with the Offering are recorded, processed, summarized and reported, within the time periods specified in the applicable rules and forms and is accumulated and communicated to the Company’s management, including its chief executive officer and chief financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure; and the Company makes and keeps books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company and the Operating Partnership. The Company and the Operating Partnership maintain a system of internal accounting controls sufficient to provide reasonable assurances that (a) transactions are executed in accordance with management’s general or specific authorization; (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (c) access to assets is permitted only in accordance with management’s general or specific authorization; and (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. To the Company’s knowledge, neither the Company nor the Operating Partnership, nor any employee or agent thereof, has made any payment of funds of the Company or the Operating Partnership, as the case may be, or received or retained any funds, and no funds of the Company, or the Operating Partnership, as the case may be, have been set aside to be used for any payment, in each case in material violation of any law, rule or regulation applicable to the Company or the Operating Partnership.

1.14 Material Relationships. No relationship, direct or indirect, exists between or among the Company on the one hand, and the directors, officers, security holders of the Company, the Operating Partnership, or their respective affiliates, on the other hand, which is required to be described in the Prospectus and which is not so described.

1.15 Possession of Licenses and Permits. The Company possesses adequate permits, licenses, approvals, consents and other authorizations (collectively, “Governmental Licenses”) issued by the appropriate federal, state, local and foreign regulatory agencies or bodies necessary to conduct the business now operated by it, except where the failure to obtain such Governmental Licenses, singly or in the aggregate, would not have a Material Adverse Effect; the Company is in compliance with the terms and condition of all such Governmental Licenses, except where the failure to so comply would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity of such Governmental Licenses to be in full force and effect would not have a Material Adverse Effect; and, as of the date hereof, the Company has not received any notice of proceedings relating to the revocation or modification of any such Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

1.16 Subsidiaries. Each “significant subsidiary” of the Company (as such term is defined in Rule 1-02 of Regulation S-X) and each other entity in which the Company holds a direct or indirect ownership interest that is material to the Company (each a “Subsidiary” and, collectively, the “Subsidiaries”) has been duly organized or formed and is validly existing as a corporation, partnership, limited liability company or similar entity in good standing under the laws of the jurisdiction of its incorporation or organization, has power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. The only direct Subsidiaries of the Company as of the date of the Registration Statement or the most recent amendment to the Registration Statement, as applicable, are the Subsidiaries described or identified in the Registration Statement or such amendment to the Registration Statement.

1.17 Possession of Intellectual Property. The Company and the Operating Partnership own or possess, have the right to use or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or other intellectual property (collectively, “Intellectual Property”) necessary to carry on the business now operated by the Company and the Operating Partnership, respectively, except where the failure to have such ownership or possession would not, singly or in the aggregate, have a Material Adverse Effect. Neither the Company nor the Operating Partnership has received any notice or is not otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company and/or the Operating Partnership therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in a Material Adverse Effect.

1.18 Advertising and Sales Materials. All advertising and supplemental sales literature prepared or approved by the Company or Moody National Advisor II, LLC, a Delaware limited liability company that serves as the Company's advisor pursuant to the terms of an advisory agreement (the "Advisor"), whether designated solely for "broker-dealer use only" or otherwise, to be used or delivered by the Company, the Advisor or the Dealer Manager in connection with the Offering (the "Authorized Sales Materials") will not contain any untrue statement of material fact or omit to state a material fact required to be stated therein, in the light of the circumstances under which they were made and in conjunction with the Prospectus delivered therewith, not misleading. Furthermore, all such Authorized Sales Materials will have received all required regulatory approval, which may include, but is not limited to, the Commission and state securities agencies, as applicable, prior to use, except where the failure to obtain such approval would not result in a Material Adverse Effect.

1.19 Compliance with Privacy Laws and the USA PATRIOT Act. The Company complies in all material respects with applicable privacy provisions of the Gramm-Leach-Bliley Act of 1999 (the "GLB Act") and applicable provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, as amended (the "USA PATRIOT Act").

1.20 Good and Marketable Title to Assets. Except as otherwise disclosed in the Prospectus:

(a) the Company and its Subsidiaries have good and insurable or good, valid and insurable title (either in fee simple or pursuant to a valid leasehold interest) to all properties and assets described in the Prospectus as being owned or leased, as the case may be, by them and to all properties reflected in the Company's most recent consolidated financial statements included in the Prospectus, and neither the Company nor any of its Subsidiaries has received notice of any claim that has been or may be asserted by anyone adverse to the rights of the Company or any Subsidiary with respect to any such properties or assets (or any such lease) or affecting or questioning the rights of the Company or any such Subsidiary to the continued ownership, lease, possession or occupancy of such property or assets, except for such claims that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(b) there are no liens, charges, encumbrances, claims or restrictions on or affecting the properties and assets of the Company or any of its Subsidiaries which would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect;

(c) no person or entity, including, without limitation, any tenant under any of the leases pursuant to which the Company or any of its Subsidiaries leases (as a lessor) any of its properties (whether directly or indirectly through other partnerships, limited liability companies, business trusts, joint ventures or otherwise) has an option or right of first refusal or any other right to purchase any of such properties, except for such options, rights of first refusal or other rights to purchase which, individually or in the aggregate, are not material with respect to the Company and its Subsidiaries considered as one enterprise;

(d) to the Company's knowledge, each of the properties of the Company or any of its Subsidiaries has access to public rights of way, either directly or through insured easements, except where the failure to have such access would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(e) to the Company's knowledge, each of the properties of the Company or any of its Subsidiaries is served by all public utilities necessary for the current operations on such property in sufficient quantities for such operations, except where failure to have such public utilities could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(f) to the knowledge of the Company, each of the properties of the Company or any of its Subsidiaries complies with all applicable codes and zoning and subdivision laws and regulations, except for such failures to comply which could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(g) all of the leases under which the Company or any of its Subsidiaries hold or use any real property or improvements or any equipment relating to such real property or improvements are in full force and effect, except where the failure to be in full force and effect could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and neither the Company nor any of its Subsidiaries is in default in the payment of any amounts due under any such leases or in any other default thereunder and the Company knows of no event which, with the passage of time or the giving of notice or both, could constitute a default under any such lease, except such defaults that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(h) to the knowledge of the Company, there is no pending or threatened condemnation, zoning change or other proceeding or action that could in any manner affect the size of, use of, improvements on, construction on or access to the properties of the Company or any of its Subsidiaries, except such proceedings or actions that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(i) neither the Company nor any of its Subsidiaries nor any lessee of any of the real property improvements of the Company or any of its Subsidiaries is in default in the payment of any amounts due or in any other default under any of the leases pursuant to which the Company or any of its Subsidiaries leases (as lessor) any of its real property or improvements (whether directly or indirectly through partnerships, limited liability companies, joint ventures or otherwise), and the Company knows of no event which, with the passage of time or the giving of notice or both, would constitute such a default under any of such leases, except such defaults as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

1.21 Registration Rights. There are no persons with registration or other similar rights to have any securities of the Company or the Operating Partnership registered pursuant to the Registration Statement or otherwise registered by the Company under the Securities Act, or included in the Offering contemplated hereby.

1.22 Taxes. The Company and the Operating Partnership have filed all federal, state and foreign income tax returns which have been required to be filed on or before the due date (taking into account all extensions of time to file), and has paid or provided for the payment of all taxes indicated by said returns and all assessments received by the Company and each of its Subsidiaries to the extent that such taxes or assessments have become due, except where the Company is contesting such assessments in good faith and except for such taxes and assessments the failure of which to pay would not reasonably be expected to have a Material Adverse Effect.

1.23 Authorized Use of Trademarks. Any required consent and authorization has been obtained for the use of any trademark or service mark in any advertising and supplemental sales literature or other materials delivered by the Company to the Dealer Manager or approved by the Company for use by the Dealer Manager and, to the Company's knowledge, its use does not constitute the unlicensed use of intellectual property.

2. Covenants of the Company and the Operating Partnership. The Company and the Operating Partnership hereby jointly and severally covenant and agree with the Dealer Manager that:

2.1 Compliance with Securities Laws and Regulations. The Company will: (a) use commercially reasonable efforts to cause the Registration Statement and any subsequent amendments thereto to become effective as promptly as possible; (b) promptly advise the Dealer Manager of (i) the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (ii) the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to the Prospectus and (iii) the time and date that any post-effective amendment to the Registration Statement becomes effective; (c) timely file every amendment or supplement to the Registration Statement or the Prospectus that may be required by the Commission or under the Securities Act; and (d) if at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, the Company will promptly notify the Dealer Manager and, to the extent the Company determines such action is in the best interest of the Company, use its commercially reasonable efforts to obtain the lifting of such order at the earliest possible time.

2.2 Delivery of Registration Statement, Prospectus and Sales Materials. The Company will, at no expense to the Dealer Manager, furnish the Dealer Manager with such number of printed copies of the Registration Statement, including all amendments and exhibits thereto, as the Dealer Manager may reasonably request. The Company will similarly furnish to the Dealer Manager and others designated by the Dealer Manager as many copies as the Dealer Manager may reasonably request in connection with the Offering of: (a) the Prospectus in preliminary and final form and every form of supplemental or amended Prospectus; and (b) the Authorized Sales Materials.

2.3 Blue Sky Qualifications. The Company will use its commercially reasonable efforts to qualify the Offered Shares for offering and sale under, or to establish the exemption of the offering and sale of the Offered Shares from qualification or registration under, the applicable state securities or "blue sky" laws of each of the 50 states and the District of Columbia (such jurisdictions in which qualifications or exemptions for the offer and sale of the Offered Shares are in effect as of a relevant date are referred to herein as the "Qualified Jurisdictions") and to maintain such qualifications or exemptions in effect throughout the Offering. In connection therewith, the Company will prepare and file all such post-sales filings or reports as may be required by the securities regulatory authorities in the Qualified Jurisdictions in which the Offered Shares have been sold, provided that the Dealer Manager shall have provided the Company with any information required for such filings or reports that is in the Dealer Manager's possession. The Company will furnish to the Dealer Manager a blue sky memorandum, prepared and updated from time to time by counsel to the Company, naming the Qualified Jurisdictions. The Company will notify the Dealer Manager promptly following a change in the status of the qualification or exemption of the Offered Shares in any jurisdiction in any respect. The Company will file and obtain clearance of the Authorized Sales Material to the extent required by applicable Securities Act Regulations and state securities laws.

2.4 Rule 158. The Company will timely file such reports pursuant to the Exchange Act as are necessary in order to make generally available to its stockholders as soon as practicable an earnings statement for the purposes of, and to provide the benefits contemplated by, the last paragraph of Section 11(a) of the Securities Act.

2.5 Material Disclosures. If at any time when a Prospectus is required to be delivered under the Securities Act any event occurs as a result of which, in the opinion of the Company, the Prospectus would include an untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, the Company will promptly notify the Dealer Manager thereof (unless the information shall have been received from the Dealer Manager) and the Dealer Manager and the Participating Dealers shall suspend the offering and sale of the Offered Shares in accordance with Section 4.13 hereof until such time as the Company, in its sole discretion (a) instructs the Dealer Manager to resume the offering and sale of the Offered Shares and (b) has prepared any required supplemental or amended Prospectus as shall be necessary to correct such statement or omission and to comply with the requirements of the Securities Act.

2.6 Reporting Requests. The Company will comply with the requirements of the Exchange Act relating to the Company's obligation to file and, as applicable, deliver to its stockholders periodic reports including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K.

2.7 No Manipulation of Market for Securities. The Company will not take, directly or indirectly, any action designed to cause or to result in, or that might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Shares in violation of federal or state securities laws.

2.8 Use of Proceeds. The Company will apply the proceeds from the sale of the Offered Shares as stated in the Prospectus in all material respects.

2.9 Transfer Agent. The Company will engage and maintain, at its expense, a registrar and transfer agent for the Offered Shares.

### 3. Payment of Expenses and Fees.

3.1 Company Expenses. Subject to the limitations described below, the Company agrees to pay all costs and expenses incident to the Offering, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, including expenses, fees and taxes in connection with: (a) the registration fee, the preparation and filing of the Registration Statement (including without limitation financial statements, exhibits, schedules and consents), the Prospectus, and any amendments or supplements thereto, and the printing and furnishing of copies of each thereof to the Dealer Manager and to Participating Dealers (including costs of mailing and shipment); (b) the preparation, issuance and delivery of certificates, if any, for the Offered Shares, including any stock or other transfer taxes or duties payable upon the sale of the Offered Shares; (c) all fees and expenses of the Company's legal counsel, independent public or certified public accountants and other advisors; (d) the qualification of the Offered Shares for offering and sale under state laws in the states, including the Qualified Jurisdictions, that the Company shall designate as appropriate and the determination of their eligibility-for sale under state law as aforesaid and the printing and furnishing of copies of blue sky surveys; (e) filing for review by FINRA of all necessary documents and information relating to the Offering and the Offered Shares (including the reasonable legal fees and filing fees and other disbursements of counsel relating thereto); (f) the fees and expenses of any transfer agent or registrar for the Offered Shares and miscellaneous expenses referred to in the Registration Statement; (g) all costs and expenses incident to the travel and accommodation of the Advisor's personnel, and the personnel of any sub-advisor designated by the Advisor and acting on behalf of the Company, in making road show presentations and presentations to Participating Dealers and other broker-dealers and financial advisors with respect to the offering of the Offered Shares; and (h) the performance of the Company's other obligations hereunder. Notwithstanding the foregoing, the Company shall not directly pay, or reimburse the Advisor for, the costs and expenses described in this Section 3.1 if the payment or reimbursement of such expenses would cause the aggregate of the Company's "organization and offering expenses" as defined by FINRA Rule 2310 (including the Company expenses paid or reimbursed pursuant to this Section 3.1, all items of underwriting compensation including Dealer Manager expenses described in Section 3.2 and *bona fide* due diligence expenses described in Section 3.3) to exceed 15.0% of the gross proceeds from the sale of the Primary Shares.

3.2 Dealer Manager Expenses. In addition to payment of the Company expenses, the Company shall reimburse the Dealer Manager as provided in the Prospectus for certain costs and expenses incident to the Offering, to the extent permitted pursuant to prevailing rules and regulations of FINRA, including expenses, fees and taxes incurred in connection with: (a) legal counsel to the Dealer Manager, including fees and expenses incurred prior to the Effective Date; (b) customary travel, lodging, meals and reasonable entertainment expenses incurred in connection with the Offering; (c) attendance at broker-dealer sponsored conferences, educational conferences sponsored by the Company, industry sponsored conferences and informational seminars; and (d) customary promotional items; *provided, however*, that, no costs and expenses shall be reimbursed by the Company pursuant to this Section 3.2 that would cause the total underwriting compensation paid in connection with the Offering to exceed 10.0% of the gross proceeds from the sale of the Primary Shares, excluding reimbursement of *bona fide* due diligence expenses as provided under Section 3.3.

3.3 Due Diligence Expenses. In addition to reimbursement as provided under Section 3.2, the Company shall also reimburse the Dealer Manager for reasonable *bona fide* due diligence expenses incurred by the Dealer Manager or any Participating Dealer; *provided, however*, that no due diligence expenses shall be reimbursed by the Company pursuant to this Section 3.3 that would cause the aggregate of all Company expenses described in Section 3.1, all underwriting compensation paid to the Dealer Manager and any Participating Dealer and the due diligence expenses paid pursuant to this Section 3.3 to exceed 15.0% of the gross proceeds from the sale of the Primary Shares. Such due diligence expenses may include travel, lodging, meals and other reasonable out-of-pocket expenses incurred by the Dealer Manager or any Participating Dealer and their personnel when visiting the Company's offices or properties to verify information relating to the Company or its properties. The Dealer Manager or any Participating Dealer shall provide a detailed and itemized invoice to the Company for any such due diligence expenses.

4. Representations, Warranties and Covenants of Dealer Manager. The Dealer Manager hereby represents and warrants to, and covenants and agrees with the Company and the Operating Partnership as of the date hereof and at all times during the Offering Period as that term is defined in Section 5.1 (provided that, to the extent representations and warranties are given only as of a specified date or dates, the Dealer Manager only makes such representations and warranties as of such date or dates) as follows:

4.1 Good Standing of the Dealer Manager. The Dealer Manager is a limited liability company duly organized and validly existing under the laws of the State of Delaware, with full power and authority to conduct its business and to enter into this Agreement and to perform the transactions contemplated hereby; this Agreement has been duly authorized, executed and delivered by the Dealer Manager and is a legal, valid and binding agreement of the Dealer Manager enforceable against the Dealer Manager in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, and by general equitable principles, and except to the extent that the enforceability of the indemnity provisions and the contribution provisions contained in Sections 7 and 8 of this Agreement, respectively, may be limited under applicable securities laws.

4.2 Compliance with Applicable Laws, Rules and Regulations. The Dealer Manager represents to the Company that (a) it is a member of FINRA in good standing, and (b) it and its employees and representatives who will perform services hereunder have all required licenses and registrations to act under this Agreement. With respect to its participation and the participation by each Participating Dealer in the offer and sale of the Offered Shares (including, without limitation, any resales and transfers of Offered Shares), the Dealer Manager agrees, and, by virtue of entering into the Participating Dealer Agreement, each Participating Dealer shall have agreed, to comply with any applicable requirements of the Securities Act and the Exchange Act, applicable state securities or blue sky laws, and, specifically including, but not in any way limited to, NASD Conduct Rules 2340 and 2420, and FINRA Conduct Rules 2310, 5130 and 5141.

4.3 AML Compliance. The Dealer Manager represents to the Company that it has established and implemented anti-money laundering compliance programs in accordance with applicable law, including applicable FINRA Conduct Rules, Exchange Act Regulations and the USA PATRIOT Act, specifically including, but not limited to, Section 352 of the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (the "Money Laundering Abatement Act," and together with the USA PATRIOT Act, the "AML Rules") reasonably expected to detect and cause the reporting of suspicious transactions in connection with the offering and sale of the Offered Shares. The Dealer Manager further represents that it is currently in compliance with all AML Rules, specifically including, but not limited to, the Customer Identification Program requirements under Section 326 of the Money Laundering Abatement Act, and the Dealer Manager hereby covenants to remain in compliance with such requirements and shall, upon request by the Company, provide a certification to the Company that, as of the date of such certification (a) its AML Program is consistent with the AML Rules and (b) it is currently in compliance with all AML Rules, specifically including, but not limited to, the Customer Identification Program requirements under Section 326 of the Money Laundering Abatement Act.

4.4 Accuracy of Information. The Dealer Manager represents and warrants to the Company, the Operating Partnership and each person that signs the Registration Statement that the information under the caption "Plan of Distribution" in the Prospectus and all other information furnished to the Company by the Dealer Manager in writing expressly for use in the Registration Statement, any preliminary prospectus, the Prospectus, or any amendment or supplement thereto, does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

4.5 Suitability.

(a) The Dealer Manager will offer Primary Shares, and in its agreement with each Participating Dealer will require that Participating Dealers offer Primary Shares, only to persons who meet the suitability standards set forth in the Prospectus or in any suitability letter or memorandum sent to it by the Company and will only make offers to persons in the jurisdictions in which it is advised in writing by the Company that the Primary Shares are qualified for sale or that such qualification is not required. Notwithstanding the qualification of the Primary Shares for sale in any respective jurisdiction (or the exemption therefrom), the Dealer Manager represents, warrants and covenants that it will not offer Primary Shares and will not permit any of its registered representatives to offer Primary Shares in any jurisdiction unless both the Dealer Manager and such registered representative are duly licensed to transact securities business in such jurisdiction. In offering Primary Shares, the Dealer Manager will comply with the provisions of the FINRA Conduct Rules, as well as all other applicable rules and regulations relating to suitability of investors, including without limitation, the provisions of Section III.C. of the Statement of Policy Regarding Real Estate Investment Trusts of the North American Securities Administrators Association, Inc. (the "NASAA REIT Guidelines").

(b) The Dealer Manager further represents, warrants and covenants that neither the Dealer Manager, nor any person associated with the Dealer Manager, shall offer or sell Primary Shares in any jurisdiction except to investors who satisfy the investor suitability standards and minimum investment requirements under all of the following: (i) applicable provisions of the Prospectus; (ii) applicable laws of the jurisdiction of which such investor is a resident; (iii) applicable FINRA Conduct Rules; and (iv) the provisions of Section III.C. of the NASAA REIT Guidelines. The Dealer Manager agrees to ensure that, in recommending the purchase, sale or exchange of Primary Shares to an investor, the Dealer Manager, or a person associated with the Dealer Manager, shall have reasonable grounds to believe, on the basis of information obtained from the investor (and thereafter maintained in the manner and for the period required by the Commission, any state securities commission, FINRA or the Company) concerning the investor's age, investment objectives, other investments, financial situation and needs, and any other information known to the Dealer Manager, or person associated with the Dealer Manager, that (i) the investor is or will be in a financial position appropriate to enable the investor to realize to a significant extent the benefits described in the Prospectus, including the tax benefits to the extent they are a significant aspect of the Company, (ii) the investor has a net worth sufficient to sustain the risks inherent in an investment in Primary Shares in the amount proposed, including loss and potential lack of liquidity of such investment and (iii) an investment in Primary Shares is otherwise suitable

for such investor. The Dealer Manager further represents, warrants and covenants that the Dealer Manager, or a person associated with the Dealer Manager, will make every reasonable effort to determine the suitability and appropriateness of an investment in Primary Shares of each proposed investor solicited by a person associated with the Dealer Manager by reviewing documents and records disclosing the basis upon which the determination as to suitability was reached as to each such proposed investor, whether such documents and records relate to accounts which have been closed, accounts which are currently maintained, or accounts hereafter established. The Dealer Manager agrees to retain such documents and records in the Dealer Manager's records for a period of six years from the date of the applicable sale of Primary Shares, to otherwise comply with the record keeping requirements provided in Section 4.6 below and to make such documents and records available to (i) the Company upon request, and (ii) representatives of the Commission, FINRA and applicable state securities administrators upon the Dealer Manager's receipt of an appropriate document subpoena or other appropriate request for documents from any such agency. The Dealer Manager shall not purchase any Primary Shares for a discretionary account without obtaining the prior written approval of the Dealer Manager's customer and such customer's completed and executed Subscription Agreement (as defined in Section 6 herein).

4.6 Recordkeeping. The Dealer Manager agrees to comply with the record keeping requirements of the Exchange Act, including, but not limited to, Rules 17a-3 and 17a-4 promulgated under the Exchange Act. The Dealer Manager further agrees to keep such records with respect to each customer who purchases Primary Shares, the customer's suitability and the amount of Primary Shares sold, and to retain such records for such period of time as may be required by the Commission, any state securities commission, FINRA or the Company.

4.7 Customer Information. The Dealer Manager shall:

(a) abide by and comply with (i) the privacy standards and requirements of the GLB Act; (ii) the privacy standards and requirements of any other applicable federal or state law; and (iii) its own internal privacy policies and procedures, each as may be amended from time to time;

(b) refrain from the use or disclosure of nonpublic personal information (as defined under the GLB Act) of all customers who have opted out of such disclosures except as necessary to service the customers or as otherwise necessary or required by applicable law; and

(c) determine which customers have opted out of the disclosure of nonpublic personal information by periodically reviewing and, if necessary, retrieving an aggregated list of such customers from the Participating Dealers (the "List") to identify customers that have exercised their opt-out rights. In the event either party uses or discloses nonpublic personal information of any customer for purposes other than servicing the customer, or as otherwise required by applicable law, that party will consult the List to determine whether the affected customer has exercised his or her opt-out rights. Each party understands that it is prohibited from using or disclosing any nonpublic personal information of any customer that is identified on the List as having opted out of such disclosures.

4.8 Resale of Offered Shares. The Dealer Manager agrees, and each Participating Dealer shall have agreed, to comply and shall comply with any applicable requirements with respect to its and each Participating Dealer's participation in any resales or transfers of the Offered Shares. In addition, the Dealer Manager agrees, and each Participating Dealer shall have agreed, that should it or they assist with the resale or transfer of the Offered Shares, it and each Participating Dealer will fully comply with all applicable FINRA rules and any other applicable federal or state laws.

4.9 Blue Sky Compliance. The Dealer Manager shall cause the Primary Shares to be offered and sold only in the Qualified Jurisdictions. No Primary Shares shall be offered or sold for the account of the Company in any other states or foreign jurisdictions.

4.10 Distribution of Prospectuses. The Dealer Manager is familiar with Rule 15c2-8 under the Exchange Act, relating to the distribution of preliminary and final Prospectuses, and confirms that it has complied and will comply therewith.

4.11 Authorized Sales Materials. The Dealer Manager shall use and distribute in conjunction with the offer and sale of any Offered Shares only the Prospectus and the Authorized Sales Materials.

4.12 Materials for Broker-Dealer Use Only. The Dealer Manager will not use any sales literature unless authorized and approved by the Company or use any "broker-dealer use only" materials with members of the public in connection with offers or sales of the Offered Shares.

4.13 Suspension or Termination of Offering. The Dealer Manager agrees, and will require that each of the Participating Dealers agree, to suspend or terminate the offering and sale of the Primary Shares upon request of the Company at any time and to resume offering and sale of the Primary Shares upon subsequent request of the Company.

## 5. Sale of Primary Shares.

5.1 Exclusive Appointment of Dealer Manager. The Company hereby appoints the Dealer Manager as its exclusive agent and managing dealer during the period commencing with the date hereof and ending on the termination date of the Offering (the "Termination Date") described in the Prospectus (the "Offering Period") to solicit, and to cause Participating Dealers to solicit, purchasers of the Primary Shares at the purchase price to be paid in accordance with, and otherwise upon the other terms and conditions

set forth in, the Prospectus, and the Dealer Manager agrees to use its best efforts to procure purchasers of the Primary Shares during the Offering Period. The Primary Shares offered and sold through the Dealer Manager under this Dealer Manager Agreement shall be offered and sold only by the Dealer Manager and, at the Dealer Manager's sole option, by any Participating Dealers whom the Dealer Manager may retain, each of which shall be members of FINRA in good standing, pursuant to an executed Participating Dealer Agreement with such Participating Dealer. The Dealer Manager hereby accepts such agency and agrees to use its best efforts to sell the Primary Shares on said terms and conditions.

## 5.2 Compensation.

(a) Selling Commissions. Subject to volume discounts and other special circumstances described in or otherwise provided in the "Plan of Distribution" section of the Prospectus or this Section 5.2, the Company will pay to the Dealer Manager selling commissions in the amount of 7.0% of the gross proceeds of the Primary Shares sold, all or a portion of which may be reallocated to the Participating Dealer who sold the Offered Shares giving rise to such commissions, as described more fully in the Participating Dealer Agreement entered into with such Participating Dealer; *provided, however*, that no commissions described in this clause (a) shall be payable in respect of the purchase of Primary Shares sold: (i) through an investment advisory representative affiliated with a Participating Dealer who is paid on a fee-for-service basis by the investor related to the investment in the Company; (ii) by a Participating Dealer (or such Participating Dealer's registered representative), in its individual capacity, or by a retirement plan of such Participating Dealer (or such Participating Dealer's registered representative); or (iii) by an officer, director or employee of the Company, the Advisor or their respective affiliates. A Participating Dealer may elect to be paid the selling commission at the time of sale, over time (a trailing commission), or a combination of both as agreed between the Dealer Manager and the Participating Dealer. The Dealer Manager, resulting from an election by a Participating Dealer, will receive the selling commission that corresponds to the payment schedules agreed to with a Participating Dealer. In no event will selling commission paid exceed 7.0%. The Company will have no obligation to pay the trailing selling commission if the applicable Primary Shares are no longer outstanding or total underwriting compensation would exceed 10.0% of gross offering proceeds from the sale of Primary Shares. The Company will not pay to the Dealer Manager any selling commissions in respect of the purchase of any DRIP Shares.

(b) Dealer Manager Fee. The Company will pay to the Dealer Manager a dealer manager fee in the amount of 3.0% of the gross proceeds from the sale of the Primary Shares (the "Dealer Manager Fee"), a portion of which may be reallocated to Participating Dealers (as described more fully in the Participating Dealer Agreement entered into with such Participating Dealer), which reallocation, if any, shall be determined by the Dealer Manager in its discretion based on factors including, but not limited to, the number of shares sold by such Participating Dealer and the assistance of such Participating Dealer in marketing the Offering.

(c) Friends and Family Program; Volume Discounts. As described in the "Plan of Distribution" section of the Prospectus, the Dealer Manager, subject to any share ownership restrictions set forth in the Company's charter, agrees to sell Primary Shares to certain affiliated persons and, if approved by the Company's Board of Directors, joint venture partners, consultants and other service providers, identified by the Company at a discount to the purchase price per share to the public for the Primary Shares as of the date of purchase, reflecting reduced or waived selling commissions and Dealer Manager Fees. In addition, for certain sales of over \$500,000 or more to "qualifying purchasers" (as defined in the Prospectus), the Dealer Manager agrees to sell Primary Shares at a discount to the purchase price per share to the public for the Primary Shares as of the date of purchase, reflecting reduced or waived selling commissions. The net proceeds received by the Company shall not be affected by any reduced or eliminated commissions or fees or volume discounts. The Dealer Manager agrees to work together with the Company to execute such sales according to the procedures agreed upon by the Dealer Manager and the Company.

5.3 Obligations to Participating Dealers. The Company will not be liable or responsible to any Participating Dealer for direct payment of commissions or any reallocation of the Dealer Manager Fee to such Participating Dealer, it being the sole and exclusive responsibility of the Dealer Manager for payment of commissions or any reallocation of the Dealer Manager Fee to Participating Dealers. Notwithstanding the above, the Company, in its sole discretion, may act as agent of the Dealer Manager by making direct payment of commissions or reallocation of the Dealer Manager Fee to such Participating Dealers without incurring any liability therefor.

## 6. Submission of Orders.

(a) Each person desiring to purchase Primary Shares in the Offering will be required to complete and execute a subscription agreement in the form attached as an appendix to the Prospectus (the "Subscription Agreement") and to deliver to the Dealer Manager or Participating Dealer, as the case may be (the "Processing Broker-Dealer"), such completed Subscription Agreement, together with a check, draft, wire or money order (hereinafter referred to as an "instrument of payment") in the initial amount of \$25.00 per share, or such other per share purchase price as the Company's Board of Directors may establish from time to time (subject to available discounts based upon the volume of shares purchased and for certain categories of purchasers, as specified in the Prospectus). There shall be a minimum initial purchase by any one purchaser of \$2,500 in Primary Shares (except as otherwise indicated in the Prospectus, or in any letter or memorandum from the Company to the Dealer Manager). Minimum subsequent purchases of Primary Shares shall be \$500 per transaction. Those persons who purchase Primary Shares will be instructed by the Processing Broker-Dealer to make their checks payable to "Moody National REIT II, Inc."

(b) The Processing Broker-Dealer receiving a Subscription Agreement and instrument of payment not conforming to the foregoing instructions shall return such Subscription Agreement and instrument of payment directly to such subscriber not later than the end of the second business day following receipt by the Processing Broker-Dealer of such materials. Subscription Agreements and instruments of payment received by the Processing Broker-Dealer which conform to the foregoing instructions shall be transmitted for deposit pursuant to one of the following methods:

(i) where, pursuant to the internal supervisory procedures of the Processing Broker-Dealer, internal supervisory review is conducted at the same location at which Subscription Agreements and instruments of payment are received from subscribers, then, by noon of the next business day following receipt by the Processing Broker-Dealer, the Processing Broker-Dealer will transmit the Subscription Agreements and instruments of payment to the Company or to such other account or agent as directed by the Company; and

(ii) where, pursuant to the internal supervisory procedures of the Processing Broker-Dealer, final internal supervisory review is conducted at a different location (the “Final Review Office”), Subscription Agreements and instruments of payment will be transmitted by the Processing Broker-Dealer to the Final Review Office by noon of the next business day following receipt by the Processing Broker-Dealer. The Final Review Office will in turn by noon of the next business day following receipt by the Final Review Office, transmit such Subscription Agreements and instruments of payment to the Company or to such other account or agent as directed by the Company.

(c) Notwithstanding the foregoing, with respect to any Offered Shares to be purchased by a custodial account, the Processing Broker Dealer shall cause the custodian of such account to deliver a completed Subscription Agreement and instrument of payment for such account to the Company or to such other account agent as directed by the Company.

## 7. Indemnification.

7.1 Indemnified Parties Defined. For the purposes of this Section 7, an entity’s “Indemnified Parties” shall include such entity’s officers, directors, employees, members, partners, affiliates, agents and representatives, and each person, if any, who controls such entity within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act.

7.2 Indemnification of the Dealer Manager and Participating Dealers. The Company and the Operating Partnership, jointly and severally, will indemnify, defend (subject to Section 7.6) and hold harmless the Dealer Manager and the Participating Dealers, and their respective Indemnified Parties, from and against any losses, claims (including the reasonable cost of investigation), damages or liabilities, joint or several, to which such Participating Dealers or the Dealer Manager, or their respective Indemnified Parties, may become subject, under the Securities Act or the Exchange Act, or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (a) in whole or in part, any material inaccuracy in a representation or warranty contained herein by either the Company or the Operating Partnership, any material breach of a covenant contained herein by either the Company or the Operating Partnership, or any material failure by either the Company or the Operating Partnership to perform its obligations hereunder or to comply with state or federal securities laws applicable to the Offering, or (b) any untrue statement or alleged untrue statement of a material fact contained (i) in any Registration Statement or any post-effective amendment thereto or in the Prospectus or any amendment or supplement to the Prospectus or (ii) in any Authorized Sales Materials or (iii) in any blue sky application or other document executed by the Company or on its behalf specifically for the purpose of qualifying any or all of the Offered Shares for sale under the securities laws of any jurisdiction or based upon written information furnished by the Company or the Operating Partnership under the securities laws thereof (any such application, document or information being hereinafter called a “Blue Sky Application”), or (c) the omission or alleged omission to state a material fact required to be stated in the Registration Statement or any post-effective amendment thereof or in the Prospectus or any amendment or supplement to the Prospectus or necessary to make the statements therein not misleading, and the Company and the Operating Partnership will reimburse each Participating Dealer or the Dealer Manager, and their respective Indemnified Parties, for any legal or other expenses reasonably incurred by such Participating Dealer or the Dealer Manager, and their respective Indemnified Parties, in connection with investigating or defending such loss, claim, damage, liability or action; *provided, however*, that the Company or the Operating Partnership will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of, or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished either (x) to the Company or the Operating Partnership by the Dealer Manager or (y) to the Company, the Operating Partnership or the Dealer Manager by or on behalf of any Participating Dealer, in each case expressly for use in the Registration Statement or any post-effective amendment thereof, or the Prospectus or any such amendment thereof or supplement thereto, or any Authorized Sales Material. This indemnity agreement will be in addition to any liability which either the Company or the Operating Partnership may otherwise have.

Notwithstanding the foregoing, as required by Section II.G. of the NASAA REIT Guidelines, the indemnification and agreement to hold harmless provided in this Section 7.2 is further limited to the extent that no such indemnification by the Company or the Operating Partnership of a Participating Dealer or the Dealer Manager, or their respective Indemnified Parties, shall be permitted under this Agreement for, or arising out of, an alleged violation of federal or state securities laws, unless one or more of the following conditions are met: (a) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee; (b) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee; or (c) a court of competent jurisdiction approves a settlement of the claims against the particular indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the Commission and of the published position of any state securities regulatory authority in which the securities were offered or sold as to indemnification for violations of securities laws.

7.3 Dealer Manager Indemnification of the Company and the Operating Partnership. The Dealer Manager will indemnify, defend and hold harmless the Company and the Operating Partnership, their respective Indemnified Parties and each person who has signed the Registration Statement, from and against any losses, claims, damages or liabilities to which any of the aforesaid parties may become subject, under the Securities Act or the Exchange Act, or otherwise, insofar as such losses, claims (including the reasonable cost of investigation), damages or liabilities (or actions in respect thereof) arise out of or are based upon (a) in whole or in part, any material inaccuracy in a representation or warranty contained herein by the Dealer Manager, any material breach of a covenant contained herein by the Dealer Manager, or any material failure by the Dealer Manager to perform its obligations hereunder or (b) any untrue statement or any alleged untrue statement of a material fact contained (i) in any Registration Statement or any post-effective amendment thereto or in the Prospectus or any amendment or supplement to the Prospectus or (ii) in any Authorized Sales Materials or (iii) any Blue Sky Application, or (c) the omission or alleged omission to state a material fact required to be stated in the Registration Statement or any post-effective amendment thereof or in the Prospectus or any amendment or supplement to the Prospectus or necessary to make the statements therein not misleading, *provided, however*, that in each case described in clauses (b) and (c) to the extent, but only to the extent, that such untrue statement or omission was made in reliance upon and in conformity with written information furnished to the Company or the Operating Partnership by the Dealer Manager specifically for use with reference to the Dealer Manager in the preparation of the Registration Statement or any such post-effective amendments thereof or the Prospectus or any such amendment thereof or supplement thereto or any Authorized Sales Material, or (d) any use of sales literature by the Dealer Manager not authorized or approved by the Company or any use of “broker-dealer use only” materials with members of the public concerning the Offered Shares by the Dealer Manager, or (e) any untrue statement made by the Dealer Manager or its representatives or agents or omission to state a fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in connection with the offer and sale of the Offered Shares, or (f) any material violation by the Dealer Manager of this Agreement, or (g) any failure by the Dealer Manager to comply with applicable laws governing money laundry abatement and anti-terrorist financing efforts in connection with the Offering, including applicable FINRA Rules, Exchange Act Regulations and the USA PATRIOT Act, or (h) any other failure by the Dealer Manager to comply with applicable FINRA or Exchange Act Regulations. The Dealer Manager will reimburse the aforesaid parties in connection with investigation or defense of such loss, claim, damage, liability or action. This indemnity agreement will be in addition to any liability which the Dealer Manager may otherwise have.

7.4 Participating Dealer Indemnification of the Company and the Operating Partnership. By virtue of entering into the Participating Dealer Agreement, each Participating Dealer severally will agree to indemnify, defend and hold harmless the Company, the Operating Partnership, the Dealer Manager, each of their respective Indemnified Parties and each person who signs the Registration Statement, from and against any losses, claims, damages or liabilities to which the Company, the Operating Partnership, the Dealer Manager, or any of their respective Indemnified Parties, or any person who signed the Registration Statement, may become subject, under the Securities Act or otherwise, as more fully described in the Participating Dealer Agreement.

7.5 Action Against Parties; Notification. Promptly after receipt by any indemnified party under this Section 7 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 7, promptly notify the indemnifying party of the commencement thereof; provided, however, the failure to give such notice shall not relieve the indemnifying party of its obligations hereunder except to the extent it shall have been prejudiced by such failure. In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled, to the extent it may wish, jointly with any other indemnifying party similarly notified, to participate in the defense thereof, with separate counsel. Such participation shall not relieve such indemnifying party of the obligation to reimburse the indemnified party for reasonable legal and other expenses (subject to Section 7.6) incurred by such indemnified party in defending itself, except for such expenses incurred after the indemnifying party has deposited funds sufficient to effect the settlement, with prejudice, of the claim in respect of which indemnity is sought. Any such indemnifying party shall not be liable to any such indemnified party on account of any settlement of any claim or action effected without the consent of such indemnifying party.

7.6 Reimbursement of Fees and Expenses. An indemnifying party under Section 7 of this Agreement shall be obligated to reimburse an indemnified party for reasonable legal and other expenses as follows:

(a) In the case of the Company and/or the Operating Partnership indemnifying the Dealer Manager, the advancement of Company funds to the Dealer Manager for legal expenses and other costs incurred as a result of any legal action for which indemnification is being sought shall be permissible (in accordance with Section II.G. of the NASAA REIT Guidelines) only if all of the following conditions are satisfied: (i) the legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the Company; (ii) the legal action is initiated by a third party who is not a stockholder of the Company or the legal action is initiated by a stockholder of the Company acting in his or her capacity as such and a court of competent jurisdiction specifically approves such advancement; and (iii) the Dealer Manager undertakes to repay the advanced funds to the Company, together with the applicable legal rate of interest thereon, in cases in which the Dealer Manager is found not to be entitled to indemnification.

(b) In any case of indemnification other than that described in Section 7.6(a) above, the indemnifying party shall pay all legal fees and expenses reasonably incurred by the indemnified party in the defense of such claims or actions; *provided, however*, that the indemnifying party shall not be obligated to pay legal expenses and fees to more than one law firm in connection with the defense of similar claims arising out of the same alleged acts or omissions giving rise to such claims notwithstanding that such actions or claims are alleged or brought by one or more parties against more than one indemnified party. If such claims or actions are alleged or brought against more than one indemnified party, then the indemnifying party shall only be obliged to reimburse the expenses and fees of the one law firm that has been participating by a majority of the indemnified parties against which such action is finally brought; and in the event a majority of such indemnified parties is unable to agree on which law firm for which expenses or fees will be reimbursable by the indemnifying party, then payment shall be made to the first law firm of record representing an indemnified party against the action or claim. Such law firm shall be paid only to the extent of services performed by such law firm and no reimbursement shall be payable to such law firm on account of legal services performed by another law firm.

## 8. Contribution.

(a) If the indemnification provided for in Section 7 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Operating Partnership, the Dealer Manager and the Participating Dealer, respectively, from the offering of the Primary Shares pursuant to this Agreement and the relevant Participating Dealer Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Operating Partnership, the Dealer Manager and the Participating Dealer, respectively, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

(b) The relative benefits received by the Company and the Operating Partnership, the Dealer Manager and the Participating Dealer, respectively, in connection with the offering of the Primary Shares pursuant to this Agreement and the relevant Participating Dealer Agreement shall be deemed to be in the same respective proportion as the total net proceeds from the offering of the Primary Shares pursuant to this Agreement and the relevant Participating Dealer Agreement (before deducting expenses), received by the Company, and the total selling commissions and Dealer Manager Fees received by the Dealer Manager and the Participating Dealer, respectively, in each case as set forth on the cover of the Prospectus bear to the aggregate initial public offering price of the Primary Shares as set forth on such cover.

(c) The relative fault of the Company and the Operating Partnership, the Dealer Manager and the Participating Dealer, respectively, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact related to information supplied by the Company or the Operating Partnership, or by the Dealer Manager or by the Participating Dealer, respectively, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(d) The Company, the Operating Partnership, the Dealer Manager and the Participating Dealer (by virtue of entering into the Participating Dealer Agreement) agree that it would not be just and equitable if contribution pursuant to this Section 8 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable contributions referred to above in this Section 8. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 8 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission or alleged omission.

(e) Notwithstanding the provisions of this Section 8, the Dealer Manager and the Participating Dealer shall not be required to contribute any amount by which the total price at which the Primary Shares sold to the public by them exceeds the amount of any damages which the Dealer Manager and the Participating Dealer have otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission.

(f) No party guilty of fraudulent misrepresentation shall be entitled to contribution from any party who was not guilty of such fraudulent misrepresentation pursuant to Section 11(f) of the Securities Act.

(g) For the purposes of this Section 8, the Dealer Manager's officers, directors, employees, members, partners, agents and representatives, and each person, if any, who controls the Dealer Manager within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution of the Dealer Manager, and each officers, directors, employees, members, partners, agents and representatives of the Company and the Operating Partnership, respectively, each officer of the Company who signed the Registration Statement and each person, if any, who controls the Company or the Operating Partnership, within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution of the Company and the Operating Partnership, respectively. The Participating Dealers' respective obligations to contribute pursuant to this Section 8 are several in proportion to the number of Primary Shares sold by each Participating Dealer and not joint.

9. Survival of Provisions. The respective agreements, representations and warranties of the Company, the Operating Partnership, and the Dealer Manager set forth in this Agreement shall remain operative and in full force and effect until the termination of this Agreement regardless of: (a) any investigation made by or on behalf of the Dealer Manager or any Participating Dealer or any person controlling the Dealer Manager or any Participating Dealer or by or on behalf of the Company, the Operating Partnership or any person controlling the Company; and (b) the delivery of payment for the Offered Shares. Following the termination of this Agreement, this Agreement will become void and there will be no liability of any party to any other party hereto, except for obligations under Sections 7, 8, 9, 10, 12, 13, 14 and 16, all of which will survive the termination of this Agreement.

10. Applicable Law; Venue. This Agreement was executed and delivered in, and its validity, interpretation and construction shall be governed by the laws of, the State of Delaware; *provided, however*, that causes of action for violations of federal or state securities laws shall not be governed by this Section 10. Venue for any action brought hereunder shall lie exclusively in Houston, Texas.

11. Counterparts. This Agreement may be executed in any number of counterparts. Each counterpart, when executed and delivered, shall be an original contract, but all counterparts, when taken together, shall constitute one and the same Agreement.

12. Entire Agreement. This Agreement and the Exhibit attached hereto constitute the entire agreement among the parties and supersede any prior understanding, whether written or oral, prior to the date hereof with respect to the Offering.

13. Successors and Amendment and Third-Party Beneficiaries.

13.1 Successors. This Agreement shall inure to the benefit of and be binding upon the Dealer Manager and the Company and the Operating Partnership and their respective successors and permitted assigns and shall inure to the benefit of the Participating Dealers to the extent set forth in Sections 1 and 5 hereof. Nothing in this Agreement is intended or shall be construed to give to any other person any right, remedy or claim, except as otherwise specifically provided herein.

13.2 Assignment. Neither the Company or Operating Partnership, nor the Dealer Manager may assign or transfer any of such party's rights or obligations under this Agreement without the prior written consent of the Dealer Manager, on the one hand, or the Company and the Operating Partnership, acting together, on the other hand.

13.3 Amendment. This Agreement may be amended only by the written agreement of the Dealer Manager, the Company and the Operating Partnership.

13.4 Third-Party Beneficiaries. The Company, Operating Partnership and the Dealer Manager hereby acknowledge and agree that the Participating Dealers shall be express third-party beneficiaries to the representations, warranties and covenants contained in Section 1 of this Agreement, and the rights to indemnification and reimbursement granted by Sections 7 and 8 of this Agreement. Nothing in this Agreement is intended or shall be construed to give to any other person any right, remedy or claim, except as otherwise specifically provided herein.

14. Term and Termination.

14.1 Termination; General. This Agreement may be terminated by either party upon 60 calendar days' written notice to the other party in accordance with Section 16 below. In any case, this Agreement shall expire at the close of business on the Termination Date.

14.2 Dealer Manager Obligations Upon Termination. The Dealer Manager, upon the expiration or termination of this Agreement, shall (a) promptly deposit any and all funds, if any, in its possession which were received from investors for the sale of Offered Shares into the appropriate account designated by the Company for the deposit of investor funds, (b) promptly deliver to the Company all records and documents in its possession which relate to the Offering and are not designated as dealer copies, (c) provide a list of all purchasers and broker-dealers with whom the Dealer Manager has initiated oral or written discussions regarding the Offering and (d) notify Participating Dealers of such termination. The Dealer Manager, at its sole expense, may make and retain copies of all such records and documents, but shall keep all such information confidential. The Dealer Manager shall use its best efforts to cooperate with the Company to accomplish an orderly transfer of management of the Offering to a party designated by the Company.

14.3 Company Obligations Upon Termination. Upon expiration or termination of this Agreement, the Company shall pay to the Dealer Manager all compensation to which the Dealer Manager is or becomes entitled under Section 5 hereof at such time as such compensation becomes payable.

15. Confirmation. The Company hereby agrees and assumes the duty to confirm on its behalf and on behalf of dealers or brokers who sell the Offered Shares all orders for purchase of Offered Shares accepted by the Company. Such confirmations will comply with the rules of the Commission and FINRA, and will comply with applicable laws of such other jurisdictions to the extent the Company is advised of such laws in writing by the Dealer Manager.

16. Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be deemed given (a) when delivered personally, (b) on the first business day after delivery to a national overnight courier service, (c) upon receipt of confirmation if sent via facsimile or (d) on the fifth business day after deposited in the United States mail, properly addressed and stamped with the required postage, registered or certified mail, return receipt requested, in each case to the intended recipient at the address set forth below:

If to the Company:

Moody National REIT II, Inc.  
6363 Woodway Drive  
Suite 110  
Houston, Texas 77057  
Facsimile: (713) 977-7505  
Attention: Secretary

If to the Operating Partnership:

Moody National Operating Partnership II, LP  
c/o Moody National REIT II, Inc., General Partner  
6363 Woodway Drive  
Suite 110  
Houston, Texas 77057  
Facsimile: (713) 977-7505  
Attention: Secretary

If to the Dealer Manager:

Moody Securities, LLC  
6363 Woodway Drive  
Suite 110  
Houston, Texas 77057  
Facsimile: (713) 977-7505  
Attention: President

Any party may change its address specified above by giving the other party notice of such change in accordance with this Section 16.

*[Signatures on following page.]*

If the foregoing correctly sets forth our understanding, please indicate your acceptance thereof in the space provided below for that purpose, whereupon this letter and your acceptance shall constitute a binding agreement between us as of the date first above written.

Very truly yours,

“COMPANY”

MOODY NATIONAL REIT II, INC.

By: /s/ Brett C. Moody

Name: Brett C. Moody

Title: Chief Executive Officer and President

“OPERATING PARTNERSHIP”

MOODY NATIONAL OPERATING PARTNERSHIP II, LP

By: Moody National REIT II, Inc.

its general partner

By: /s/ Brett C. Moody

Name: Brett C. Moody

Title: Chief Executive Officer and President

Accepted and agreed as of the date first above written:

“DEALER MANAGER”

MOODY SECURITIES, LLC

By: /s/ Melinda G. LeGaye

Name: Melinda G. LeGaye

Title: President

*Signature Page to Amended and Restated Dealer Manager Agreement*

## **EXHIBIT A**

### **FORM OF PARTICIPATING DEALER AGREEMENT**

MOODY NATIONAL REIT II, INC.

Up to \$1,100,000,000 in Shares of Common Stock, \$0.01 par value per share

\_\_\_\_\_, 2016

Ladies and Gentlemen:

Subject to the terms described herein, Moody Securities, LLC, as the dealer manager (the “Dealer Manager”) for Moody National REIT II, Inc., a Maryland corporation (the “Company”), invites you (“Participating Dealer”) to participate in the public sale (the “Offering”), on a “best efforts basis,” of up to \$1,100,000,000 in shares of common stock of the Company, \$0.01 par value per share (the “Common Stock”), of which amount: (i) up to \$100,000,000 in shares of Common Stock are being offered pursuant to the Company’s distribution reinvestment plan at an initial purchase price of \$23.75 per share (the “DRIP Shares”); and (ii) up to \$1,000,000,000 in shares of Common Stock are being offered to the public at an initial purchase price of \$25.00 per share (subject in certain circumstances to discounts based upon the volume of shares purchased and for certain categories of purchasers) (the “Primary Shares” and together with the DRIP Shares, the “Offered Shares”). Notwithstanding the foregoing, the Company has reserved the right to (i) change the offering price per share in the Offering, including the price for DRIP Shares as described in the Prospectus (as defined herein) and (ii) reallocate the Offered Shares between the Primary Shares and the DRIP Shares.

A registration statement on Form S-11 (File No. 333-198305) has been prepared by the Company in accordance with applicable requirements of the Securities Act of 1933, as amended (the “Securities Act”), and the applicable rules and regulations of the Securities and Exchange Commission (the “Commission”) promulgated thereunder (the “Securities Act Regulations”), for the registration of the Offered Shares. This registration statement, which includes a preliminary prospectus, was filed with the Commission on August 22, 2014. The Company has prepared and filed such amendments thereto, if any, and such amended prospectus, if any, as may have been required to the date hereof, and will file such additional amendments and supplements thereto as may hereafter be required. Copies of such registration statement and each amendment thereto have been or will be delivered to Participating Dealer. The prospectus, as amended or supplemented, on file with the Commission at the Effective Date (as defined below) of the registration statement (including financial statements, exhibits and all other documents related thereto filed as a part thereof or incorporated therein), is hereinafter referred to as the “Prospectus,” except that if the Prospectus is amended or supplemented after the Effective Date, the term “Prospectus” shall refer to the Prospectus as amended or supplemented to date, and if the Prospectus filed by the Company pursuant to Rule 424(b) or 424(c) of the Securities Act Regulations shall differ from the Prospectus on file at the time the registration statement or any post-effective amendment to the registration statement shall become effective, the term “Prospectus” shall refer to the Prospectus filed pursuant to either Rule 424(b) or 424(c) of the Securities Act Regulations from and after the date on which it shall have been filed with the Commission. As used in this agreement, the term “Registration Statement” means the Registration Statement, as amended through the date hereof, except that, if the Company files any post-effective amendments to the Registration Statement, “Registration Statement” shall refer to the Registration Statement as so amended by the last post-effective amendment declared effective, and the term “Effective Date” means the applicable date upon which the Registration Statement or any post-effective amendment thereto is or was first declared effective by the Commission.

I. Dealer Manager Agreement. The Company is the sole general partner of Moody National Operating Partnership II, LP, a Delaware limited partnership that serves as the Company’s operating partnership subsidiary (the “Operating Partnership”). The Dealer Manager has entered into an Amended and Restated Dealer Manager Agreement with the Company and the Operating Partnership dated January 15, 2016 (the “Dealer Manager Agreement”). Upon effectiveness of this Participating Dealer Agreement (this “Agreement”), you will become one of the Participating Dealers referred to in the Dealer Manager Agreement.

II. Sale of Shares. Participating Dealer hereby agrees to use its best efforts to sell the Primary Shares for cash on the terms and conditions stated in the Prospectus. Nothing in this Agreement shall be deemed or construed to make Participating Dealer an employee, agent, representative, or partner of the Dealer Manager, the Company or the Operating Partnership, and Participating Dealer is not authorized to act for the Dealer Manager, the Company or the Operating Partnership or to make any representations on their behalf except as set forth in the Prospectus and any printed sales literature or other materials prepared by the Company or Moody National Advisor II, LLC, a Delaware limited liability company that serves as the Company’s advisor pursuant to the terms of an advisory agreement (the “Advisor”), provided that the use of said sales literature and other materials has been approved for use by the Company in writing and all appropriate regulatory agencies (the “Authorized Sales Materials”).

III. Submission of Orders. Each person desiring to purchase Primary Shares in the Offering will be required to complete and execute a subscription agreement (“Subscription Agreement”) in the form attached as an Appendix to the Prospectus and to deliver to Participating Dealer such completed Subscription Agreement, together with a check, draft, wire or money order (hereinafter referred to as an “instrument of payment”) in the initial amount of \$25.00 per share, or such other purchase price per share that the Company’s Board of Directors may establish from time to time (subject to available discounts based upon the volume of shares purchased and for certain

categories of purchasers, as specified in the Prospectus). There shall be a minimum initial purchase by any one purchaser of \$2,500 in shares (except as otherwise indicated in the Prospectus, or in any letter or memorandum from the Company to the Dealer Manager). Minimum subsequent purchases of shares shall be \$500 per transaction. Any Subscription Agreement and instrument of payment not conforming to the foregoing instructions shall be returned to such subscriber not later than the end of the second business day following receipt by Participating Dealer of such materials. Subscription Agreements and instruments of payment received by the Participating Dealer which conform to the foregoing instructions shall be transmitted for deposit pursuant to one of the following methods:

(a) where, pursuant to Participating Dealer's internal supervisory procedures, internal supervisory review is conducted at the same location at which Subscription Agreements and instruments of payment are received from subscribers, then, by noon of the next business day following receipt by Participating Dealer, Participating Dealer will transmit the Subscription Agreements and instrument of payment to the Escrow Agent (as defined below) or, after the Company has received and accepted subscriptions for at least \$2,000,000 in Primary Shares (the "Minimum Offering"), to the Company or to such other account or agent as directed by the Company; and

(b) where, pursuant to Participating Dealer's internal supervisory procedures, final internal supervisory review is conducted at a different location (the "Final Review Office"), then Subscription Agreements and instruments of payment will be transmitted by Participating Dealer to the Final Review Office by noon of the next business day following receipt by Participating Dealer. The Final Review Office will in turn, by noon of the next business day following receipt by the Final Review Office, transmit such Subscription Agreements and instrument of payment to the Escrow Agent or, after the Minimum Offering has been obtained, to the Company or to such other account or agent as directed by the Company.

(c) Participating Dealer understands that the Company and/or the Dealer Manager reserves the unconditional right to reject any order for any or no reason.

(d) Notwithstanding the foregoing, with respect to any Primary Shares to be purchased by a custodial account, the Participating Dealer shall cause the custodian of such account to deliver a completed Subscription Agreement and instrument of payment for such account directly to the Escrow Agent or, after the Minimum Offering has been obtained, to the Company or to such other account agent as directed by the Company. The Participating Dealer shall furnish to the Escrow Agent with each delivery of instruments of payment a list of the subscribers showing the name, address, tax identification number, state of residence, amount of Primary Shares subscribed for, and the amount of money paid.

(e) Participating Dealer hereby agrees to be bound by the terms of the Escrow Agreement, dated January 12, 2015 (the "Escrow Agreement"), by and among UMB Bank, N.A., as escrow agent (the "Escrow Agent"), and the Company.

#### IV. Participating Dealer's Compensation.

(a) Subject to volume discounts and other special circumstances described in or as otherwise provided in the "Plan of Distribution" section of the Prospectus, Participating Dealer's selling commission applicable to the total public offering price of Primary Shares sold by Participating Dealer which it is authorized to sell hereunder is 7.0% of the gross proceeds from the Primary Shares sold by it and accepted and confirmed by the Company, which commission will be paid by the Dealer Manager. A Participating Dealer may elect to be paid the selling commission at the time of sale, over time (a trailing commission), or a combination of both as agreed between the Dealer Manager and the Participating Dealer and as set forth on Schedule 1 hereto. In no event will selling commission paid exceed 7.0%. The Dealer Manager will have no obligation to pay the trailing selling commission if the applicable Primary Shares are no longer outstanding or total underwriting compensation would exceed 10.0% of gross offering proceeds from the sale of Primary Shares. For these purposes, a "sale of Primary Shares" shall occur if and only if a Subscription Agreement is accepted by the Company and the Company has thereafter distributed the commission to the Dealer Manager in connection with such transaction. Participating Dealer hereby waives any and all rights to receive payment of commissions due until such time as the Dealer Manager is in receipt of the commission from the Company. Participating Dealer affirms that the Dealer Manager's liability for commissions payable to Participating Dealer is limited solely to the commissions received by the Dealer Manager from the Company associated with Participating Dealer's sale of Primary Shares.

(b) In addition, as set forth in the Prospectus, the Dealer Manager, in its sole discretion, may reallocate a portion of the dealer manager fee described in the Prospectus (the "Dealer Manager Fee") to Participating Dealer as marketing fees or to defray other distribution-related expenses. Such reallocation, if any, shall be determined by the Dealer Manager in its sole discretion based on factors including, but not limited to, the number of Primary Shares sold by Participating Dealer and the assistance of Participating Dealer in marketing the Offering; *provided, however*, that Participating Dealer will not be entitled to receive a portion of the Dealer Manager Fees that would cause the aggregate amount of selling commissions, Dealer Manager Fees and all other forms of underwriting compensation (as defined in accordance with applicable rules of the Financial Industry Regulatory Authority, Inc. ("FINRA")) received by the Dealer Manager and all Participating Dealers to exceed 10.0% of the gross proceeds raised from the sale of Primary Shares in the Offering. The Dealer Manager's reallocation of Dealer Manager Fees to Participating Dealer shall be described in Schedule 1 to this Agreement.

(c) Participating Dealer acknowledges and agrees that no selling commissions or Dealer Manager Fees will be paid in respect of the sale of any DRIP Shares.

(d) The parties hereby agree that the foregoing selling commissions and Dealer Manager Fees are not in excess of the usual and customary distributors' or sellers' commission received in the sale of securities similar to the Primary Shares, that Participating Dealer's interest in the offering is limited to such selling commissions and Dealer Manager Fees from the Dealer Manager and Participating Dealer's indemnity referred to in Section XII below, and that the Company is not liable or responsible for the direct payment of such selling commissions and Dealer Manager Fees to Participating Dealer. In addition, as set forth in the Prospectus, the Dealer Manager will reimburse Participating Dealer for reasonable *bona fide* due diligence expenses incurred by Participating Dealer. Such due diligence expenses may include travel, lodging, meals and other reasonable out-of-pocket expenses incurred by Participating Dealer and its personnel when visiting the Company's offices or properties to verify information relating to the Company or its properties. Participating Dealer shall provide a detailed and itemized invoice for any such due diligence expenses.

V. Payment.

(a) Payments of selling commissions will be made by the Dealer Manager (or by the Company as the agent of the Dealer Manager, as provided in the Dealer Manager Agreement) to Participating Dealer within 30 days of the receipt by the Dealer Manager of the gross commission payments from the Company.

(b) Participating Dealer, in its sole discretion, may authorize Dealer Manager (or the Company as the agent of the Dealer Manager, as provided in the Dealer Manager Agreement) to deposit selling commissions, Dealer Manager Fees and other payments due to it pursuant to this Agreement directly to its bank account. If Participating Dealer so elects, Participating Dealer shall provide deposit authorization and instructions to Dealer Manager in Schedule 2 to this Agreement.

VI. Right to Reject Orders or Cancel Sales. All orders, whether initial or additional, are subject to acceptance by and shall only become effective upon confirmation by the Company and/or the Dealer Manager, which reserves the right to reject any order for any or no reason. Orders not accompanied by the required instrument of payment for the Primary Shares may be rejected. Issuance and delivery of the Primary Shares will be made only after actual receipt of payment therefor. In the event an order is rejected, canceled or rescinded for any reason, Participating Dealer agrees to return to the Dealer Manager any selling commissions or Dealer Manager Fees theretofore paid with respect to such order, and, if Participating Dealer fails to so return any such selling commissions, the Dealer Manager shall have the right to offset amounts owed against future commissions or Dealer Manager Fees due and otherwise payable to Participating Dealer.

VII. Prospectus and Authorized Sales Materials. Participating Dealer is not authorized or permitted to give, and will not give, any information or make any representation (written or oral) concerning the Offered Shares except as set forth in the Prospectus and the Authorized Sales Materials. The Dealer Manager will supply Participating Dealer with reasonable quantities of the Prospectus (including any supplements thereto), as well as any Authorized Sales Materials, for delivery to investors, and Participating Dealer will deliver a copy of the Prospectus (including all supplements thereto) to each investor to whom an offer is made prior to or simultaneously with the first solicitation of an offer to sell the Primary Shares to an investor; *provided, however*, no preliminary prospectus may be delivered to investors. Participating Dealer agrees that it will not send or give any supplements to the Prospectus or any Authorized Sales Materials to any investor unless it has previously sent or given a Prospectus and all supplements thereto to that investor or has simultaneously sent or given a Prospectus and all supplements thereto with such Prospectus supplement or Authorized Sales Materials. Participating Dealer agrees that it will not show or give to any investor or reproduce any material or writing which is supplied to it by the Dealer Manager and marked "broker-dealer use only" or otherwise bearing a legend denoting that it is not to be used in connection with the offer or sale of Offered Shares to members of the public. Participating Dealer agrees that it will not use in connection with the offer or sale of Offered Shares any materials or writings which have not been previously approved by the Company other than the Prospectus and the Authorized Sales Materials. Participating Dealer agrees to furnish a copy of any revised preliminary Prospectus to each person to whom it has furnished a copy of any previous preliminary Prospectus, and further agrees that it will itself mail or otherwise deliver all preliminary and final Prospectuses required for compliance with the provisions of Rule 15c2-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

VIII. License and Association Membership. Participating Dealer's acceptance of this Agreement constitutes a representation to the Company and the Dealer Manager that Participating Dealer is a properly registered or licensed broker-dealer, duly authorized to sell Primary Shares under Federal and state securities laws and regulations in all states where it offers or sells Primary Shares, and that it is a member in good standing of FINRA. Participating Dealer represents and warrants that it is currently licensed as a broker-dealer in the jurisdictions identified on Schedule 3 to this Agreement and that its independent contractors and registered representatives have the appropriate licenses(s) to offer and sell the Primary Shares in such jurisdictions. This Agreement shall automatically terminate if Participating Dealer ceases to be a member in good standing of FINRA, or with the securities commission of the state in which Participating Dealer's principal office is located. Participating Dealer agrees to notify the Dealer Manager immediately if Participating Dealer ceases to be a member in good standing of FINRA or with the securities commission of any state in which Participating Dealer is currently registered or licensed. The Participating Dealer also hereby agrees to abide by the Rules of Fair Practice of FINRA and to comply with the NASD Conduct Rules 2340 and 2420, and FINRA Conduct Rules 2310, 5130 and 5141.

IX. Anti-Money Laundering Compliance Programs.

(a) Participating Dealer's acceptance of this Agreement constitutes a representation to the Company and the Dealer Manager that Participating Dealer has established and implemented an anti-money laundering compliance program ("AML Program") in accordance with applicable law, including applicable FINRA Rules, rules promulgated by the Commission (the "Commission Rules") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (the "USA PATRIOT Act"), specifically including, but not limited to, Section 352 of the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (the "Money Laundering Abatement Act") and together with the USA PATRIOT Act, the "AML Rules"), reasonably expected to detect and cause the reporting of suspicious transactions in connection with the sale of Primary Shares. Participating Dealer's acceptance of this Agreement also constitutes a representation to the Company and the Dealer Manager that as of the date hereof, Participating Dealer is in compliance with all AML Rules, specifically including, but not limited to, the Customer Identification Program requirements under Section 326 of the Money Laundering Abatement Act. Participating Dealer covenants that it will perform all activities it is required to perform by applicable AML Rules and its AML Program with respect to all customers on whose behalf Participating Dealer submits orders to the Company. To the extent permitted by applicable law, Participating Dealer will share information with the Dealer Manager and the Company for purposes of ascertaining whether a suspicious activity report is warranted with respect to any suspicious transaction involving the purchase or intended purchase of Primary Shares.

(b) Upon request by the Dealer Manager at any time, Participating Dealer hereby agrees to (i) furnish a written copy of its AML Program to the Dealer Manager for review, and (ii) furnish a copy of the findings and any remedial actions taken in connection with Participating Dealer's most recent independent testing of its AML Program. Participating Dealer further represents that it is currently in compliance with all AML Rules, specifically including, but not limited to, the Customer Identification Program requirements under Section 326 of the Money Laundering Abatement Act, and Participating Dealer hereby covenants to remain in compliance with such requirements and shall, upon request by the Dealer Manager, provide a certification to Dealer Manager that, as of the date of such certification, (i) its AML Program is consistent with the AML Rules, (ii) it has continued to implement its AML Program, and (iii) it is currently in compliance with all AML Rules, specifically including, but not limited to, the Customer Identification Program requirements under Section 326 of the Money Laundering Abatement Act.

X. Limitation of Offer; Suitability.

(a) Participating Dealer will offer Primary Shares only to persons who meet the suitability standards set forth in the Prospectus and any suitability letter or memorandum sent to it by the Company or the Dealer Manager and will only make offers to persons in the jurisdictions in which it is advised in writing by the Company or the Dealer Manager that the Primary Shares are qualified for sale or that such qualification is not required (the "Qualified Jurisdictions"). Notwithstanding the qualification of the Primary Shares for sale in any respective jurisdiction (or the exemption therefrom), Participating Dealer represents, warrants and covenants that it will not offer Primary Shares and will not permit any of its registered representatives to offer Primary Shares in any jurisdiction unless both Participating Dealer and such registered representative are duly licensed to transact securities business in such jurisdiction. In offering Primary Shares, Participating Dealer will comply with the provisions of the Rules of Fair Practice set forth in the FINRA Manual, as well as all other applicable rules and regulations relating to suitability of investors, including without limitation, the provisions of Section III.C. of the Statement of Policy Regarding Real Estate Investment Trusts of the North American Securities Administrators Association, Inc. (the "NASAA REIT Guidelines").

(b) Participating Dealer further represents, warrants and covenants that neither Participating Dealer, nor any person associated with Participating Dealer, shall offer or sell Primary Shares in any jurisdiction except to investors who satisfy the investor suitability standards and minimum investment requirements under all of the following: (i) applicable provisions of the Prospectus; (ii) applicable laws of the jurisdiction of which such investor is a resident; (iii) applicable FINRA Conduct Rules; and (iv) the provisions of Section III.C. of the NASAA REIT Guidelines. Participating Dealer agrees to ensure that, in recommending the purchase, sale or exchange of Primary Shares to an investor, Participating Dealer, or a person associated with Participating Dealer, shall have reasonable grounds to believe, on the basis of information obtained from the investor (and thereafter maintained in the manner and for the period required by the Commission, any state securities commission, FINRA or the Company) concerning such investor's age, investment objectives, other investments, financial situation and needs, and any other information known to Participating Dealer, or person associated with Participating Dealer, that (i) the investor is or will be in a financial position appropriate to enable the investor to realize to a significant extent the benefits described in the Prospectus, including the tax benefits to the extent they are a significant aspect of the Offered Shares, (ii) the investor has a fair market net worth sufficient to sustain the risks inherent in an investment in Primary Shares in the amount proposed, including loss and lack of liquidity of such investment, and (iii) an investment in Primary Shares is otherwise suitable for such investor. Participating Dealer further represents, warrants and covenants that Participating Dealer, or a person associated with Participating Dealer, will make every reasonable effort to determine the suitability and appropriateness of an investment in Primary Shares of each proposed investor solicited by a person associated with Participating Dealer by reviewing documents and records disclosing the basis upon which the determination as to suitability was reached as to each such proposed investor, whether such documents and records relate to accounts which have been closed, accounts which are currently maintained, or accounts hereafter established. Participating Dealer agrees to retain such documents and records in Participating Dealer's records for a period of six years from the date of the applicable sale of Primary Shares, to otherwise comply with the record keeping requirements provided in Section

XIV below and to make such documents and records available to (i) the Dealer Manager and the Company upon request, and (ii) representatives of the Commission, FINRA and applicable state securities administrators upon Participating Dealer's receipt of an appropriate document subpoena or other appropriate request for documents from any such agency. Participating Dealer shall not purchase any Primary Shares for a discretionary account without obtaining the prior written approval of Participating Dealer's customer and such customer's completed and executed Subscription Agreement.

XI. Due Diligence; Adequate Disclosure. Prior to offering the Primary Shares for sale, Participating Dealer shall have conducted an inquiry such that Participating Dealer has reasonable grounds to believe, based on information made available to Participating Dealer by the Company or the Dealer Manager through the Prospectus or other materials, that all material facts are adequately and accurately disclosed and provide a basis for evaluating a purchase of Primary Shares. Notwithstanding the foregoing, Participating Dealer may rely upon the results of an inquiry conducted by an independent third party retained for that purpose. Prior to the sale of the Primary Shares, Participating Dealer shall inform each prospective purchaser of Primary Shares of pertinent facts relating to the Primary Shares including specifically the risks related to limitations on liquidity and marketability of the Primary Shares during the term of the investment but shall not, in any event, make any representation on behalf of the Company or the Operating Partnership except as set forth in the Prospectus and any Authorized Sales Materials.

XII. Indemnification. For the purposes of this Section XII, an entity's "Indemnified Parties" shall include such entity's officers, directors, employees, members, partners, affiliates, agents and representatives, and each person, if any, who controls such entity within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act.

(a) Participating Dealer agrees to indemnify, defend and hold harmless the Company, the Operating Partnership, the Dealer Manager, each of their respective Indemnified Parties, and each person who signs the Registration Statement, from and against any losses, claims, damages or liabilities to which the Company, the Operating Partnership, the Dealer Manager, or any of their respective Indemnified Parties, or any person who signed the Registration Statement, may become subject, under the Securities Act or otherwise, insofar as such losses, claims (including the reasonable cost of investigation), damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) in whole or in part, any material inaccuracy in a representation or warranty by Participating Dealer, any material breach of a covenant by Participating Dealer, or any material failure by Participating Dealer to perform its obligations hereunder, or (ii) any untrue statement or alleged untrue statement of a material fact contained (1) in any Registration Statement or any post-effective amendment thereto or the Prospectus or any amendment or supplement to the Prospectus or (2) in any Authorized Sales Materials or (3) in any application to qualify the Offered Shares for the offer and sale under the applicable state securities or "blue sky" laws of any state or jurisdiction, or (iii) the omission or alleged omission to state a material fact required to be stated in the Registration Statement or any post-effective amendment thereof or in the Prospectus or any amendment or supplement to the Prospectus or necessary to make statements therein not misleading, *provided, however*, that in each case described in clauses (ii) and (iii) to the extent, but only to the extent, that such untrue statement or omission was made in reliance upon and in conformity with written information furnished to the Company, the Operating Partnership or the Dealer Manager by Participating Dealer specifically for use with reference to Participating Dealer in the Registration Statement or any such post-effective amendments thereof or the Prospectus or any such amendment thereof or supplement thereto or any Authorized Sales Material, or (iv) any use of sales literature by Participating Dealer not authorized or approved by the Company or use of "broker-dealer use only" materials with members of the public concerning the Offered Shares by Participating Dealer or Participating Dealer's representatives or agents, or (v) any untrue statement made by Participating Dealer or its representatives or agents or omission to state a fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in connection with the offer and sale of the Offered Shares, or (vi) any material violation of this Agreement by Participating Dealer, or (vii) any failure of Participating Dealer to comply with applicable laws governing money laundry abatement and anti-terrorist financing efforts in connection with the Offering, including applicable FINRA Rules, Commission Rules and the USA PATRIOT Act, or (viii) any other failure by Participating Dealer to comply with applicable FINRA rules or Commission Rules or any other applicable Federal or state laws in connection with the Offering. Participating Dealer will reimburse the aforesaid parties in connection with investigation or defense of such loss, claim, damage, liability or action. This indemnity agreement will be in addition to any liability which Participating Dealer may otherwise have.

(b) Promptly after receipt by any indemnified party under this Section XII of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section XII, notify in writing the indemnifying party of the commencement thereof and the omission to so notify the indemnifying party shall not relieve the indemnifying party of its obligations hereunder except to the extent it shall have been prejudiced by such failure. In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled, to the extent it may wish, jointly with any other indemnifying party similarly notified, to participate in the defense thereof, with separate counsel. Such participation shall not relieve such indemnifying party of the obligation to reimburse the indemnified party for reasonable legal and other expenses (subject to Section XII (c) below) incurred by such indemnified party in defending itself, except for such expenses incurred after the indemnifying party has deposited funds sufficient to effect the settlement, with prejudice, of the claim in respect of which indemnity is sought. Any such indemnifying party shall not be liable to any such indemnified party on account of any settlement of any claim or action effected without the consent of such indemnifying party.

(c) An indemnifying party under this Section XII of this Agreement shall pay all legal fees and expenses of the indemnified party in the defense of such claims or actions; *provided, however*, that the indemnifying party shall not be obligated to pay legal expenses and fees to more than one law firm in connection with the defense of similar claims arising out of the same alleged acts or omissions giving rise to such claims notwithstanding that such actions or claims are alleged or brought by one or more parties against more than one indemnified party. If such claims or actions are alleged or brought against more than one indemnified party, then the indemnifying party shall only be obliged to reimburse the expenses and fees of the one law firm that has been participating by a majority of the indemnified parties against which such action is finally brought; and in the event a majority of such indemnified parties is unable to agree on which law firm for which expenses or fees will be reimbursable by the indemnifying party, then payment shall be made to the first law firm of record representing an indemnified party against the action or claim. Such law firm shall be paid only to the extent of services performed by such law firm and no reimbursement shall be payable to such law firm on account of legal services performed by another law firm.

### XIII. Contribution.

(a) If the indemnification provided for in Section XII hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Operating Partnership, the Dealer Manager and Participating Dealer, respectively, from the offering of the Primary Shares pursuant to this Agreement and the Dealer Manager Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Operating Partnership, the Dealer Manager and Participating Dealer, respectively, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

(b) The relative benefits received by the Company and the Operating Partnership, the Dealer Manager and Participating Dealer, respectively, in connection with the offering of the Primary Shares pursuant to this Agreement shall be deemed to be in the same respective proportion as the total net proceeds from the sale of the Primary Shares (before deducting expenses) received by the Company, and the total selling commissions and Dealer Manager Fees received by the Dealer Manager and Participating Dealer, respectively, in each case as set forth on the cover of the Prospectus bear to the aggregate initial public offering price of the Primary Shares as set forth on such cover.

(c) The relative fault of the Company and the Operating Partnership, the Dealer Manager and Participating Dealer, respectively, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact related to information supplied by the Company or the Operating Partnership, or by the Dealer Manager or by Participating Dealer, respectively, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(d) The Company, the Operating Partnership, the Dealer Manager and Participating Dealer agree that it would not be just and equitable if contribution pursuant to this Section XIII were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable contributions referred to above in this Section XIII. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section XIII shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission or alleged omission.

(e) Notwithstanding the provisions of this Section XIII, the Dealer Manager and Participating Dealer shall not be required to contribute any amount by which the total amount of selling commissions and Dealer Manager Fees received by them exceeds the amount of any damages which the Dealer Manager and Participating Dealer have otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission.

(f) No party guilty of fraudulent misrepresentation shall be entitled to contribution from any party who was not guilty of such fraudulent misrepresentation pursuant to Section 11(f) of the Securities Act.

(g) For the purposes of this Section XIII, the Dealer Manager's officers, directors, employees, members, partners, agents and representatives, and each person, if any, who controls the Dealer Manager within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution of the Dealer Manager, and each officers, directors, employees, members, partners, agents and representatives of the Company and the Operating Partnership, respectively, each officer of the Company who signed the Registration Statement and each person, if any, who controls the Company or the Operating Partnership, within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution of the Company and the Operating Partnership, respectively. Participating Dealer's obligations to contribute pursuant to this Section XIII are several in proportion to the number of Primary Shares sold by Participating Dealer and not joint.

XIV. Compliance with Record keeping Requirements. Participating Dealer agrees to comply with the record keeping requirements of the Exchange Act, including but not limited to, Rules 17a-3 and 17a-4 promulgated under the Exchange Act. Participating Dealer further agrees to keep such records with respect to each customer who purchases Primary Shares, his suitability and the amount of Primary Shares sold, and to retain such records for such period of time as may be required by the Commission, any state securities commission, FINRA or the Company.

XV. Customer Complaints. Participating Dealer hereby agrees to provide to the Dealer Manager promptly upon receipt by Participating Dealer copies of any written or otherwise documented customer complaints received by Participating Dealer relating in any way to the Offering (including, but not limited to, the manner in which the Primary Shares are offered by Participating Dealer), the Offered Shares or the Company.

XVI. Effective Date. This Agreement will become effective upon the last date it is signed by either party hereto.

XVII. Termination; Amendment.

(a) Participating Dealer will immediately suspend or terminate its offer and sale of Primary Shares upon the request of the Company or the Dealer Manager at any time and will resume its offer and sale of Primary Shares hereunder upon subsequent request of the Company or the Dealer Manager. Any party may terminate this Agreement by written notice pursuant to Section XX below. Following the termination of this Agreement, this Agreement will become void and there will be no liability of any party to any other party hereto, except for obligations under Sections XII, XIII, XIV, XVII, XIX, XX and XXI, all of which will survive the termination of this Agreement. This Agreement and the exhibits and schedules hereto are the entire agreement of the parties and supersedes all prior agreements, if any, between the parties hereto relating to the subject matter hereof.

(b) This Agreement may be amended at any time by the Dealer Manager by written notice to Participating Dealer, and any such amendment shall be deemed accepted by Participating Dealer upon placing an order for sale of Primary Shares after it has received such notice.

XVIII. Assignment. Participating Dealer shall have no right to assign this Agreement or any of Participating Dealer's rights hereunder or to delegate any of Participating Dealer's obligations. Any purported assignment or delegation by Participating Dealer shall be null and void. The Dealer Manager shall have the right to assign any or all of its rights and obligations under this Agreement by written notice, and Participating Dealer shall be deemed to have consented to such assignment by execution hereof. Dealer Manager shall provide written notice of any such assignment to Participating Dealer.

XIX. Privacy Laws. The Dealer Manager and Participating Dealer (each referred to individually in this Section XIX as a "party") agree as follows:

(a) Each party agrees to abide by and comply with (i) the privacy standards and requirements of the Gramm-Leach-Bliley Act of 1999 ("GLB Act"); (ii) the privacy standards and requirements of any other applicable Federal or state law; and (iii) its own internal privacy policies and procedures, each as may be amended from time to time;

(b) Each party agrees to refrain from the use or disclosure of nonpublic personal information (as defined under the GLB Act) of all customers who have opted out of such disclosures except as necessary to service the customers or as otherwise necessary or required by applicable law; and

(c) Each party shall be responsible for determining which customers have opted out of the disclosure of nonpublic personal information by periodically reviewing and, if necessary, retrieving a list of such customers (the "List") as provided by each to identify customers that have exercised their opt-out rights. In the event either party uses or discloses nonpublic personal information of any customer for purposes other than servicing the customer, or as otherwise required by applicable law, that party will consult the List to determine whether the affected customer has exercised his or her opt-out rights. Each party understands that each is prohibited from using or disclosing any nonpublic personal information of any customer that is identified on the List as having opted out of such disclosures.

XX. Notice. All notices will be in writing and deemed given (a) when delivered personally, (b) on the first business day after delivery to a national overnight courier service, (c) upon receipt of confirmation if sent via facsimile, or (d) on the fifth business day after deposit in the United States mail, properly addressed and stamped with the required postage, registered or certified mail, return receipt requested, to the Dealer Manager at: 6363 Woodway Drive, Suite 110, Houston, Texas 77057, Attention: Secretary, and to Participating Dealer at the address specified by Participating Dealer on the signature page hereto.

XXI. Attorneys' Fees, Applicable Law and Venue.

In any action to enforce the provisions of this Agreement or to secure damages for its breach, the prevailing party shall recover its costs and reasonable attorney's fees. This Agreement shall be construed under the laws of the State of Delaware. Venue for any action (including arbitration) brought hereunder shall lie exclusively in Houston, Texas.

*[Signatures on following pages.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on its behalf by its duly authorized agent.

“DEALER MANAGER”

MOODY SECURITIES, LLC

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

Name: Melinda G. LeGaye

Title: President

We have read the foregoing Agreement and we hereby accept and agree to the terms and conditions therein set forth. We hereby represent that the jurisdictions identified below represent a true and correct list of all jurisdictions in which we are registered or licensed as a broker or dealer and are fully authorized to sell securities, and we agree to advise you of any change in such list during the term of this Agreement.

1. Identity of Participating Dealer:

Full Legal Name:

\_\_\_\_\_  
(to be completed by Participating Dealer)

Type of Entity:

\_\_\_\_\_  
(to be completed by Participating Dealer)

Organized in the State of:

\_\_\_\_\_  
(to be completed by Participating Dealer)

Tax Identification Number:

\_\_\_\_\_  
(to be completed by Participating Dealer)

FINRA/CRD Number:

\_\_\_\_\_  
(to be completed by Participating Dealer)

2. Any notice under this Agreement will be deemed given pursuant to Section XX hereof when delivered to Participating Dealer as follows:

Company Name: \_\_\_\_\_

Attention to: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Street Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Telephone No.: ( \_\_\_\_\_ )

Facsimile No.: ( \_\_\_\_\_ )

Email Address: \_\_\_\_\_

Accepted and agreed as of the date below:

“PARTICIPATING DEALER”

\_\_\_\_\_  
(Print Name of Participating Dealer)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1  
TO  
PARTICIPATING DEALER AGREEMENT WITH  
MOODY SECURITIES, LLC**

**NAME OF ISSUER:** MOODY NATIONAL REIT II, INC.

**NAME OF PARTICIPATING DEALER:**

**SCHEDULE TO AGREEMENT DATED:**

As marketing fees and to defray other distribution-related expenses, the Dealer Manager will pay \_ basis points of the gross cash proceeds on all sales generated by Participating Dealer pursuant to Section IV of this Participating Dealer Agreement. These amounts are in addition to the selling commissions provided for in Section IV of this Participating Dealer Agreement and will be due and payable as more fully described below.

(1) Up front selling commission:

(payable at time of sale)

\_\_\_\_\_

(2) Trailing selling commission:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

“DEALER MANAGER”  
MOODY SECURITIES, LLC

By:

Name:

Title:

“PARTICIPATING DEALER”  
(Print Name of Participating Dealer)

By:

Name:

Title:

**SCHEDULE 2  
TO  
PARTICIPATING DEALER AGREEMENT WITH  
MOODY SECURITIES, LLC**

**NAME OF ISSUER:** MOODY NATIONAL REIT II, INC.

**NAME OF PARTICIPATING DEALER:**

**SCHEDULE TO AGREEMENT DATED:**

Participating Dealer hereby authorizes the Dealer Manager or its agent to deposit selling commissions, reallowances and other payments due to it pursuant to the Participating Dealer Agreement to its bank account specified below. This authority will remain in force until Participating Dealer notifies the Dealer Manager in writing to cancel it. In the event that the Dealer Manager deposits funds erroneously into Participating Dealer's account, the Dealer Manager is authorized to debit the account with no prior notice to Participating Dealer for an amount not to exceed the amount of the erroneous deposit.

Bank Name:

Bank Address:

Bank Routing Number:

Account Number:

“PARTICIPATING DEALER”

(Print Name of Participating Dealer)

By:

Name:	_____
Title:	_____
Date:	_____

**SCHEDULE 3  
TO  
PARTICIPATING DEALER AGREEMENT WITH  
MOODY SECURITIES, LLC**

Participating Dealer represents and warrants that it is currently licensed as a broker-dealer in the following jurisdictions:

- |   |   |
|---|---|
| <input type="checkbox"/> Alabama              | <input type="checkbox"/> Montana        |
| <input type="checkbox"/> Alaska               | <input type="checkbox"/> Nebraska       |
| <input type="checkbox"/> Arizona              | <input type="checkbox"/> Nevada         |
| <input type="checkbox"/> Arkansas             | <input type="checkbox"/> New Hampshire  |
| <input type="checkbox"/> California           | <input type="checkbox"/> New Jersey     |
| <input type="checkbox"/> Colorado             | <input type="checkbox"/> New Mexico     |
| <input type="checkbox"/> Connecticut          | <input type="checkbox"/> New York       |
| <input type="checkbox"/> Delaware             | <input type="checkbox"/> North Carolina |
| <input type="checkbox"/> District of Columbia | <input type="checkbox"/> North Dakota   |
| <input type="checkbox"/> Florida              | <input type="checkbox"/> Ohio           |
| <input type="checkbox"/> Georgia              | <input type="checkbox"/> Oklahoma       |
| <input type="checkbox"/> Hawaii               | <input type="checkbox"/> Oregon         |
| <input type="checkbox"/> Idaho                | <input type="checkbox"/> Pennsylvania   |
| <input type="checkbox"/> Illinois             | <input type="checkbox"/> Rhode Island   |
| <input type="checkbox"/> Indiana              | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> Iowa                 | <input type="checkbox"/> South Dakota   |
| <input type="checkbox"/> Kansas               | <input type="checkbox"/> Tennessee      |
| <input type="checkbox"/> Kentucky             | <input type="checkbox"/> Texas          |
| <input type="checkbox"/> Louisiana            | <input type="checkbox"/> Utah           |
| <input type="checkbox"/> Maine                | <input type="checkbox"/> Vermont        |
| <input type="checkbox"/> Maryland             | <input type="checkbox"/> Virginia       |
| <input type="checkbox"/> Massachusetts        | <input type="checkbox"/> Washington     |
| <input type="checkbox"/> Michigan             | <input type="checkbox"/> West Virginia  |
| <input type="checkbox"/> Minnesota            | <input type="checkbox"/> Wisconsin      |
| <input type="checkbox"/> Mississippi          | <input type="checkbox"/> Wyoming        |
| <input type="checkbox"/> Missouri             |   |

## **AGREEMENT OF PURCHASE AND SALE**

THIS AGREEMENT OF PURCHASE AND SALE (this “Agreement”) is made as of May 11, 2015, by and between **MUELLER HOSPITALITY, LP**, a Texas limited partnership (the “Seller”), and **MOODY NATIONAL REIT I, INC.**, a Maryland corporation (the “Purchaser”).

### **RECITATIONS:**

A. The Seller is the owner of that certain tract of land more particularly described on Exhibit ”A” attached hereto and made a part hereof, located at 1200 Barbara Jordan Boulevard, Building 4, Austin, Texas 78723, together with all rights, titles, benefits, easements, privileges, remainders, tenements, hereditaments, interests, reversions and appurtenances thereunto belonging or in any way appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of the Seller therein, including in and to adjacent strips and gores, if any, between the Land and abutting properties, and in and to adjacent streets, highways, roads, alleys or rights-of-way, and the beds thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired, all water and mineral rights, development rights and all easements, rights and other interests appurtenant thereto, (the “Land”), and all buildings and improvements, including the 112-key hotel presently branded as a Residence Inn by Marriott, located on the Land (the “Improvements”). The Land and the Improvements, together with the Personal Property, are sometimes referred to hereinafter together as the “Hotel”.

B. The Purchaser desires to purchase the Property, including the Hotel, from the Seller, and the Seller desires to sell the Property, including the Hotel, to the Purchaser, for the Purchase Price (as defined below) and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and undertakings of the parties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is agreed:

### **ARTICLE I DEFINITIONS**

The following terms shall have the indicated meanings:

- 1.1 “3-05 Audit” shall have the meaning ascribed to such term in Section 2.4(f).
- 1.2 “Accounts Receivable” shall mean all amounts which the Seller is entitled to receive from the operation of the Hotel, but are not paid as of the Closing, including, without limitation, charges for the use or occupancy of any guest, conference, meeting or banquet rooms or other facilities at the Hotel, or any other goods or services provided by or on behalf of the Seller at the Hotel.
- 1.3 “Advance Bookings” shall mean reservations and agreements made or entered into by Seller or Manager prior to Closing and assumed by Purchaser for Hotel rooms or meeting rooms to be utilized after Closing, or for catering services or other Hotel services to be provided after Closing.
- 1.4 “Affiliate” shall mean any Person that is directly or indirectly (through one or more intermediaries) controlled by, under common control with, or controlling another Person. For the purposes of this definition, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person or the power to veto major policy decisions of any Person, whether through the ownership of voting securities, by contract or otherwise.
- 1.5 “Agreement” shall have the meaning ascribed to such term in the Preamble.
- 1.6 “Allocation” shall have the meaning ascribed to such term in Section 2.5.
- 1.7 “Applicable Laws” shall mean any applicable building, zoning, subdivision, environmental, health, safety or other governmental laws, statutes, ordinances, resolutions, rules, codes, regulations, orders or determinations of any Governmental Authority, or any restrictive covenants or deed restrictions affecting the Property or the ownership, operation, use maintenance or condition thereof.
- 1.8 “Assignment and Assumption Agreement” shall mean an assignment and assumption agreement between Seller and Purchaser in substantially the form attached hereto as Exhibit “D” whereby Seller assigns and Purchaser assumes all of the Seller’s rights, title and interest in and to the Hotel Agreements which are disclosed to Purchaser and not terminated prior to Closing in accordance with this Agreement.
- 1.9 “Authorizations” shall mean all certificates of occupancy, licenses, permits, authorizations and approvals required by any governmental or quasi-governmental agency, body, department, commission, board, bureau or instrumentality presently issued.

- 1.10 “Bankruptcy Code” shall have the meaning ascribed to such term in Section 3.21.
- 1.11 “Basket Limitation” shall mean an amount equal to \$50,000.00.
- 1.12 “Bill of Sale and General Assignment” shall mean a bill of sale and general assignment between the Seller and Purchaser in substantially the form attached hereto as Exhibit “E”, conveying title to the Personal Property (other than Leased Property) from Seller to Purchaser, together with any Warranties and Guaranties related thereto, and Advance Bookings.
- 1.13 “Cap Limitation” shall mean an amount equal to 15% of the Purchase Price.
- 1.14 “Certificate of Completion” means a certificate of compliance issued by the new construction council having authority over the Property.
- 1.15 “Closing” shall mean the consummation of the sale and purchase of the Property pursuant to this Agreement.
- 1.16 “Closing Date” shall mean the date that is thirty (30) days following the expiration of the Study Period, subject to Purchaser’s right to extend the Closing Date for up to an additional fifteen (15) days by providing written notice to Seller on or before the originally scheduled Closing Date in the event Purchaser has not received Licensor approval of Purchaser or its designee as a franchisee of the Hotel.
- 1.17 “Closing Documents” shall have the meaning ascribed to such term in Section 7.1.
- 1.18 “Code” shall have the meaning ascribed to such term in Section 10.13.
- 1.19 “Covered Audit Period” shall have the meaning ascribed to such term in Section 2.4(f).
- 1.20 “Deed” shall mean a special warranty deed in substantially the form attached hereto as Exhibit “F”, conveying fee title to the Real Property from the Seller to the Purchaser, subject to the Permitted Title Exceptions.
- 1.21 “Earnest Money” shall have the meaning ascribed to such term in Section 2.3.
- 1.22 “Effective Date” (or other similar phrases such as “date of this Agreement” or “date hereof”) shall mean the first date on which the Escrow Agent shall have acknowledged receipt of this Agreement fully executed by the Seller and the Purchaser.
- 1.23 “Employees” shall have the meaning ascribed to such term in Section 3.6.
- 1.24 “Environmental Conditions” shall have the meaning ascribed to such term in Section 4.6(c).
- 1.25 “Environmental Laws” shall mean any present or future federal, state or local laws, statutes, codes, ordinances, rules, regulations, standards, policies, court orders, decrees, relating to protection of human health or safety or the environment or relating to Hazardous Materials, including without limitation, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), Safe Drinking Water Act (42 U.S.C. § 3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), Clean Air Act (42 U.S.C. § 7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), and any law, statute, regulation, rule or ordinance of the state in which the Property is located and any other governmental entity with actual or asserted jurisdiction over the Property or part thereof, concerning such hazardous, special or toxic materials, wastes or substances or any judicial, administrative, or otherwise binding and applicable interpretation of any such laws, rules or regulations.
- 1.26 “ERISA” shall have the meaning ascribed to such term in Section 3.6.
- 1.27 “Escrow Agent” shall mean the Title Company.
- 1.28 “Exchange” shall have the meaning ascribed to such term in Section 10.21.
- 1.29 “Executive Orders” shall have the meaning ascribed to such term in Section 4.5.
- 1.30 “Final Rooms Revenue” shall mean the final night’s room revenue for the Hotel (revenue from rooms occupied as of 11:59 p.m. on the day prior to the Closing Date, exclusive of food, beverage, telephone and similar charges, which shall be retained by the Seller), including any sales taxes, room taxes or other taxes thereon.
- 1.31 “FIRPTA Certificate” shall mean the affidavit of Seller under Section 1445 of the Internal Revenue Code, as amended.
- 1.32 “First Earnest Money Deposit” shall have the meaning ascribed to such term in Section 2.3.
- 1.33 “Governmental Authority” shall mean any federal, state, county, municipal or other government or governmental or quasi-governmental agency, department, commission, board, bureau, office or instrumentality, foreign or domestic, or any of the them, in each case to the extent the same has jurisdiction over the Person or property in question.

- 1.34 “Hazardous Substances” shall have the meaning ascribed to such term in Section 3.14.
- 1.35 “Hotel” shall have the definition ascribed to such term in the Recitals.
- 1.36 “Hotel Agreements” shall mean collectively the Operating Agreements, Leased Property Agreements, Off-Site Facility Agreements and the Occupancy Agreements.
- 1.37 “Improvements” shall mean the Hotel and all other buildings, structures, improvements, and all fixtures, systems, facilities and other items of real estate located on the Land.
- 1.38 “Independent Contract Consideration” shall mean One Hundred and No/100 Dollars (\$100.00) of the Earnest Money which shall be paid by the Escrow Agent to the Seller in the event that the Purchaser elects to terminate this Agreement.
- 1.39 “Insurance Policies” shall mean all policies of insurance maintained by or on behalf of the Seller pertaining to the Property, its operation, or any part thereof.
- 1.40 “Intangible Personal Property” shall mean the Seller’s right, title and interest in and to all intangible personal property owned or possessed by the Seller and used in connection with the ownership or operation of the Property, including, without limitation, (1) Authorizations (but only to the extent transferrable under Applicable Laws), (2) utility and development rights and privileges, general intangibles, business records, plans and specifications pertaining to the Real Property and the Personal Property, (3) any unpaid award for taking by condemnation or any damage to the Land by reason of a change of grade or location of or access to any street or highway, (4) the share of the Final Rooms Revenue determined under Section 7.6(i) hereof, (5) Advance Bookings, excluding the Seller’s cash on hand, in the bank accounts and invested with financial or other institutions, and (6) any Warranties and Guaranties. For the avoidance of doubt, Intangible Personal Property shall not include Accounts Receivable, the License Agreement, any agreement terminated by the Seller in accordance with Section 6.1, or any Authorizations that cannot be transferred under Applicable Laws.
- 1.41 “Inventory” shall mean all inventories of food, beverage and consumable items in opened or unopened cases and all in-use reserve stock of linens, towels, paper goods, soaps, cleaning supplies, office supplies, engineering supplies, maintenance supplies, parts and tools and other “inventories of merchandise” and “inventories of supplies” as such terms are defined in the Uniform System of Accounts for Hotels used in connection with the operation and maintenance of the Hotel, but expressly excluding any alcoholic beverages to the extent the sale or transfer of the same is not permitted under Applicable Law.
- 1.42 “Knowledge of the Seller” or “Seller’s Knowledge” shall mean the current, actual knowledge of Billy Brown, without any duty on the part of such Person to conduct any independent investigation or make any inquiry of any Person, other than the duty of such Person to make a reasonable inquiry of the Manager with respect to the specific matters or facts then in question.
- 1.43 “Land” shall mean the approximately 2.198 acres of land more particularly described on Exhibit “A”, together with all rights, titles, benefits, easements, privileges, remainders, tenements, hereditaments, interests, reversions and appurtenances thereunto belonging or in any way appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of the Seller therein, including in and to adjacent strips and gores, if any, between the Land and abutting properties, and in and to adjacent streets, highways, roads, alleys or rights-of-way, and the beds thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired, all water and mineral rights, development rights and all easements, rights and other interests appurtenant thereto.
- 1.44 “Leased Property” shall mean all items of Tangible Personal Property leased to the Seller, including items subject to any capital lease, operating lease, financing lease, or any similar agreement (if any).
- 1.45 “Leased Property Agreements” shall mean all lease agreements pertaining to the Leased Property (if any) set forth on Exhibit “G” hereto, as such Exhibit may be modified consistent with the provisions of this Agreement.
- 1.46 “LEED Certification” shall mean the Leadership in Energy and Environmental Design certification received from the U.S. Green Building Council.
- 1.47 “License Agreement” shall mean the franchise agreement, dated September 17, 2010, between Licensor and Seller with respect to the Hotel.
- 1.48 “Licensors” shall mean Marriott International, Inc.
- 1.49 “Liquor Permit” shall have the meaning ascribed to such term in Section 7.11.
- 1.50 “Management Agreement” shall mean that certain Management Agreement, dated May 24, 2010, between Manager and Seller with respect to the Hotel.
- 1.51 “Manager” shall mean Intermountain Management, L.L.C.
- 1.52 “Monetary Title Encumbrances” shall have the meaning ascribed to such term in Section 2.4(e).

- 1.53 “New Manager” shall have the meaning ascribed to such term in Section 5.1(e).
- 1.54 “Occupancy Agreements” shall mean the leases, concession or occupancy agreements in effect with respect to the Real Property under which any tenants (other than Hotel guests and other than Seller) or concessionaires have the right to occupy space upon the Real Property set forth on Exhibit “H” hereto, as such Exhibit may be modified consistent with the provisions of this Agreement.
- 1.55 “Off-Site Facility Agreements” shall mean the written leases, contracts and agreements, if any, pertaining to facilities not located on the Property but which are required and presently used for the operation of the Hotel including, without limitation, use agreements for local golf courses, and parking or garage contracts or leases, as set forth on Exhibit “I” hereto, as such Exhibit may be modified consistent with the provisions of this Agreement.
- 1.56 “Operating Agreements” shall mean the service, supply, maintenance and repair, and other similar contracts in effect with respect to the Property (other than the Occupancy Agreements, Leased Property Agreements, Off-Site Facility Agreements and the Management Agreement) related to construction, operation, or maintenance of the Property and the business conducted thereon, as set forth on Exhibit “J” hereto, as such Exhibit may be modified consistent with the provisions of this Agreement.
- 1.57 “Owner’s Title Policy” shall mean an owner’s policy of title insurance issued to the Purchaser by the Title Company, pursuant to which the Title Company (or any applicable underwriter) insures the Purchaser’s ownership of good and indefeasible fee simple title to the Real Property, subject only to Permitted Title Exceptions and, at Purchaser’s sole expense if Purchaser elects to purchase and the same are available under the circumstances, including extended coverage over the so-called “pre-printed” standard exceptions and such other endorsements as are customary in such transactions.
- 1.58 “Patriot Act” shall have the meaning ascribed to such term in Section 4.5.
- 1.59 “Permits” shall have the meaning ascribed to such term in Section 3.13.
- 1.60 “Permitted Exceptions” shall mean (i) the Permitted Title Exceptions, (ii) liens for current real estate taxes which are not yet due and payable, and (iii) laws, regulations, resolutions or ordinances, including, without limitation, building, zoning and environmental protection, as to the use, occupancy, subdivision, development, conversion or redevelopment of the Land currently or hereinafter imposed by any Governmental Authority.
- 1.61 “Permitted Title Exceptions” shall mean those exceptions to title to the Real Property that are satisfactory or deemed satisfactory to the Purchaser as determined pursuant to Section 2.4(e) hereof.
- 1.62 “Person” shall mean an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Authority.
- 1.63 “Personal Property” shall mean collectively the Tangible Personal Property and the Intangible Personal Property.
- 1.64 “Property” shall mean collectively the Real Property and Personal Property.
- 1.65 “Purchase Price” shall mean the amount of TWENTY FIVE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$25,500,000.00) payable in the manner described in Section 2.2 hereof, which amount shall include the Inventory.
- 1.66 “Purchaser” shall have the meaning ascribed to such term in the Preamble.
- 1.67 “Purchaser Parties” shall mean the Purchaser’s directors, officers, lenders, employees, agents, counsel, consultants or representatives.
- 1.68 “Purchaser Waived Breach” shall have the meaning ascribed to such term in Section 9.6(e).
- 1.69 “Purchaser’s Objections” shall have the meaning ascribed to such term in Section 2.4(e).
- 1.70 “Purchaser’s PIP” shall have the meaning ascribed to such term in Section 7.12.
- 1.71 “Real Property” shall mean the Land and the Improvements.
- 1.72 “Rep Survival Period” shall have the meaning ascribed to such term in the last sentence of Article III.
- 1.73 “SEC” shall have the meaning ascribed to such term in Section 6.8.
- 1.74 “Second Earnest Money Deposit” shall have the meaning ascribed to such term in Section 2.3.
- 1.75 “Seller” shall have the meaning ascribed to such term in the Preamble.
- 1.76 “Seller Indemnity Obligations” shall have the meaning ascribed to such term in Section 9.6(c).

1.77 “Seller’s Response” shall have the meaning ascribed to such term in Section 2.4(e).

1.78 “Seller’s Response Period” shall have the meaning ascribed to such term in Section 2.4(e).

1.79 “Study Period” shall mean the period ending at 5:00 p.m. on the date which is thirty (30) days following the Effective Date. Except as expressly noted herein to the contrary, times referred to in this Agreement shall mean the times as in effect, from time to time, in Houston, Texas.

1.80 “Tangible Personal Property” shall mean the items of tangible personal property consisting of all furniture, fixtures, equipment, machinery, Inventory and vehicles owned by Seller that are used by the Seller in operation of Property and the Hotel and other tangible personal property of every kind and nature (which does not include cash-on-hand and petty cash) located at the Hotel which shall be owned by Seller or leased by Seller pursuant to a Leased Property Agreement, including, without limitation, Seller’s interest as lessee with respect to any such leased Tangible Personal Property.

1.81 “Terrorism Executive Order” shall have the meaning ascribed to such term in Section 4.5.

1.82 “Title Commitment” shall have the meaning ascribed to such term in Section 2.4(e).

1.83 “Title Company” shall mean Moody National Title Company, L.P., 6363 Woodway, Suite 250, Houston, Texas 77057, or other title insurance underwriter selected by Purchaser and reasonably acceptable to Seller.

1.84 “Updated Survey” shall mean a current ALTA as-built survey of the Real Property, certified to the Purchaser and the Title Company by a land surveyor or professional engineer qualified in the jurisdiction in which the Real Property is located, to be obtained by the Purchaser, at Purchaser’s sole cost and expense, pursuant to the provisions of Section 2.4(e).

1.85 “WARN Act” means the Worker’s Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101, et seq., and any similar state and local applicable law, as amended from time to time, and any regulations, rules and guidance issued pursuant thereto.

1.86 “Warranties and Guaranties” shall mean, to the extent assignable by Seller without the consent of any other Person at no cost or expense to Seller, all of Seller’s interest in any existing warranties and guaranties relating to the development, construction, ownership and operation of the Improvements, the Tangible Personal Property, the Hotel or any part thereof.

## **ARTICLE II PURCHASE AND SALE; DEPOSIT; PAYMENT OF PURCHASE PRICE; STUDY PERIOD**

2.1 Purchase and Sale. The Seller agrees to sell the Property and the Purchaser agrees to purchase the Property, free and clear of all liens and encumbrances (excluding Permitted Exceptions) for the Purchase Price and in accordance with and subject to the other terms and conditions set forth herein. No adjustment shall be made to the Purchase Price except as explicitly set forth in this Agreement.

2.2 Payment of Purchase Price. The Purchaser shall pay the Purchase Price, as adjusted in the manner specified in Article VII and as set forth below, to the Seller (or other party designated by the Seller) at Closing by making a wire transfer of immediately available federal funds to the account of the Seller (or other party designated by the Seller). Such wire transfer shall be sent by Purchaser to the Escrow Agent for the account of the Seller on the Closing Date.

2.3 Earnest Money. Within one (1) business day following the Effective Date, the Purchaser will deliver to the Escrow Agent the sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) (the “First Earnest Money Deposit”). Within one (1) business day following the expiration of the Study Period, assuming the Purchaser has not previously elected to terminate this Agreement in accordance with Section 2.4, the Purchaser shall deliver to the Escrow Agent the additional sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) (the “Second Earnest Money Deposit”) (the First Earnest Money Deposit and the Second Earnest Money Deposit, if any, and all interest earned thereon are hereinafter collectively referred to as the “Earnest Money”). The Earnest Money shall be non-refundable, except as otherwise provided for in this Agreement. The Earnest Money shall be invested by the Escrow Agent in short-term interest bearing accounts at banks or other financial institutions, which accounts must be insured by the Federal Deposit Insurance Corporation. All interest earned on such deposits shall belong to the party (as between the Seller and the Purchaser) who is entitled to receive the Earnest Money under the applicable provisions of this Agreement. In the event the transactions contemplated herein are not closed in accordance with the provisions hereof, the Earnest Money shall be disbursed to either the Seller or the Purchaser as provided in this Agreement.

2.4 Due Diligence.

(a) The Purchaser shall have the right, until 5:00 p.m. on the last day of the Study Period, and thereafter if Purchaser does not notify Seller in writing prior to the expiration of the Study Period that Purchaser has elected to terminate this Agreement, to enter upon the Real Property upon not less than one (1) business day prior notice to the Seller, and to perform at

Purchaser's sole cost, risk and expense and subject to terms and conditions set forth in Section 2.4(d) below, such due diligence investigations during business hours as the Purchaser, in its discretion deems appropriate, provided that any such inspection shall not unreasonably impede the normal day to day business operation of the Hotel, and provided further that the Seller shall be entitled to accompany the Purchaser and the Purchaser Parties (as applicable) on such inspection. Notwithstanding the foregoing, the Purchaser shall not have the right to interview the Employees, the Manager, the tenants or subtenants under Tenant Leases or any Hotel guests or licensees or other users or occupants of the Hotel, without the prior written consent of the Seller, such consent to be granted or withheld by the Seller's reasonable discretion. The Purchaser's right of inspection of the Property shall be subject to the rights of the tenants and Hotel guests and the rights of the Manager under the Management Agreement. Prior to any such inspection, the Purchaser shall deliver to the Seller evidence of insurance reasonably acceptable to the Seller. If prior to the expiration of the Study Period, the Purchaser provides written notice to the Seller and Escrow Agent that it has determined in its sole, absolute and unreviewable discretion, to terminate the Agreement for any reason or no reason whatsoever, this Agreement shall automatically terminate, the Earnest Money (less the Independent Contract Consideration, which shall be paid to the Seller) shall be returned to Purchaser and the Seller and the Purchaser shall be released from all further liability or obligation hereunder except those which expressly survive a termination of this Agreement; provided, however, that if the Purchaser does not provide such written notice prior to the expiration of the Study Period, such right shall be deemed to be waived and this Agreement shall remain binding and of full force and effect. In the event of such termination, the Earnest Money, less the Independent Contract Consideration (which shall be paid to the Seller), shall be refunded by the Escrow Agent to Purchaser without any further notice to Escrow Agent.

(b) Seller shall, on or before 5:00 p.m. C.D.T. on the date which is five (5) days following the Effective Date, deliver copies of the items identified in Exhibit "B" (collectively, the "Submission Matters") to Purchaser. In addition, at all times prior to the Closing, Seller shall also provide to Purchaser, within two (2) days of the Purchaser's request thereof, such other documents and information concerning the Property as the Purchaser or the Purchaser's lender may from time to time reasonably request which are in Seller's or the Manager's possession or control, excluding any correspondence, documents, agreements, instruments or materials subject to the attorney-client privilege or which the Seller is contractually or legally not permitted to disclose (as to which Seller shall give notice to the Purchaser of same). During the Study Period, upon two (2) business days prior notice and upon conditions reasonably established by the Seller, the Seller shall also make available at the Hotel to the Purchaser, and the Purchaser's agents, auditors, engineers, attorneys, consultants, and potential lessees, partners and lenders (collectively, the "Purchaser Parties"), for inspections and/or copying at the Purchaser's sole cost and expense, the Seller's and the Manager's books, records, and correspondence specifically relating to the Property which are in the Seller's or the Manager's possession at the Hotel, excluding any correspondence, documents, agreements, instruments or materials subject to the attorney-client privilege or which the Seller is contractually or legally not permitted to disclose (as to which Seller shall give notice to Purchaser of same).

(c) If for any reason whatsoever the Purchaser does not purchase the Property, the Purchaser shall promptly deliver to the Seller or destroy copies of the Submission Matters delivered to or copied by the Purchaser or Purchaser Parties; provided, however, that the Purchaser shall not be obligated to deliver to the Seller any materials of a proprietary nature (such as, for the purposes of example only, any financial forecast or market repositioning plans) prepared for the Purchaser or the Purchaser Parties in connection with the Property. Any such information reflecting, referencing or incorporating any Submission Matters shall be held in the strictest confidence by the Purchaser and the Purchaser Parties. The Purchaser shall be liable for any breach or violation of this Section 2.4(c) by any Purchaser Party. The terms of this Section 2.4(c) shall survive the termination of this Agreement.

(d) The Purchaser shall indemnify, hold harmless and defend the Seller against any loss, damage, liability, cost (including, without limitation, reasonable attorneys' fees) or claim for personal injury or property damage and any other loss, damage, liability, cost (including, without limitation, reasonable attorneys' fees) claim or lien to the extent arising out of, resulting from, relating to or in connection with any such inspection of the Real Property by the Purchaser or the Purchaser Parties or any agents, contractors or employees of the Purchaser or the Purchaser Parties, except for the discovery of existing conditions of the Real Property. The Purchaser understands and accepts that any on-site inspections of the Property shall occur during business hours and at reasonable times agreed upon by the Seller and the Purchaser after not less than three (3) business days prior notice to the Seller and shall be conducted so as not to interfere unreasonably with the operation of the Property and the use of the Property by the tenants and the guests of the Hotel. The Seller shall have the right to have a representative present during any such inspections. If the Purchaser desires to do any invasive testing at the Property, the Purchaser shall do so only after notifying Seller and subject to reasonable terms and conditions as may be proposed by the Seller. The Seller shall be entitled to accompany the Purchaser and the Purchaser Parties (as applicable) on any such permitted testing. The Purchaser shall not permit any liens to attach to the Property by reason of such inspections. The Purchaser shall (i) restore the Property, at its own expense, to substantially the same condition which existed prior to any inspections or other activities of the Purchaser thereon; and (ii) be responsible for and pay any and all liens by contractors, subcontractors, materialmen, or laborers performing the inspections or any work for the Purchaser or the Purchaser Parties on or related to the Property. The provisions of this Section 2.4(d) shall survive any termination of this Agreement and the Closing (if any).

(e) Within fifteen (15) days after the Effective Date, the Seller shall cause the Title Company to furnish to the Purchaser and Seller, a title insurance commitment bearing an effective date not earlier than forty-five (45) days prior to the Effective Date issued by the Title Company covering the Real Property, binding the Title Company to issue the Owner's Title Policy upon satisfaction of the conditions set forth in such commitment, together with legible copies (to the extent such legible copies are available)

of all documents identified in such title insurance commitment as exceptions to title (collectively, the “Title Commitment”) with respect to the state of title to the Property. Within ten (10) days after delivery of the Title Commitment to Seller by the Purchaser, the Purchaser shall cause a surveyor licensed to practice in the state where the Property is located to furnish to the Purchaser an updated survey (the “Updated Survey”) of the Land and Improvements. Within five (5) business days following its receipt of the Title Commitment and the Updated Survey, or within five (5) business days of any supplement to the Title Commitment or Updated Survey, the Purchaser shall notify the Seller in writing of any matters identified in the Title Commitment that the Purchaser is unwilling to accept (including any defect or failure of the Title Commitment to comply with requirements of this Section 2.4(e)) (collectively, the “Purchaser’s Objections”). Notwithstanding anything herein to the contrary, the Seller shall be obligated to pay and discharge, or insure over any monetary encumbrances or obligations arising from delinquent real property taxes, deeds of trust, security agreements, or mechanics’ liens or other similar monetary liens or charges that were created by, expressly consented to in writing, or expressly assumed by Seller in writing, including without limitation any loans, bonds or due and payable obligations to municipal or other governmental bodies (collectively, “Monetary Title Encumbrances”) reflected in the Title Commitment. No Monetary Title Encumbrances shall be considered to be a Permitted Title Exception. For such purposes, the Seller may use all or a portion of the Purchase Price to pay or discharge any such Monetary Title Encumbrances at the Closing. The Seller may notify Purchaser within five (5) days after receipt of Purchaser’s Objections (the “Seller’s Response Period”) whether the Seller, in its sole discretion, agrees to cure any of such Purchaser’s Objections, (the “Seller’s Response”). If the Seller agrees in the Seller’s Response Period to cure any of such Purchaser’s Objections, the Seller shall use good faith efforts (without the obligation to expend any money or incur any liability) to cure such Purchaser’s Objections that the Seller has agreed to attempt to cure on or before the Closing. If the Seller does not provide the Seller’s Response to the Purchaser within the Seller’s Response Period, the Seller shall be deemed to have elected not to cure Purchaser’s Objections. If (i) Seller elects to not cure or is deemed to have elected not to cure any Purchaser’s Objections, within five (5) days after receipt of Seller’s Response (or, after the expiration of Seller’s Response Period in the event no Seller’s Response is delivered) or (ii) in the event Seller agrees in the Seller’s Response Period to cure any of such Purchaser’s Objections, but fails to do so on or before the Closing, Purchaser shall, in its sole and absolute discretion, elect (1) to waive such Purchaser’s Objections without any abatement in the Purchase Price and proceed to close or (2) to terminate this Agreement in writing delivered to Seller on or before Closing in which case the parties hereto shall be released from all further obligations hereunder, except those which expressly survive a termination of this Agreement; provided, however, with respect to clause (i) above, such termination right shall automatically expire if not exercised by Purchaser and delivered in writing to Seller before the earlier to occur of (A) five (5) days after Seller’s Response is delivered (or if none is delivered, five (5) days after the Seller’s Response Period expires), and (B) the Closing Date. In the event Purchaser does not timely provide to the Seller written notice of Purchaser’s election in response to Seller’s Response, Purchaser shall be deemed to have elected clause (1) of the preceding sentence. In the event of Purchaser’s termination or deemed termination pursuant to this Section 2.4(e), the Earnest Money, less the Independent Contract Consideration (which shall be paid to the Seller), shall be refunded by the Escrow Agent to Purchaser without any further notice to Escrow Agent and despite any objection or potential objection by Seller.

(f) At Purchaser’s sole cost and expense, Purchaser’s auditor may conduct an audit as required of Purchaser pursuant to Rule 3-05 of Securities and Exchange Commission Regulation S-X (the “3-05 Audit”) of the financial statements of the Property for the three (3) complete fiscal years immediately preceding the Closing Date and the stub period through the Closing Date (the “Covered Audit Period”), and Seller shall reasonably cooperate (at no cost to Seller) with Purchaser’s auditor in the conduct of such 3-05 Audit. Without limiting the foregoing, (i) Purchaser or its designated independent or other auditor may audit the financial statements of the Property, at Purchaser’s expense and, upon Purchaser’s prior written request, Seller shall allow Purchaser’s auditors reasonable access to such books and records maintained by Seller in respect to the Property and pertaining to the Covered Audit Period as necessary to conduct such 3-05 Audit, and (ii) Seller shall use reasonable efforts to provide to Purchaser such existing financial information as may be reasonably required by Purchaser and required for Purchaser’s auditors to conduct such 3-05 Audit; provided, however, that the ongoing obligations of Seller shall be limited to providing such information or documentation as may be in the possession or control of Seller, the Seller’s accountants or Manager, at no cost to any of such parties, and in the format that Seller or its accountants or Manager have maintained such information. Notwithstanding anything contained in this paragraph to the contrary, in no event shall Seller or any of Seller’s Affiliates be obligated to disclose any confidential or non-public financial information with respect to any of Seller’s Affiliates or any property of any such Seller’s Affiliate. This provision shall survive Closing.

2.5 Purchase Price Allocation. The Seller and the Purchaser agree that the Purchase Price shall be allocated among the assets of the Property as determined by agreement of the parties prior to the Closing for federal, state and local tax purposes in accordance with Section 1060 of the Code. The Purchaser shall, within ten (10) days after the date of this Agreement, prepare and deliver to the Seller for its review a schedule allocating the Purchase Price (and any other items that are required for federal income tax purposes to be treated as part of the Purchase Price) among the assets of the Property (such schedule, the “Allocation”). The Seller shall review such Allocation and provide any objections to the Purchaser within ten (10) days after the receipt thereof. If the Seller raises any objection to the Allocation, the parties hereto will negotiate in good faith to resolve such objection(s). Upon reaching an agreement on the Allocation, the Purchaser and the Seller shall (i) cooperate in the filing of any forms (including Form 8594 under Section 1060 of the Code) with respect to the Allocation as finally resolved, including any amendments to such forms required pursuant to this Agreement with respect to any adjustment to the Purchase Price and (ii) shall file all federal, state and local tax returns and related tax documents consistent with such Allocation. Notwithstanding the foregoing, if, after negotiating in good faith, the parties hereto are unable to agree on a mutually satisfactory Allocation, each of the Purchaser and the Seller shall use its own allocation for purposes of this Section 2.5.

**ARTICLE III**  
**SELLER'S REPRESENTATIONS AND WARRANTIES**

In order to induce the Purchaser to enter into this Agreement and to purchase the Property, and to pay the Purchase Price therefor, Seller hereby makes the representations and warranties set forth below to the Purchaser. Each such representation shall be materially true and correct on the Effective Date and shall be materially true and correct on the Closing Date.

3.1 Organization and Power. Seller is a limited partnership duly organized, validly existing and in good standing under the laws of Texas and has all requisite power and authority to enter into and perform its obligations hereunder and under any document or instrument required to be executed and delivered on behalf of the Seller hereunder.

3.2 Authorization and Execution. This Agreement (and all documents contemplated hereby) has been duly authorized by all necessary limited partnership action on the part of the Seller, has been duly executed and delivered by the Seller, constitutes the valid and binding agreement of the Seller and is enforceable against the Seller in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally or by the principles governing the availability of equitable remedies. The Person executing this Agreement on behalf of the Seller, for and on behalf of the Seller, has the authority to do so.

3.3 Non-contravention. Subject to any consent to the assignment of any particular Hotel Agreement required by the terms thereof or by Applicable Laws, the execution and delivery of, and the performance by the Seller of its obligations under, this Agreement do not and will not contravene, or constitute a default under, any provision of any Applicable Law or regulation, the Seller's organizational documents or any agreement, judgment, injunction, order, decree or other instrument binding upon the Seller or to which the Property is subject, or result in the creation of any lien or other encumbrance on any asset of the Seller.

3.4 Litigation. There is no action, suit or proceeding, pending or, to Seller's Knowledge, overtly threatened in writing, against or affecting Seller or the Property, in any court or before any arbitrator or before any Governmental Authority which would reasonably be expected to materially adversely affect the ability of the Seller to perform its obligations hereunder.

3.5 Seller Is Not a "Foreign Person". Seller is not a "foreign person" or a "disregarded entity" within the meaning of Section 1445 of the Internal Revenue Code, as amended (i.e., the Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person as those terms are defined in the Internal Revenue code and regulations promulgated thereunder).

3.6 Labor and Employment Matters. There are no employees of the Hotel other than those employees who are employed by Manager with respect to the Hotel (collectively, the "Employees"). There are no agreements to which Seller is a party relating to any labor or collective bargaining agreement affecting the Hotel. There are no pension plans of any type with respect to which Seller or the Property has an obligation. Neither Seller nor Manager has received any written notice from any labor union or group of employees that such union or group represents or believes or claims it represents or intends to represent any of the employees of Seller or Manager at the Hotel nor has it received any notice of any claim of unfair labor practices. Seller and Manager have and shall maintain through the Closing Date a level of employment at the Hotel that is sufficient for the normal business operations of the Hotel at standards required by the License Agreement. The Closing of the transaction contemplated by this Agreement will not constitute or result in a violation of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or of any state or local statutes regulating investments of and fiduciary obligations with respect to governmental plans (as defined in Section 3(32) of ERISA).

3.7 Insurance. All insurance policies held with respect to the Property by Seller are valid and in full force and effect.

3.8 Intentionally Deleted.

3.9 Right to Purchase. Seller has not granted to any Person other than Purchaser any right to purchase the Property or any portion thereof or interest therein.

3.10 Condemnation. There are no any pending or, to Seller's Knowledge, overtly threatened in writing condemnation or similar proceedings affecting the Property.

3.11 Hotel. All Hotel Agreements are listed on Schedule 3.11 attached hereto. Seller has made or will make available to Purchaser true and complete copies of all such Hotel Agreements. All such Hotel Agreements are in full force and effect, and to Seller's Knowledge there are no defaults or events that with notice or the passage of time or both, would constitute a default by Seller (or any party constituting Seller) or Manager under any such Hotel Agreement, nor, to Seller's Knowledge, by any other party thereto, other than any such defaults or events that would not reasonably be expected to materially adversely affect the ability of the Seller to perform its obligations hereunder.

3.12 Management and Franchise Agreements. There are no existing management contracts or franchise (or other similar) agreements relating to the Property other than the Management Agreement and the License Agreement.

3.13 Permits. Other than the LEED Certification and the Certificate of Completion, all licenses (including, without limitation, liquor licenses), certificates of occupancy, permits and approvals required to be issued by any governmental authority or any third party and used in or necessary to the operation of the Hotel as a fully functioning select service hotel (the “Permits”) have been obtained and are in full force and effect. Each such Permit is listed on Schedule 3.13 attached hereto, and Seller has made or will make available to Purchaser true and complete copies of each such Permit. Seller has not received a written notice from any applicable governmental authority (a) of any violation, default, intended or threatened non-renewal, suspension or revocation of any of the Permits, the loss of which would reasonably be expected to have a material adverse effect on the present use and occupancy of the Hotel or (b) that such party is lacking any permits or licenses necessary for the present use and occupancy of the Hotel, the lack of which would reasonably be expected to materially adverse effect present use and occupancy of the Property.

3.14 Environmental Matters. Except as disclosed in the environmental reports (and all modifications thereto) listed on Exhibit B, neither Seller nor Manager has received any written notice from any governmental or regulatory authority of the presence or release of any substance that is regulated under any Environmental Laws as a pollutant, contaminant or toxic, radioactive or otherwise hazardous substance, including petroleum, its derivatives or by-products and other hydrocarbons (collectively and individually, “Hazardous Substances”) that would cause the Hotel to be in violation of any applicable Environmental Laws and that remains uncured, nor has Seller received written notice from any applicable governmental or regulatory authority or has any knowledge that the Hotel is not in compliance with applicable Environmental Laws. Except as otherwise disclosed in such environmental reports (i) there are no Hazardous Substances located at, on or under the Hotel and (ii) no Hazardous Substances have leaked, escaped or been discharged, emitted or otherwise released from the Land underlying the Hotel onto any adjoining properties or from any adjoining property onto the Property.

3.15 Financial Information. Attached as Schedule 3.15 is a schedule of (a) all of the audited financial statements of the Seller for the last complete fiscal year of the Seller, and (b) balance sheets and operating statements for the Hotel for the fiscal period ending December 31, 2014, a true and complete copy of each of which has been delivered to Purchaser. All of the information contained in the financial statements and the balance sheets and operating statements has been prepared in accordance with generally accepted accounting principles applied consistently with past practices (except as may be indicated in the notes thereto or with respect to the absence of notes thereto), fairly presents in all material respects the financial position of the Seller and the Hotel at the end of the period covered and the results of the operations thereof for each such period, and there has been no material adverse change in the financial condition, operations or results of operations of the Hotel since December 31, 2014.

3.16 Compliance with Applicable Law. Neither Seller nor Manager has received any written notice from any governmental authority of any violations of law or municipal ordinances, orders or requirements with respect to the Hotel.

3.17 Taxes. Seller has duly and timely paid all taxes and any interest and penalties thereon (including, without limitation, transient occupancy (bed) taxes), assessments and other governmental charges affecting the Property or required to be paid or collected by Seller in the operation of the Property which have been incurred or are due and payable (except real property taxes or taxes that are being disputed by the Seller).

3.18 Hotel Improvements. Licensor has not identified or requested in writing to Seller any repairs, improvements or alterations.

3.19 Possession. Seller has not granted to any party any license, lease, or other right relating to the use or possession of the Hotel or any part thereof, except tenants under the Occupancy Agreements and guests in the ordinary course of business.

3.20 Municipal Assessment/Notices. There are no outstanding unpaid municipal assessment notices against the Property.

3.21 Bankruptcy. None of the parties constituting Seller is insolvent within the meaning of Title 11 of the United States Code, as amended (the “Bankruptcy Code”), and has not ceased to pay its debts as they become due. None of the parties constituting Seller has filed or taken any action to file a voluntary petition, case or proceeding under any section or chapter of the Bankruptcy Code, or under any similar law or statute of the United States or any state thereof, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of its debts; and no such petition, case or proceeding has been filed against it which has not been dismissed, vacated or stayed on appeal; and none has been adjudicated as a bankrupt or insolvent or consented to, nor filed an answer admitting or failing reasonably to contest an allegation of bankruptcy or insolvency. None has sought, or consented to or acquiesced in, the appointment of any receiver, trustee, liquidator or other custodian of it or a material part of its assets, or has made or taken any action to make a general assignment for the benefit of creditors or an arrangement, attachment or execution has been levied and no tax lien or other governmental or similar lien has been filed, against it or a material part of its properties, which has not been duly and fully discharged prior to the Effective Date.

3.22 Title to FF&E. Other than Personal Property subject to the Hotel Agreements, to Seller’s Knowledge, Seller is the owner of the Personal Property located at the Hotel and used in connection with the operation of the Hotel, which in each case shall be free and clear of all liens and encumbrances as of the Closing Date, subject only to the related Permitted Exceptions.

The representations and warranties made by the Seller to the Purchaser in this Article III shall survive the Closing for a period of one (1) year following the Closing Date (the “Rep Survival Period”).

**ARTICLE IV**  
**THE PURCHASER'S REPRESENTATIONS AND WARRANTIES**

In order to induce the Seller to enter into this Agreement and to sell the Property, the Purchaser hereby makes the following representations and warranties to Seller:

4.1 Organization and Power. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland and has all requisite power and authority to enter into and perform its obligations under this Agreement and any document or instrument required to be executed and delivered on behalf of Purchaser hereunder.

4.2 Authorization and Execution. This Agreement has been duly authorized by all necessary action on the part of the Purchaser, has been duly executed and delivered by the Purchaser, constitutes the valid and binding agreement of the Purchaser and is enforceable against the Purchaser in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally or by the principles governing the availability of equitable remedies. The Person executing this Agreement on behalf of the Purchaser has the authority to do so.

4.3 Non-contravention. The execution and delivery of this Agreement and the performance by the Purchaser of its obligations hereunder do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation, the Purchaser's organizational documents, or any agreement, judgment, injunction, order, decree or other instrument binding upon Purchaser or result in the creation of any lien or other encumbrance on any asset of Purchaser.

4.4 Litigation. There is no action, suit or proceeding, pending or known to be threatened, against or affecting the Purchaser in any court or before any arbitrator or before any Governmental Authority which would materially and adversely affect the ability of the Purchaser to perform its obligations hereunder, or under any document to be delivered pursuant hereto.

4.5 OFAC. The Purchaser represents and warrants to Seller that neither the Purchaser nor any affiliate of the Purchaser is subject to sanctions of the United States government or in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) (the "Terrorism Executive Order") or is similarly designated under any related enabling legislation or any other similar Executive Orders (collectively with the Terrorism Executive Order, the "Executive Orders"), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act"), any sanctions and regulations promulgated under authority granted by the Trading with the Enemy Act, 50 U.S.C. App. 1-44, as amended from time to time, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, as amended from time to time, the Iraqi Sanctions Act, Publ. L. No. 101-513; United Nations Participation Act, 22 U.S.C. § 287c, as amended from time to time, the International Security and Development Cooperation Act, 22 U.S.C. § 2349 aa-9, as amended from time to time, The Cuban Democracy Act, 22 U.S.C. §§ 6001-10, as amended from time to time, The Cuban Liberty and Democratic Solidarity Act, 18 U.S.C. §§ 2332d and 2339b, as amended from time to time, and The Foreign Narcotics Kingpin Designation Act, Publ. L. No. 106-120, as amended from time to time.

4.6 Condition of Property; As-is, Where-is.

(a) The Purchaser represents that by reason of its business and financial experience and the business and financial experience of those Persons retained by Purchaser to advise it with respect to its investment in the Property, Purchaser has sufficient knowledge, sophistication, and experience in business and financial matters to evaluate the merits and risks of the prospective investment and is able to bear the economic risk of such investment. Purchaser has had an adequate opportunity and time to review and analyze the risks attendant to the transactions contemplated in this Agreement with the assistance and guidance of competent professionals. Purchaser represents, warrants, and agrees that Purchaser is relying on its own inspections, examinations, and investigations in making the decision to purchase the Property.

(b) Except for the representations and warranties expressly set forth in Article III hereof, Purchaser has not relied, and is not relying, upon any information, documents, sales brochures, or other literature, maps or sketches, projections, proformas, statements, representations, guaranties, or warranties (whether express or implied, oral or written, material or immaterial) that may have been given or made by or on behalf of the Seller or the Manager. Such representations and warranties by the Seller in Article III constitute the sole and exclusive representations and warranties of the Seller to the Purchaser in connection with the transactions contemplated hereby, and the Purchaser understands, acknowledges and agrees that all other representations and warranties of any kind or nature expressed or implied (including, but not limited to, any relating to the future or historical financial condition, results of operations, assets or liabilities of the Property) are specifically disclaimed by the Seller.

(c) Except for the representations and warranties expressly set forth in Article III, Purchaser is not relying and has not relied on Seller, Manager or any of their respective partners, or any of their respective officers, members, partners, directors, shareholders, agents, attorneys, employees, or Purchaser Parties as to (i) the quality, nature, adequacy, or physical condition of the Property including, but not limited to, the structural elements, foundations, roofs, appurtenances, access, landscaping, parking facilities, electrical, mechanical, HVAC, plumbing, sewage or utility systems, facilities, or appliances at the Property or any portion of the

Property, (ii) the quality, nature, adequacy, or physical condition of soils or the existence of ground water which comprise a part of the Real Property, (iii) the existence, quality, nature, adequacy, or physical condition of any utility serving the Real Property, (iv) the ad valorem taxes now or hereafter payable on the Property or the valuation of the Property for ad valorem tax purposes, (v) the development potential of the Real Property or the habitability, merchantability or fitness, suitability, or adequacy of the Property or any portion thereof for any particular use or purpose, (vi) the zoning or other legal status of any portion of the Property, (vii) the compliance by the Property, or any portion of the Property, or the operations conducted on or at the Property, with any Applicable Law or other covenants, conditions, or restrictions, (viii) the quality of any labor or materials relating in any manner to the Property, or (ix) except as otherwise expressly provided in this Agreement, the condition of title to the Property or the nature, status, and extent of any right-of-way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction, or any other matter affecting title to the Property.

(d) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III HEREOF, THE SALE AND CONVEYANCE BY THE SELLER TO THE PURCHASER OF ALL RIGHT, TITLE, AND INTEREST OF SELLER IN AND TO THE PROPERTY WILL BE MADE WITHOUT ANY WARRANTY OR RECOURSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE (EXCEPT AS TO ACTS OF SELLER), ABSENCE OF VICES OR DEFECTS (WHETHER APPARENT OR LATENT, KNOWN OR UNKNOWN, EASILY DISCOVERABLE OR HIDDEN), FITNESS FOR ANY ORDINARY USE, OR FITNESS FOR ANY INTENDED USE OR PARTICULAR PURPOSE. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III HEREOF AND IN ANY OTHER DOCUMENT OR CERTIFICATE DELIVERED PURSUANT TO THE TERMS OF THIS AGREEMENT AND THE CONSUMMATION OF THE SELLER'S OTHER OBLIGATIONS HEREUNDER, THE SOLE PERIL AND RISK OF EVICTION (EXCEPT AS A RESULT OF ACTS OF SELLER) WITH RESPECT TO THE REAL PROPERTY SHALL BE ASSUMED BY THE PURCHASER; IT BEING UNDERSTOOD THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III, THE PURCHASER WILL TAKE THE PROPERTY **"AS IS"** AND **"WHERE IS."**

(e) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III HEREOF, PURCHASER ACKNOWLEDGES THAT NEITHER SELLER NOR MANAGER HAS MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO TITLE (EXCEPT AS TO ACTS OF SELLER), ABSENCE OF VICES OR DEFECTS (WHETHER APPARENT OR LATENT, KNOWN OR UNKNOWN, EASILY DISCOVERABLE OR HIDDEN), HABITABILITY, MERCHANTABILITY, FITNESS FOR ANY ORDINARY USE, FITNESS FOR ANY INTENDED USE OR PARTICULAR PURPOSE, ZONING, TAX CONSEQUENCES, PHYSICAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAW, INCLUDING WITHOUT LIMITATION THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. 12101, ET SEQ., THE TRUTH, ACCURACY, OR COMPLETENESS OF ANY MATERIALS, DATA, OR INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR MANAGER TO PURCHASER, OR THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO THE PROPERTY OR THE MANNER OF REPAIR, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY OR ANY PORTION THEREOF. UNLESS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY OTHER DOCUMENT OR CERTIFICATE DELIVERED BY SELLER OR MANAGER PURSUANT TO THE TERMS OF THIS AGREEMENT, ALL SUCH WARRANTIES WITH RESPECT TO THE PROPERTY ARE HEREBY DISCLAIMED BY SELLER AND MANAGER AND EXPRESSLY WAIVED BY PURCHASER. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III HEREOF, PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND NEITHER SELLER NOR MANAGER IS LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING OR RELATING TO THE PROPERTY MADE OR FURNISHED BY SELLER, MANAGER, OR ANY PARTY ACTING OR PURPORTING TO ACT FOR SELLER OR MANAGER, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, VERBALLY OR IN WRITING. PURCHASER FURTHER HAS NOT RELIED ON SELLER'S OR MANAGER'S SKILL OR JUDGMENT IN SELECTING THE PROPERTY.

(f) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE III, NEITHER SELLER NOR MANAGER HAS, NOR WILL THEY MAKE ANY REPRESENTATIONS OR WARRANTIES WITH REGARD TO (A) COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS MATERIAL OR (B) ABSENCE OF ANY CLAIMS, WHETHER ASSERTED OR UNASSERTED, WITH RESPECT TO COMPLIANCE WITH ENVIRONMENTAL LAWS OR ENVIRONMENTAL CONDITIONS AT THE PROPERTY. UNLESS SUCH CLAIM ARISES PURSUANT TO THE TERMS OF ARTICLE III OF THIS AGREEMENT, PURCHASER **RELEASES** SELLER AND MANAGER FROM ANY AND ALL CLAIMS PURCHASER MAY HAVE AGAINST SELLER OR MANAGER OF WHATEVER KIND OR NATURE NOW OR HEREAFTER RESULTING FROM OR IN ANY WAY CONNECTED WITH THE ENVIRONMENTAL CONDITION OF THE

PROPERTY, INCLUDING ANY AND ALL CLAIMS PURCHASER MAY HAVE AGAINST SELLER OR MANAGER UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. §9601 ET SEQ., AS AMENDED OR REAUTHORIZED, ANY TEXAS EQUIVALENT, OR ANY OTHER ENVIRONMENTAL LAW OR COMMON LAW, PROVIDED, THAT NO RELEASE IS INTENDED WITH RESPECT TO CLAIMS THAT PURCHASER MAY HAVE AGAINST SELLER'S PREDECESSORS IN TITLE UNDER APPLICABLE LAW.

(g) UNLESS SUCH CLAIM ARISES PURSUANT TO THE TERMS OF ARTICLE III OF THIS AGREEMENT, PURCHASER HEREBY RELEASES SELLER AND MANAGER FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES WHICH PURCHASER HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO THE PHYSICAL CONDITION OF THE PROPERTY, ANY CONSTRUCTION DEFECTS, ANY ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY AND ANY ENVIRONMENTAL CONDITIONS AT, IN OR UNDER THE PROPERTY, AND PURCHASER WILL NOT LOOK TO SELLER OR MANAGER IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF.

(h) PURCHASER AND SELLER FURTHER DECLARE AND ACKNOWLEDGE THAT THE FOREGOING RELEASES WILL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF THEIR EXPRESS TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION AND STRICT LIABILITY CLAIMS. THE FOREGOING RELEASES INCLUDE CLAIMS OF WHICH PURCHASER IS PRESENTLY UNAWARE OR WHICH PURCHASER DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY PURCHASER, WOULD MATERIALLY AFFECT PURCHASER'S RELEASE TO SELLER AND/OR MANAGER.

(i) IT IS INTENDED THAT MANAGER IS A THIRD PARTY BENEFICIARY OF THIS ARTICLE IV.

The representations and warranties in this Article IV shall survive the Closing for the Rep Survival Period; provided that the representations, warranties, covenants and agreements in Section 4.6 shall survive the Closing Date indefinitely.

## **ARTICLE V CONDITIONS PRECEDENT**

5.1 As to Purchaser's Obligations. The Purchaser's obligations hereunder are subject to the timely satisfaction of the following conditions precedent on or before the Closing Date or such earlier date as is set forth below.

(a) Seller's Deliveries. The Seller shall have delivered to or for the benefit of the Purchaser, on or before the Closing Date, all of the documents required of the Seller pursuant to Sections 7.2 and 7.4 hereof.

(b) Representations, Warranties and Covenants; Obligations of the Seller; Certificate. All of the Seller's representations and warranties made in this Agreement shall be true and correct in all material respects as of the Closing Date as if then made (other than any representations and warranties that are no longer true and correct in all material respects as a result of actions taken at the request of the Purchaser); and the Seller shall have performed in all material respects all of its covenants and other obligations under this Agreement. Further, a duly authorized officer of the Seller shall have executed at Closing a "bring down certificate" with respect to the aforesaid representations and warranties.

(c) Title. Title Company shall unconditionally be prepared to deliver to the Purchaser Owner's Title Policy (subject to the premiums therefor and delivery of the documents specified in Section 7.2 below and Purchaser's authority documents).

(d) License Agreement. Licensor shall have approved of Purchaser or its designee as a franchisee of the Hotel and shall have entered into a new license agreement with Purchaser or shall have agreed with Purchaser on the terms of an assignment of the License Agreement.

(e) Litigation. There shall be no actions, suits, arbitrations, governmental investigations or other proceedings pending or, to Seller's Knowledge, overtly threatened in writing against Seller or affecting the Property before any court or governmental authority, an adverse determination of which would reasonably be expected to have a material adverse effect on (a) the financial condition or operations of Seller or the Hotel, (b) Seller's ability to enter into or perform this Agreement or (c) Seller's title to the Property.

(f) Management Agreement. Prior to the Closing Date, Seller shall have terminated the Management Agreement effective as of the Closing.

(g) LEED Certification. Prior to the Closing Date, Seller shall have obtained the LEED Certification for the Property.

(h) Certificate of Completion. Prior to the Closing Date, Seller shall have obtained the Certificate of Completion for the Property, including those portions of the leased premises (described below).

(i) Certain Obligations Under Leases. Prior to the Closing Date, Seller shall (i) have fully performed and satisfied the construction obligations set forth on Exhibit C of that certain Lease dated December 30, 2014, by and between Seller and Eugene Catenacci and Exhibit C of that certain Lease, dated December 29, 2014, by and between Seller and Tiff's Treats, Ltd.; and (ii) delivery of estoppel certificates from both such tenants, in a form reasonably acceptable to Purchaser, verifying (among other items) that all such work required to be completed by Seller has been completed in accordance the applicable leases and that there no defaults under the applicable lease agreements.

Each of the conditions contained in this Section are intended for the benefit of the Purchaser and may be waived in whole or in part, by the Purchaser. If the conditions precedent set forth above are neither satisfied nor waived by the Purchaser by the Closing Date, the Purchaser shall have the right to (a) terminate this Agreement and obtain a refund of the Earnest Money in which event and the Purchaser shall be released from all further liability or obligation hereunder except those which expressly survive the termination of this Agreement, or (b) extend the Closing for a reasonable amount of time to allow for any outstanding conditions to be satisfied. If such termination is in connection with a default by the Seller, Purchaser shall be entitled to exercise its remedies as set forth in Section 9.1.

5.2 As to the Seller's Obligations. Subject to the provisions of Section 9.2, the Seller's obligations hereunder are subject to the satisfaction of the following conditions precedent:

(a) Purchaser's Deliveries. The Purchaser shall have delivered to or for the benefit of the Seller, on or before the Closing Date, all of the documents and payments required of the Purchaser pursuant to Sections 7.3 and 7.4 hereof.

(b) Representations, Warranties and Covenants; Obligations of Purchaser; Certificate. All of the Purchaser's representations and warranties made in this Agreement shall be true and correct in all material respects as of the Closing Date as if then made; and the Purchaser shall have performed in all material respects all of its covenants and other obligations under this Agreement. Further, a duly authorized officer of the Purchaser shall have executed at Closing a "bring down certificate" with respect to the aforesaid representations and warranties.

(c) Litigation. There shall be no actions, suits, arbitrations, governmental investigations or other proceedings pending or threatened against the Purchaser, an adverse determination of which would reasonably be expected to have a material adverse effect on (a) the Purchaser's ability to enter into or perform this Agreement or (b) restrains or prohibits the transfer of the Property.

Each of the conditions contained in this Section are intended for the benefit of Seller and may be waived in whole or in part, by Seller. If the conditions precedent set forth above are neither satisfied nor waived by the Seller by the Closing Date, the Seller shall have the right to terminate this Agreement. If such termination is in connection with a default by the Purchaser, Seller shall be entitled to exercise its remedies as set forth in Section 9.2 (including but not limited to being entitled to receive the Earnest Money from the Escrow Agent as liquidated damages). If such termination is not in connection with a default by the Purchaser, Purchaser shall receive a refund of the Earnest Money. In either event, immediately upon the disbursement of the Earnest Money, the Seller shall be released from all further liability or obligation hereunder except those which expressly survive the termination of this Agreement.

Neither Seller nor the Purchaser may rely, either as a basis for not consummating the transactions contemplated hereby or terminating this Agreement, on the failure of any condition set forth in Sections 5.1, 5.2 or Article VII, as the case may be, to be satisfied if such failure was caused by such party's breach in any material respect of any provision of this Agreement or failure to act in good faith or to use its commercially reasonable efforts to consummate the transactions contemplated hereby, as required by and subject to Section 6.12.

## **ARTICLE VI PRE-CLOSING (AND CERTAIN POST CLOSING) COVENANTS OF SELLER AND PURCHASER**

6.1 Operating Agreements/Occupancy Agreements/Leased Property Agreements/Off-Site Facility Agreements. The Purchaser will advise the Seller in writing within twenty (20) days after the Effective Date as to which Hotel Agreements the Purchaser will assume and which Hotel Agreements Purchaser requires be terminated at Closing; and Seller shall, at Seller's cost, terminate, as of the Closing Date, all Hotel Agreements with respect to the Property which Purchaser does not expressly agree to assume. The Purchaser will fully perform each such assumed Hotel Agreement in accordance with its respective terms. Seller shall, at Seller's cost, terminate, as of the Closing Date, all existing management agreements with respect to the Property. Seller shall not enter into any new agreement materially affecting the Property (except to address an emergency), or modify any existing agreement affecting the Property (but may terminate any Service Contract that is in default), which will be binding on the Property after Closing, without first obtaining Purchaser's approval of the proposed action, which approval or disapproval shall be in Purchaser's sole discretion. Should Purchaser fail to notify Seller in writing of any objections to a new agreement within five (5) Business Days after receipt of Seller's written request for approval, then Purchaser shall be deemed to have approved such new agreement.

6.2 Insurance. The Seller shall pay, all premiums on, and shall not cancel or voluntarily allow to expire, any of the Seller's Insurance Policies unless such policy is replaced, without any lapse of coverage, by another policy or policies providing coverage at least as extensive as the policy or policies being replaced.

6.3 Operation of Property Prior to Closing. The Seller covenants and agrees with the Purchaser that, to the extent it is legally entitled to do so, between the date of this Agreement and the date of Closing:

(a) Subject to the restrictions contained herein, the Seller shall instruct the Manager to operate and maintain the Property in substantially the same manner in which it operated and maintained the Property prior to the execution of this Agreement.

(b) The Seller shall instruct the Manager to maintain its books of account and records in the usual, regular and ordinary manner, in accordance with accounting principles and applied on a basis, both consistent with that used in keeping its books in prior years.

(c) The Seller shall instruct the Manager to pay (subject to legal rights of appeal and protest) prior to delinquency all ad valorem, occupancy and sales taxes due and payable with respect to the Property or the operation of the Hotel.

(d) The Seller shall instruct the Manager to continue to take guest room reservations and to book functions and meetings and otherwise to promote the business of the Property in generally the same manner as it did prior to the execution of this Agreement; and all advance room bookings and reservations and all meetings and function bookings shall be booked at rates, prices and charges charged by the Seller for such purposes in the ordinary course of business consistent with past practices. The Seller acknowledges that the Purchase Price includes the transfer of Advance Bookings.

(e) The Seller shall not enter into any employment agreements with any Hotel employee which would be binding on the Purchaser with respect to the Property.

(f) The Seller shall promptly advise the Purchaser of any litigation, arbitration or administrative hearing concerning the Property of which the Seller obtains Knowledge.

(g) The Seller shall instruct the Manager to refrain from removing or causing or permitting to be removed any material part or portion of the Real Property or the Tangible Personal Property owned by the Seller other than in the normal course of business without the prior written consent of the Purchaser, unless the same is replaced, prior to Closing, with similar items of at least equal suitability, quality and value, free and clear of any liens or security interests, other than Permitted Exceptions.

(h) The Seller shall cause Manager to keep the Inventory adequately stocked, consistent with the standards employed by the Seller prior to the execution of this Agreement.

6.4 Hotel Employees. Effective as of 11:59 p.m. the day prior to Closing, the Seller shall (or cause Manager to) terminate its employer/employee relationship with all Employees. Upon such termination, Seller or Manager, as the case may be, shall pay to each Employee their salaries, wages and to the extent required by applicable law and any existing employment contract, earned vacation pay. As of 11:59 p.m. the day prior to Closing, the Purchaser will hire or will cause its manager to hire a sufficient number of the Employees to prevent the occurrence of an event requiring notice under the WARN Act. The Purchaser agrees to be responsible for and hereby indemnifies and agrees to hold harmless and defend Seller, Manager and their affiliates from and against (i) claims and liabilities arising from violation of its obligations hereunder that create any liability under the WARN Act and (ii) any claim made by any Employee that accepts employment with the Purchaser (or its manager) and commences employment with the Purchaser (or its manager) on or after the Closing with respect to matters arising after the Closing Date. The provisions of this Section 6.4 shall survive the Closing without limitation.

6.5 Employee Claims. The Seller shall indemnify and defend or cause to be indemnified and defended the Purchaser and its Affiliates from and against any and all claims, causes of action, proceedings, judgments, damages, penalties, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Purchaser with respect to claims, causes of action, judgments, damages, penalties and liabilities asserted by Hotel Employees arising out of or related to any act, failure to act, any transaction or any facts or circumstances occurring prior to 11:59 p.m. the day prior to Closing.

6.6 Reasonable Inspection After Closing.

(a) After Closing, the Seller and Manager shall afford the Purchaser and its agents, at their sole cost and expense, reasonable access to their books of account, financial and other records, information, employees and auditors to the extent such items and contact with such persons relate solely to the Property and to the extent necessary in connection with any audit or any other reasonable business purpose relating to the Property (other than litigation or investigation of any claim or action against the Seller or the Manager), including, but not limited to a 3-05 Audit or any other audit which may be required by the Securities Exchange Commission; provided that: (i) any such access by the Purchaser or its agents shall not unreasonably interfere with the conduct of the Seller's or the Manager's business; and (ii) Purchaser or its agents shall keep the information contained in such records confidential; provided, however, that any such information compiled in a report and distributed in accordance with Securities and Exchange Commission Regulation S-X and Rule 3-05 and/or Rule 3-14 shall not be prohibited.

(b) After Closing, the Purchaser shall afford the Seller and the Manager and their agents, at their sole cost and expense, reasonable access to its books of account, financial and other records, information, employees and auditors to the extent such items and contact with such persons relate solely to the Property prior to the Closing and to the extent necessary in connection with any audit or any other reasonable business purpose relating to the Property (other than litigation or investigation of any claim or action against the Purchaser); provided that (i) any such access by the Seller, the Manager or their agents shall not unreasonably interfere with the conduct of the Purchaser's business; and (ii) the Seller, Manager or their agents shall keep the information contained in such records confidential. The provisions of this Section 6.6(a) and (b) shall survive the Closing.

6.7 Condition of Property. Except as otherwise provided herein, the Seller shall not, after the date of this Agreement, sell, mortgage, encumber, hypothecate or otherwise transfer or dispose of the Property or any interest therein, or cause the Property to be subject to any, covenants, conditions, restrictions, easements or other title matters or seek any zoning changes without the Purchaser's prior written consent, which consent shall be given or withheld in Purchaser's reasonable discretion.

6.8 Access to Financial Information. After Closing, the Seller and Manager shall afford the Purchaser and its agents reasonable access to their books of account, financial and other records, information, employees and auditors to the extent such items and contact with such persons relate solely to the Property and to the extent necessary in connection with any audit or any other reasonable business purpose relating to the Property (other than litigation or investigation of any claim or action against the Seller or the Manager), including, but not limited to a 3-05 Audit or any other audit which may be required by the Securities Exchange Commission; provided that: (i) any such access by the Purchaser or its agents shall not unreasonably interfere with the conduct of the Seller's or the Manager's business; and (ii) Purchaser or its agents shall keep the information contained in such records confidential; provided, however, that any such information compiled in a report and distributed in accordance with Securities and Exchange Commission Regulation S-X and Rule 3-05 and/or Rule 3-14 shall not be prohibited.

6.9 Amendment to Schedules. Notwithstanding anything to the contrary in this Agreement, the Seller shall have the right to amend and supplement the schedules to this Agreement from time to time prior to the Closing to reflect changes since the date of this Agreement by providing a written copy of such amendment or supplement to the Purchaser; provided, however, that any amendment or supplement to the schedules to this Agreement shall have no effect for the purposes of determining whether Section 5.1(b) has been satisfied if the matter raised in such supplement has a materially adverse effect on the Property, but shall have effect only for the purposes of limiting the defense and indemnification obligations of the Seller for the inaccuracy or untruth of the representation or warranty qualified by such amendment or supplement.

6.10 Licenses and Permits. The Purchaser shall use all commercially reasonable and good faith efforts to obtain the transfer of all Permits (to the extent transferable) or the issuance of new licenses and permits. The Purchaser, at its cost and expense, shall submit all necessary applications and other materials to the appropriate Governmental Authority and take such other actions to effect the transfer of Licenses and Permits or issuance of new licenses and permits, as of the Closing, and the Seller shall use commercially reasonable efforts (at no cost or expense to the Seller) to cooperate with the Purchaser to cause the Permits to be transferred or new licenses and permits to be issued to the Purchaser. Notwithstanding anything to the contrary in this Section 6.10, the Purchaser shall not post any notices at the Hotel or publish any notices required for the transfer of the Permits or issuance of new licenses and permits, including, without limitation, the liquor licenses, without the prior written consent of the Seller, which consent may not be unreasonably withheld. It shall not be a condition to the Closing hereunder that the Purchaser has obtained any transfer of Licenses or Permits or issuance of any new licenses or permits, including any liquor licenses.

6.11 Bookings. The Purchaser shall honor all existing Advance Bookings and all other Advance Bookings made in accordance with this Agreement for any period on or after the Closing Date. The provisions of this Section 6.11 shall survive the Closing without limitation.

6.12 Further Actions; Efforts. Subject to the terms and conditions of this Agreement, each party shall use its commercially reasonable efforts in good faith to take, or cause to be taken, all actions and to do, or cause to be done, all actions that are within its control to consummate the transactions contemplated by this Agreement.

## ARTICLE VII CLOSING

7.1 Closing. The Closing shall occur on the Closing Date. As more particularly described below, at the Closing the parties hereto will (a) execute or cause to be executed (and acknowledged where appropriate) all of the documents required to be delivered in connection with the transactions contemplated hereby (the "Closing Documents"), (b) deliver or cause to be delivered the same to the Title Company, and (c) take or cause to be taken all other action required to be taken in respect of the transactions contemplated hereby. The Closing will occur through escrow, at the Title Company, or at any such other place as the Seller and Purchaser may mutually agree. At the Closing, Purchaser shall deliver the balance of the Purchase Price to Title Company as provided herein. As provided herein, the parties hereto will agree upon adjustments and prorations to certain items which cannot be exactly determined at the Closing and will make the appropriate adjustments with respect thereto. Possession of the Property shall be delivered to Purchaser at the Closing, subject to Permitted Title Exceptions and guests in possession. The Closing shall constitute conclusive evidence that the Seller and the Purchaser have respectively waived any conditions which are not satisfied as of the Closing.

7.2 Seller's Deliveries. At the Closing, the Seller shall deliver (or cause to be delivered) to the Title Company all of the following instruments, each of which shall have been duly executed and, where applicable, acknowledged and/or sworn, on behalf of the Seller, and shall be dated to be effective as of the Closing Date:

- (a) The Deed.
- (b) The Bill of Sale and General Assignment.
- (c) The Assignment and Assumption Agreement.
- (d) Certificate(s)/Registration of Title for any vehicle owned by the Seller and used in connection with the Property (if any).
- (e) The FIRPTA Certificate.
- (f) The "bring-down certificate" specified in Section 5.1(b).
- (g) Evidence of the termination of the Management Agreement.
- (h) An owner's title affidavit and gap indemnity (to the extent required by the Title Company), each duly executed and acknowledged by Seller.
- (i) Such evidence, documents, affidavits and indemnifications as may be reasonably required by the Title Company and relating to: (i) the authority of the persons executing the instruments delivered at Closing on behalf of Seller have the authority to bind Seller to perform its obligations set forth therein, (ii) mechanics' or materialmen's liens, (iii) parties in possession, or (iv) any other matters reasonably required to enable the Title Company to issue the Title Policy and endorsements thereto, in form and content satisfactory to Purchaser and the Title Company.
- (j) Any other document or instrument specifically required by this Agreement.

The Seller shall also cause the Manager to deliver to Purchaser or make available to Purchaser at the Property:

- (k) information as to all Advance Bookings, in reasonable detail so as to enable Purchaser to honor the Seller's commitments in that regard,
- (l) information as to outstanding Accounts Receivable as of midnight on the date prior to the Closing, including the name of each account and the amount due,
- (m) all keys, passwords, access cards, combinations, codes and other similar entry or control devices with respect to the Property.

7.3 Purchaser's Deliveries. At the Closing, Purchaser shall deliver to Title Company the following, duly executed and, where applicable, acknowledged and/or sworn on behalf of Purchaser, and dated as of the Closing Date:

- (a) The Assignment and Assumption Agreement.
- (b) The Bill of Sale and General Assignment.
- (c) The "bring-down certificate" specified in Section 5.2(b).
- (d) Any other document or instrument specifically required by this Agreement.
- (e) At the Closing, Purchaser shall deliver to Title Company the Purchase Price (less the Earnest Money and any interest thereon and subject to the revenue and expense allocations as set forth below) as described in Section 2.2 hereof.

7.4 Mutual Deliveries. At the Closing, Purchaser and the Seller shall mutually execute and deliver each to the other:

- (a) A closing statement reflecting the Purchase Price and the adjustments and prorations required hereunder and the allocation of income and expenses required hereby.
- (b) Subject to the provisions of Section 7.11 hereof, such other documents, instruments and undertakings as may be required by the liquor authorities of the State where the Property is located, or of any county or municipality or governmental entity having jurisdiction with respect to the transfer or issue of liquor licenses or alcoholic beverage licenses or permits for the Hotel, to the extent not theretofore executed and delivered.

(c) Such other and further documents, papers and instruments as may be reasonably required by the parties hereto or the Title Company to consummate the transactions contemplated by this Agreement and which are not inconsistent with the Agreement or the other Closing Documents; provided, that in no event shall the Seller's counsel be required to give a legal opinion.

7.5 Closing Costs. The Seller and Purchaser shall equally divide any escrow fee, recording fees or other expenses or similar charges charged by the Title Company. The Seller shall pay for the cost of the Title Commitment and for the premium for the basic Owner Title Policy. The Purchaser shall pay for the cost of any endorsements or other "extended coverage" to the Owner's Title Policy, the cost of the Updated Survey, and the cost of and any of all inspections or tests undertaken by Purchaser. Purchaser shall pay all costs associated with the assignment of the License Agreement (or issuance of a new License Agreement), including, without limitation, all application fees, inspection fees, PIP fees, transfer fees, and all expenses of Licensor, including, without limitation, legal fees and expenses, incurred in connection therewith, provided, however, that Seller shall pay all fees, costs and expenses under the License Agreement which have accrued prior to the Closing. Unless the payment of any other cost is specifically provided for in this Agreement, all other costs shall be apportioned between the parties by the Title Company in the manner customary in the location of the Hotel, for properties of a similar nature. Except as otherwise provided in Section 9.4, each party shall be responsible for the payment of its own attorney's fees incurred in connection with transaction which is the subject of this Agreement.

7.6 Revenue and Expense Allocations. All revenues and expenses with respect to the Property, and applicable to the period of time before and after Closing, determined in accordance with sound accounting principles consistently applied, shall be allocated between the Seller and the Purchaser as provided herein. The Seller shall be entitled to all revenue and shall be responsible for all expenses for the period of time up to but not including the Closing Date, and the Purchaser shall be entitled to all revenue and shall be responsible for all expenses for the period of time from, after and including the Closing Date provided that the housekeeping costs and the Final Rooms Revenue shall be shared equally between the Seller and the Purchaser. Such adjustments shall be shown on the closing statement (with such supporting documentation as the parties hereto may reasonably require being attached as exhibits to the closing statements) and shall increase or decrease (as the case may be) the cash amount payable by the Purchaser pursuant to Section 2.2 hereof. All prorations shall be made on the basis of the actual number of days in the year and month in which the Closing occurs or in the period of computation. Without limiting the generality of the foregoing, the following items of revenue and expense shall be allocated and prorated at Closing:

- (a) Current rents.
- (b) Real estate and personal property taxes and assessments (with maximum allowable discounts for early or prompt payment).
- (c) Revenue and expenses under the Operating Agreements, Leased Property Agreements and Off-Site Facility Agreements to be assigned to and assumed by the Purchaser.
- (d) Utility charges (including, but not limited to, charges for phone service, cable television, gas, water, sewer and electricity).
- (e) Payments due under any assessments imposed by private covenant.
- (f) Municipal or other governmental improvement liens and special assessments, which shall be paid by the Seller at Closing where the work has been assessed, and which shall be assumed by the Purchaser at Closing where the work has not been assessed; provided, however, that if such liens or assessments are payable in installments, the Seller shall be responsible for the payment of such installments relating to periods prior to the Closing Date and the Purchaser shall be responsible for the payments of such installments relating to periods on and subsequent to the Closing Date.
- (g) License and permit fees and pre-paid amounts, where transferable. The Seller shall receive a credit for all deposits made by the Seller under the Permits which are transferred to the Purchaser or which remain on deposit for the benefit of the Purchaser.
- (h) All other revenues and expenses of the Property, including, but not limited to, such things as parking, vending machines, restaurant, bar and meeting room income and expenses and the like.
- (i) The Final Room Revenue and housekeeping costs for the Closing Date (to be apportioned equally between the Seller and the Purchaser).
- (j) Charges and payments (including the reimbursement of expenses) under all Operating Agreements.
- (k) Such other items as are usually and customarily prorated between purchasers and sellers of hotel properties in the area where the Property is located.

The Seller shall receive a credit for any prepaid expenses accruing to periods on or after the Closing Date. The Purchaser shall receive a credit against the Purchase Price for the total of (a) prepaid rents for the period after the Closing Date and (b) prepaid deposits for Bookings scheduled for accommodations or events on or after the Closing Date which the Purchaser is obligated to honor pursuant to this Agreement, except to the extent such deposits are transferred to the Purchaser. At 11:59 p.m. the day prior to Closing, Seller shall check-out those hotel guests who are in occupancy at the Hotel, so as to directly bill and collect all revenues generated prior to the Closing Date, and then immediately check those hotel guests back into the Hotel so they can be included in the Final Rooms Revenue for the Closing Date. At Closing, the Seller shall sell to the Purchaser in connection with the Hotel, and Purchaser shall purchase from the Seller at face value all petty cash funds in connection with the hotel guest operations at the Property, which shall be an amount equal to the total of all petty cash funds on hand and transferred to the Purchaser. The Seller shall receive a credit for all cash on hand at the Hotel and all cash on deposit in any house bank at the Hotel as of the Closing. The Seller shall retain all amounts in any operating accounts of the Hotel in any bank, and there shall be no credit or adjustment hereunder with respect to such cash. The procedure and method of making the proration adjustments set forth in this Section 7.6 is attached to this Agreement as Exhibit C.

Any such taxes applicable to the Final Rooms Revenue shall be apportioned equally between the Seller and the Purchaser. The Seller shall cooperate reasonably with the Purchaser to permit the Purchaser to obtain, if desired by the Purchaser, sale and occupancy tax clearance certificates from the State in which the Real Property is located.

If accurate allocations cannot be made at Closing because current bills are not obtainable (as, for example, in the case of utility bills and/or real estate or personal property taxes), the parties shall allocate such revenue or expenses at Closing on the best available information, subject to adjustment upon receipt of the final bill or other evidence of the applicable revenue or expense. The obligation to make the adjustment shall survive the Closing of the transaction contemplated by this Agreement. Any revenue received or expense incurred by the Seller or by the Purchaser with respect to the Property after the date of Closing shall be promptly allocated in the manner described herein and the parties shall promptly pay or reimburse any amount due. With respect to any closing statements amounts or issues relating to prorations that are not agreed upon at Closing, the Seller and the Purchaser shall thereafter work in good faith to resolve such amounts or issues; provided that if such amounts or issues are not fully agreed upon and paid within one hundred twenty (120) days after the Closing, then, in such event, such amounts or issues shall be submitted to an independent certified public accountant with a hospitality practice (reasonably acceptable to the Seller and the Purchaser) for final resolution, and the Seller and the Purchaser agree to be bound by the determination of such accountant. The costs and expenses incurred in connection with the services of such accountant shall be borne equally by the Seller and the Purchaser. The provisions of this Section 7.6 shall survive the Closing.

7.7 Safe Deposit Boxes. On the Closing Date, the Seller shall cause the Manager to make available to the Purchaser at the Hotel all receipts and agreements in the Manager's possession relating to all safe deposit boxes in use at the Hotel, other than safes or lockboxes, if any, located inside individual guest rooms in Hotel. During the Study Period, the Seller and the Purchaser shall mutually agree upon a procedure to provide notice to each Hotel guest utilizing a safe deposit box on the Closing Date about the sale of the Property and to cause each such Hotel guest to adhere to the procedure set forth in the notice so that a proper inventory can be prepared and an orderly transition made. From and after the Closing, the Seller and the Manager shall be relieved of any and all responsibility in connection with each said box, and the Purchaser shall indemnify, defend and hold the Seller and the Manager harmless from and against any claim, liability, cost or expense (including reasonable attorneys' fees) with respect to such safety deposit box arising after the Closing. The Seller hereby agrees to hold the Purchaser harmless from any other liability or claims with respect to such safe deposit boxes arising prior to the Closing Date. The provisions of this Section 7.7 shall survive the Closing.

7.8 Inventory of Baggage. The representatives of the Seller and/or the Manager, and of the Purchaser shall prepare an inventory of baggage at the Hotel as of 12:00 noon on the Closing Date (which inventory of baggage shall be binding on all parties thereto) of (a) all luggage, valises and trunks checked or left in the care of the Hotel by guests then or formerly in the Hotel, (b) parcels, laundry, valet packages and other property of guests checked or left in the care of the Hotel by guests then or formerly in the Hotel (excluding, however, property in Hotel safe deposit boxes), (c) all luggage or other property of guests retained by Seller as security for any unpaid accounts receivable, and (d) all items contained in the Hotel lost and found. The Purchaser shall be responsible from and after the Closing Date for all baggage and other items listed in such inventory of baggage, and the Purchaser shall indemnify, defend and hold the Seller and the Manager harmless from and against any claim liability, cost or expense (including reasonable attorneys' fees) incurred by the Seller or the Manager or any Affiliate thereof with respect thereto arising after the Closing Date. The Seller hereby agrees to hold the Purchaser harmless from any other liability or claims with respect to such inventory of baggage arising prior to the Closing Date. The provisions of this Section 7.8 shall survive the Closing.

7.9 Accounts Receivable. It is expressly agreed by and between Purchaser and Seller that Seller is not hereby agreeing to sell to Purchaser, and Purchaser is not hereby agreeing to purchase from Seller, any of Seller's accounts receivable. All of Seller's accounts receivable shall be and remain the property of Seller. At the Closing, Seller shall prepare a list of its outstanding accounts receivable as of midnight on the date prior to the Closing, specifying the name of each account and the amount due to Seller. Purchaser shall hold any funds received by Purchaser on account of or with respect to such accounts receivable, in trust, if Purchaser actually collects any such amounts, and shall pay the monies collected in respect thereof to Seller at the end of each calendar month, accompanied by a statement showing the amount collected on each such account. Other than the foregoing, Purchaser shall have no obligation with respect to any such account, and Purchaser shall not be required to take any legal proceeding or action to effect collection on behalf of

Seller. It is generally the intention of Purchaser and Seller that although all of Seller's accounts receivable shall be and remain the property of Seller, if any such accounts are paid to Purchaser, then Purchaser shall collect same and remit to Seller in the manner above provided. Nothing herein contained shall be construed as requiring Purchaser to remit to Seller any funds collected by Purchaser on account of Purchaser's accounts receivable generated from Hotel operations after the Closing, even if the person or entity paying same is also indebted to Seller.

7.10 Accounts Payable. The Purchaser shall receive a credit for any and all accounts payable owed by the Seller in connection with the Property as of the Closing Date.

7.11 Liquor Permits. To the extent that a license or permit required for the service of alcoholic beverages at the Hotel (a "Liquor Permit") is issued to Seller or Manager, Seller shall use commercially reasonable efforts or shall or use commercially reasonable efforts to cause Manager to, to the extent permitted by Applicable Laws, transfer such Liquor Permit to Purchaser (or, at the request of the Purchaser, to Purchaser's Manager) at Closing. If the Liquor Permit cannot be transferred to Purchaser or Purchaser's Manager by Seller or Manager, or otherwise obtained by Purchaser prior to the scheduled Closing, then, to the extent permitted by applicable law, Seller or Manager, as the case may be, shall cooperate with Purchaser by entering an interim alcoholic beverage management agreement, in form and substance reasonably satisfactory to Purchaser, with respect to the sale of alcoholic beverages at the Hotel. Seller shall also use commercially reasonable efforts (at the Purchaser's sole cost and expense) to assist and cooperate with Purchaser if Purchaser elects to apply for an interim/temporary liquor license so that alcoholic beverages may continue to be served at the Hotel pending issuance of the permanent Liquor Permit. If necessary liquor licenses are not obtained prior to Closing, and alcoholic beverages cannot lawfully be transferred to or for the benefit of Purchaser, alcoholic beverages shall be excluded from Inventories and shall not be transferred at Closing. The Purchaser agrees to be responsible for and hereby indemnifies and agrees to hold harmless and defend Seller, Manager and their affiliates from and against claims and liabilities arising out of or relating to any matters arising after the Closing relating to the Liquor Permit or the purchase and sale of alcoholic beverages at the Hotel.

7.12 Property Improvement Plan. It is contemplated that, as of the Closing Date, the Purchaser shall have received from the Licensor a property improvement plan (the "Purchaser's PIP") with respect to the Hotel for the remainder of calendar 2015 (and, if applicable, subsequent years). The Purchaser shall be responsible for all actions and expenses required by the Purchaser's PIP, except as specifically stated otherwise herein. The provisions of this Section 7.12 shall survive the Closing.

## **ARTICLE VIII GENERAL PROVISIONS**

8.1 Fire or Other Casualty. The Seller agrees to give Purchaser prompt notice of any fire or other casualty to the Property occurring between the Effective Date and the Closing Date of which the Seller has Knowledge. If, prior to Closing, the Property is damaged by fire or other casualty which is fully insured (without regard to deductibles) and would cost less than One Million Dollars (\$1,000,000.00) and require less than ninety (90) days to repair, then neither party shall have the right to terminate this Agreement by reason thereof and the Closing shall take place without abatement of the Purchase Price, but the Seller shall assign to Purchaser at the Closing all of the Seller's interest in any insurance proceeds (except use and occupancy insurance, rent loss and business interruption insurance, and any similar insurance, attributable to the period preceding the Closing Date) that may be payable to the Seller on account of any such fire or other casualty, to the extent such proceeds have not been previously expended or are otherwise required to reimburse the Seller for actual expenditures of restoration made prior to the Closing Date, plus Seller shall credit the amount of any deductibles under any policies related to such proceeds to the Purchase Price together with any amount not covered by insurance. If any such damage due to fire or other casualty is insured and would cost in excess of One Million Dollars (\$1,000,000.00) or require ninety (90) days or more to repair, then Purchaser may terminate this Agreement by written notice given to the Seller within ten (10) days after the Seller has given Purchaser the notice of damage or casualty referred to in this Section 8.1, or on the Closing Date, whichever is earlier, in which case the parties hereto shall be released of all further obligations hereunder with respect to the Property except those which expressly survive a termination of this Agreement. Should Purchaser elect to proceed to Closing notwithstanding the amount of the insured loss or the time required for repairs, the Closing shall take place without abatement of the Purchase Price and at Closing the Seller shall assign to Purchaser the insurance proceeds (except use and occupancy insurance, rent loss and business interruption insurance, and any similar insurance, attributable to the period preceding the Closing Date) and grant to Purchaser a credit against the Purchase Price equal to the amount of the applicable deductible plus any amount not covered by insurance. If, prior to Closing, the Property is damaged by fire or casualty which is uninsured and would cost Five Hundred Thousand Dollars (\$500,000.00) or more to repair, then Purchaser may terminate this Agreement by written notice given to the Seller within ten (10) days after the Seller has given Purchaser the notice of damage or casualty or on the Closing Date, whichever is earlier, in which case the parties hereto shall be released of all further obligations hereunder, except those which expressly survive a termination of this Agreement. If Purchaser does not elect to terminate its obligations under this Agreement pursuant to the immediately preceding sentence, or if any uninsured fire or casualty would cost less than One Million Dollars (\$1,000,000.00) to repair, then the Closing shall take place as provided herein, and the Purchase Price shall be reduced by the estimated amount to repair such casualty, not to exceed One Million Dollars (\$1,000,000.00).

8.2 Condemnation. After the Effective Date, the Seller agrees to give Purchaser prompt written notice of any knowledge of or notice of any taking by condemnation of any part of or rights appurtenant to the Real Property. If taking involves property having a value in excess of One Million Dollars (\$1,000,000.00) or will materially interfere with the operation or use of the Hotel, the Purchaser may terminate this Agreement by written notice to the Seller given within ten (10) days after the Seller has given Purchaser the notice of taking referred to in this Section 8.2, or on the Closing Date, whichever is earlier. If Purchaser exercises its option to terminate its obligations to purchase the Property pursuant to this Section 8.2, the parties hereto shall be released from all further obligations hereunder with respect to the Property, except those which expressly survive a termination of the Agreement. If Purchaser does not so elect to terminate this Agreement, then the Closing shall take place as provided herein, and the Seller shall assign to Purchaser at the Closing all of the Seller's interest in any condemnation award which may be payable to the Seller on account of any such condemnation and, at Closing, the Seller shall credit to the amount of the Purchase Price payable by Purchaser the amount, if any, of condemnation proceeds received by the Seller between the Effective Date and Closing less (a) any amounts reasonably expended by the Seller in collecting such sums and (b) any amounts reasonably used by the Seller to repair the Property as a result of such condemnation. If, prior to Closing, there shall occur a taking by condemnation of any part of or rights appurtenant to the Property that involves property having a value of One Million Dollars (\$1,000,000.00) or less and does not materially interfere with the operation or use of the Hotel which constitutes a part of the Property, Purchaser shall not have the right to terminate this Agreement by reason thereof and the Closing shall take place without abatement of the Purchase Price, but the Seller shall assign to Purchaser at Closing all of the Seller's interest in any condemnation award which may be payable to the Seller on account of any such condemnation and, at Closing, the Seller shall credit to the amount of the Purchase Price payable by Purchaser the amount, if any, of condemnation proceeds received by the Seller between the Effective Date and Closing less (a) any amounts reasonably expended by the Seller in collecting such sums and (b) any amounts reasonably used by the Seller to repair the Property as a result of such condemnation. Provided Purchaser has not exercised its right to terminate this Agreement pursuant to Section 8.2, the Seller shall notify Purchaser in advance regarding any proceeding or negotiation with respect to the condemnation and Purchaser shall have a reasonable right, at its own cost and expense, to appear and participate in any such proceeding or negotiation. For purposes of Sections 8.1 and 8.2 if this Agreement, estimates of costs and time required for restoration or repair shall be made by an architect or engineer, as appropriate, designated by the Seller and reasonably acceptable to Purchaser.

8.3 Broker. Seller and Purchaser each represents and warrants to the other that it has not employed any real estate sales representatives or brokers regarding the transaction contemplated by this Agreement other than, in Seller's case, the engagement of NT Realty, LLC, in respect of which Seller shall be solely responsible for the payment of a brokerage fee pursuant to a separate written agreement. Seller shall indemnify, defend and hold Purchaser harmless from any commission or fee claimed to be owing due to the acts of Seller. Purchaser shall indemnify, defend and hold Seller harmless from any commission or fee claimed to be owing due to the acts of Purchaser. This Section relates solely to the transaction contemplated by this Agreement between Seller and Purchaser and shall not create any third party right or obligation in favor of either or any broker. The provisions of this Section 8.3 shall survive the Closing and any termination of this Agreement.

## **ARTICLE IX DEFAULT; TERMINATION RIGHTS; INDEMNIFICATIONS**

9.1 Default by Seller. If the sale contemplated hereby is not consummated because of a default by Seller in accordance with this Agreement after Purchaser has performed or tendered performance of all of its obligations and satisfied all closing conditions in accordance with this Agreement (other than those closing conditions that by their terms require action on the part of the Seller), then Purchaser, as its sole and exclusive remedy (except as set forth in Section 9.3) shall elect (a) to terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser, Seller shall reimburse Purchaser for its reasonable aggregate out-of-pocket-expenses in connection with the proposed purchase of the Property (not to exceed the sum of One Hundred Thousand Dollars (\$100,000)) and all other rights and obligations of the Seller and Purchaser hereunder (except those set forth herein which expressly survive a termination of this Agreement) shall terminate immediately; (b) to waive such matter or condition and proceed to Closing, with no reduction in the Purchase Price, or (c) to pursue the remedy of specific performance. In the event of any termination by the Purchaser pursuant to the provisions of this Section 9.1, the Earnest Money shall be refunded by the Escrow Agent to the Purchaser.

9.2 Default by the Purchaser. If the sale contemplated hereby is not consummated because of a default by the Purchaser in accordance with this Agreement after Seller has satisfied the closing conditions set forth herein in accordance with this Agreement (other than those closing conditions that by their terms require action on the part of the Purchaser), the Seller, as its sole and exclusive remedy (except as set forth in Section 9.3), shall be permitted to terminate this Agreement in which event the parties hereto shall be released from all further obligations hereunder except those which expressly survive a termination of this Agreement. In the event of such termination, the Seller shall be entitled to receive the Earnest Money from the Escrow Agent as liquidated damages and not as penalty, in full satisfaction of its claims against Purchaser hereunder. SELLER AND PURCHASER AGREE THAT THE SELLER'S DAMAGES RESULTING FROM PURCHASER'S DEFAULT ARE DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE AND THE EARNEST MONEY IS A FAIR ESTIMATE OF THOSE DAMAGES WHICH HAS BEEN AGREED TO IN AN EFFORT TO CAUSE THE AMOUNT OF SAID DAMAGES TO BE CERTAIN.

9.3 Effect of Termination. Neither party hereto shall have any liability in respect to a termination of this Agreement pursuant to Sections 9.1 or 9.2, except to the extent that a party's failure to satisfy its closing conditions, as applicable, results from the intentional or willful breach or violation of the representations, warranties, covenants or agreements of such party under this Agreement or willful misconduct or fraud in connection with this Agreement.

9.4 Costs and Attorneys' Fees. In the event of any litigation or dispute between the parties arising out of or in any way connected with this Agreement, resulting in any litigation, then the prevailing party in such shall be entitled to recover its costs of prosecuting and/or defending same, including, without limitation, reasonable attorneys' fees at trial and all appellate levels. The provisions of this Section 9.4 shall survive the termination of this Agreement.

9.5 Limitation of Liability. Notwithstanding anything herein to the contrary, the liability of each party hereto and any other indemnifying party hereunder resulting from the breach, default or alleged breach or default of this Agreement by such party (or other indemnifying party) shall, in any event, in contract, tort, common law or otherwise, be limited to direct actual damages incurred by the injured party and each party hereto hereby waives its rights to recover from the other party and any other indemnifying party consequential, punitive, exemplary, speculative, punitive or exemplary damages of any kind, damages consisting of lost profits (regardless of the characterization thereof), damages for diminution in value, or damages determined as a multiple of income, earnings, revenue or similar basis, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen by such other party. The provisions of this Section 9.5 shall survive the termination of this Agreement indefinitely.

9.6 Agreement to Indemnify.

(a) Subject to the limitations set forth in this Section 9.6, and notwithstanding any provisions of this Agreement to the contrary, Seller shall hold harmless, indemnify and defend Purchaser against any and all claims asserted by any third-party(ies) with respect to obligations, claims, losses, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and other charges) connected with the ownership or operation of the Hotel and relating to the period during which Seller owned the Hotel, including, without limitation, actions or claims asserted by such third-party(ies) relating to damage to property or injury to or death of any person during the period of Seller's ownership of the Hotel, or any claims by any such third-party(ies) for any debts or obligations occurring on or about or in connection with the Hotel or any portion thereof or with respect to the Hotel's operations at any time during such period. As a material part of the consideration for this Agreement Benchmark Development, Inc. shall guarantee the Seller's obligations set forth in this Section 9.6(a).

(b) Subject to the limitations set forth in this Section 9.6, and notwithstanding any provisions of this Agreement to the contrary, Purchaser shall hold harmless, indemnify and defend Seller, its affiliates, members, partners, shareholders, directors, managers, employees representatives and agents against any and all obligations, claims, losses, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising out of, or in any way relating to, (a) any breach of any representation or warranty of the Seller contained in this Agreement, (b) and breach of any covenant of the Seller which survives the Closing contained in this Agreement and (c) any claims asserted by any third-party(ies) with respect to obligations, claims, losses, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and other charges) connected with the ownership or operation of the Hotel and relating to the period after the Closing Date, including, without limitation, actions or claims asserted by such third-party(ies) relating to damage to property or injury to or death of any person during the period after the Closing Date, or any claims by any such third-party(ies) for any debts or obligations occurring on or about or in connection with the Hotel or any portion thereof or with respect to the Hotel's operations at any time during such period.

(c) Subject to the limitations set forth in this Section 9.6, whenever it is provided in this Agreement that an obligation of one party will be assumed by the other party on or after the Closing, the party so assuming such liability also shall be deemed to have agreed to indemnify, defend and hold harmless the other party and its successors and assigns, from and against all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and other charges) arising from any failure of the assuming party to perform the obligation so assumed after the Closing and from all third party claims brought against the other party to the extent relating to the period from and after assumption of the liability on which the claim is based.

(d) Subject to the limitations set forth in this Section 9.6, whenever either party shall learn through the filing of a claim or the commencement of a proceeding or otherwise of the existence of any liability for which the other party is or may be responsible under this Agreement, the party learning of such liability shall notify the other party promptly and furnish such copies of documents (and make originals thereof available) and such other information as such party may have that may be used or useful in the defense of such claims and shall afford said other party full opportunity to defend the same in the name of the notifying party and generally shall cooperate with said other party in the defense of any such claim. Upon receipt of such notice of possible liability, the party obligated to provide indemnity shall have the right to provide a written notice to the party entitled to indemnity that the indemnifying party elects to assume the defense of such matter, including, without limitation, the employment of counsel reasonably satisfactory to the indemnified party; whereupon the indemnifying party shall have the right to prosecute such defense and shall be responsible for the payment of the fees and disbursements of such counsel; *provided, however*, if in the reasonable judgment of the indemnified party, (i) such litigation, action, suit, demand, claim or the resolution thereof, would have a material adverse effect on the indemnified party or (ii) the indemnifying party shall have a conflict of interest in defending such action on the indemnified party's behalf, then at the indemnified party's election, the

indemnified party may defend itself, and in either of such instances it shall be at the indemnifying party's expense; *provided, however*, that the indemnifying party shall be responsible for the reasonable fees of no more than one counsel in each jurisdiction in each proceeding. No indemnifying party shall be responsible for any obligation, loss, cost, expense or other liability to the extent that (a) the party entitled to indemnification failed to provide prompt notice thereof to the indemnifying party and (b) such obligation, loss, cost, expense or other liability could have been avoided if prompt notice had been given.

(e) Notwithstanding the foregoing provisions of Section 9.6(a), (i) the Seller shall not be required to indemnify under Section 9.6(a) or otherwise (collectively, the "Seller Indemnity Obligations") under this Agreement unless the aggregate amount of the Seller Indemnity Obligations otherwise payable by the Seller exceeds the Basket Limitation and, in such event, the Seller shall be responsible only for such amount in excess of the Basket Limitation, (ii) in no event shall the liability of the Seller with respect to the Seller Indemnification Obligations exceed in the aggregate the Cap Limitation, and (iii) if prior to the Closing, the Purchaser obtains or has actual knowledge of any inaccuracy or breach of any representation, warranty or covenant of the Seller contained in this Agreement (a "Purchaser Waived Breach") and nonetheless proceeds with and consummates the Closing, then the Purchaser shall be deemed to have waived and forever renounced any right to assert a claim for indemnification under this Agreement for, or any other claim or cause of action under this Agreement, at law or in equity on account of any such Purchaser Waived Breach.

(f) Notwithstanding anything in this Agreement to the contrary, the covenants contained in this Agreement and the Closing Documents shall survive the Closing for a period of one (1) year and the representations and warranties shall survive the Closing for the Rep Survival Period, unless otherwise provided for in this Agreement (such periods, the "Survival Periods"), at which point each covenant, representation and warranty will expire and be of no force and effect.

(g) Any claim for indemnification not made by a party on or prior to the last day of the applicable Survival Period shall be irrevocably and unconditionally released and waived; provided, however, that any obligation to indemnify and hold harmless under Section 9.6(a) shall not terminate with respect to any indemnifiable obligations, claims, losses, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) to which the person to be indemnified shall have given notice in accordance herewith before the termination of the applicable Survival Period.

(h) If the Closing has occurred, the sole and exclusive remedy available to a party in the event of a breach by the other party to this Agreement of any representation, warranty, covenant or other provision of this Agreement or any Closing Document which survives the Closing shall be the indemnifications provided for under this Section 9.6, which indemnification obligations shall survive the Closing indefinitely (subject to Section 9.6(g)).

(i) The amount of any obligations, claims, losses, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) for which indemnification is provided under this Section 9.6 shall be net of any amounts actually recovered by the indemnified party under insurance policies with respect to such obligations, claims, losses, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) (net of any expenses the Purchaser and the indemnified parties incurred in connection with such recovery or any other adverse consequence suffered in pursuing such recovery, including any increase in premium). The Purchaser shall use its commercially reasonable efforts (which shall not include commencing litigation) to recover under insurance policies for any Losses under this Agreement. If an indemnified party receives any amounts under applicable insurance policies with respect to an indemnification claim subsequent to an indemnification payment by an indemnifying party with respect to such indemnification claim, then such indemnified party shall promptly reimburse the indemnifying party, up to the amount received by the indemnified party under such policies.

## ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Completeness; Modification. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto. This Agreement may be modified or amended only by a written instrument duly executed by the parties hereto.

10.2 Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their permitted respective successors and assigns. Except as expressly set forth in herein, nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such assigns, any legal or equitable rights hereunder.

10.3 Days. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not business days.

10.4 Governing Law. This Agreement and all documents referred to herein shall be governed by and construed and interpreted in accordance with the laws of the state in which the Property is located without regard to its principles of conflicts of law.

10.5 Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereto shall collectively constitute a single agreement. Telecopied signatures shall have the same valid and binding effect as original signatures.

10.6 Severability. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.7 Costs. Regardless of whether Closing occurs hereunder, and except as otherwise expressly provided herein, each party hereto shall be responsible for its own costs in connection with this Agreement and the transactions contemplated hereby, including, without limitation, fees of attorneys, engineers and accountants.

10.8 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered by hand, sent prepaid for next-day delivery by Federal Express (or a comparable overnight delivery service) or sent by the United States mail, certified, postage prepaid, return receipt requested, at the addresses and with such copies as designated below. Any notice, request, demand or other communication delivered or sent in the manner aforesaid may be given by the party required to give such notice, etc., or its attorney, and shall be deemed given or made (as the case may be) when actually delivered to or refused by the intended recipient.

If to Seller: Mueller Hospitality, LP  
c/o Benchmark Development, Inc.  
190 E. Stacy Road, Suite 1720  
Allen, Texas 75002  
Attn: Billy Brown  
Telephone: (214) 618-8288  
Facsimile: (214) 618-2791  
E-Mail: billy.brown@benchmarktexas.net

with a copy to: Mr. David Lange  
Locke Lord LLP  
200 Ross, Suite 2200  
Dallas, Texas 75201  
Telephone No. (214) 740-8468  
E-Mail: dlange@lockelord.com

If to Purchaser: c/o Moody National Realty Company, LP  
6363 Woodway, Suite 110  
Houston, Texas 77057  
Attn: Brett Moody/ Alex Sims  
Telephone: (713) 977-7500  
Facsimile: (713) 977-7505  
bmoody@moodynational.com/  
[asims@moodynational.com](mailto:asims@moodynational.com)

with a copy to: Mr. Adam S. Wilk  
Ms. Kasi Moeskau  
Sneed, Vine & Perry, P.C.  
900 Congress, Suite 300  
Austin, Texas 78701  
Telephone No. (512) 494-3126  
E-Mail: awilk@sneedvine.com/  
kmoeskau@sneedvine.com

If to Title Company: Moody National Title Company, L.P.  
6363 Woodway, Suite 110  
Houston, Texas 77057  
Attn: Kay Street  
Telephone: (713) 273-6680  
Facsimile: (713) 977-0117  
kstreet@moodynational.com

or to such other address as the intended recipient may have specified in a notice to the other party. Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party and Escrow Agent in a manner described in this Section.

10.9 Escrow Agent. Escrow Agent has agreed to act as such for the convenience of the parties without fee or other charges for such services as Escrow Agent. Escrow Agent shall not be liable: (a) to any of the parties for any act or omission to act except for its own gross negligence or willful misconduct; (b) for any legal effect, insufficiency, or undesirability or any instrument deposited with or delivered by Escrow Agent or exchanged by the parties hereunder, whether or not Escrow Agent prepared such instrument; (c) for any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection, or while those funds are on deposit in a financial institution, if such loss or impairment results from the failure, insolvency or suspension of a financial institution; (d) for the expiration of any time limit or other consequences of delay, unless a properly executed written instruction from one the parties hereto, accepted by Escrow Agent, has instructed Escrow Agent to comply with said time limit; (e) for the default, error, action or omission of either party to the escrow. Escrow Agent, in its capacity as escrow agent, shall be entitled to rely on any document or paper received by it, believed by such Escrow Agent, in good faith, to be bona fide and genuine. In the event of any dispute as to the disposition of any monies held in escrow, or of any documents held in escrow, Escrow Agent may, if such Escrow Agent so elects, interplead the matter by filing an interpleader action in a court of competent jurisdiction in the county or circuit where the Real Property is located (to the jurisdiction of which both parties do hereby consent), and pay into the registry of the court such monies held by Escrow Agent, or deposit any such documents with respect to which there is a dispute in the registry of such court, whereupon such Escrow Agent shall be relieved and released from any further liability as Escrow Agent hereunder. Escrow Agent shall not be liable for Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment and decree of any court, whether issued with or without jurisdiction, and whether or not subsequently vacated, modified, set aside or reversed.

10.10 Incorporation by Reference. All of the exhibits and schedules attached hereto are by this reference incorporated and made a part hereof.

10.11 Further Assurances. The Seller and Purchaser each covenant and agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required by either party hereto for the purpose of or in connection with consummating the transactions described herein provided that compliance with the provision of this Section 10.11 shall not increase the liability of the complying party.

10.12 No Partnership. This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto except the relationship of seller and purchaser specifically established hereby.

10.13 Time of Essence. Time is of the essence with respect to every provision hereof.

10.14 Signatory Exculpation. The signatory(ies) for the Seller and Purchaser is/are executing this Agreement in his/their capacity as representative of such party and not individually and, therefore, shall have no personal or individual liability of any kind in connection with this Agreement and the transactions contemplated by it.

10.15 Rules of Construction. The following rules shall apply to the construction and interpretation of this Agreement:

(a) Singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

(b) All references herein to particular articles, sections, subsections, clauses or exhibits are references to articles, sections, subsections, clauses or exhibits of this Agreement.

(c) The headings contained herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(d) Each party hereto and its counsel have reviewed and revised (or requested revisions of) this Agreement and have participated in the preparation of this Agreement, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto.

10.16 No Recording. Neither this Agreement nor any memorandum hereof, or any other instrument intended to give notice hereof (or which actually gives notice hereof) shall be recorded.

10.17 Facsimile Signatures. The execution of this Agreement and all notices given hereunder and all amendments hereto, may be effected by facsimile signatures, all of which shall be treated as originals; provided, however, that the party receiving a document with a facsimile signature may, by notice to the other, require the prompt delivery of an original signature to evidence and confirm the delivery of the facsimile signature.

10.18 Assignment by the Parties. Neither party shall assign or transfer or permit the assignment or transfer of its rights or obligations under this Agreement without the prior written consent of the other, any such assignment or transfer without such prior consent being hereby declared to be null and void; provided, however, that Purchaser shall have the right to either nominate one or more Affiliates to take title to the Property or to certain components of the Property or to assign this Agreement to one or more Affiliates prior to the Closing; provided that the Purchaser provides the Seller with a fully executed and enforceable assignment of this Agreement in form and substance satisfactory to the Purchaser in its reasonable discretion and provided that the Purchaser will continue to remain primarily liable under this Agreement notwithstanding any such nomination or assignment.

10.19 Waiver. Except as otherwise set forth herein, the excuse or waiver of the performance by a party of any obligation of the other party under this Agreement shall only be effective if evidenced by a written statement signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Purchaser of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

10.20 Exclusivity. After the Effective Date, Seller and its respective agents, representatives and employees shall immediately cease all marketing of the Property until such time as this Agreement is terminated and Seller shall not directly or indirectly make, affirmatively accept, negotiate or otherwise pursue any offers for the sale of the Property.

10.21 Section 1031 Exchange. Either party may consummate the purchase or sale of the Property as part of a so-called like kind exchange (an “Exchange”) pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the “Code”), provided that (i) the Closing shall not be delayed or affected by reason of an Exchange nor shall the consummation or accomplishment of any Exchange be a condition precedent or condition subsequent to a party’s obligations under this Agreement; (ii) any party desiring an Exchange shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary and the other party shall not be required to take an assignment of the purchase agreement for the relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating such Exchange; and (iii) the party desiring an Exchange shall be responsible for all costs and expenses, including reasonable attorney’s fees, that would not otherwise have been incurred by Purchaser or Seller had such party not consummated its purchase or sale through an Exchange. Neither party shall by this agreement or acquiescence to an Exchange desired by the other party (1) have its rights under this Agreement affected or diminished in any manner or (2) be responsible for compliance with or be deemed to have warranted to the other party that such party’s Exchange in fact complies with Section 1031 of the Code. In connection with such cooperation, Seller agrees, upon request of Purchaser to “direct deed” for actual interests in the property to designees of Purchaser.

10.22 Public Announcements. Except as otherwise expressly provided herein, neither Seller nor Purchaser shall make any public statement or issue any press release prior to the Closing with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other party. Seller hereby expressly acknowledges that Purchaser is a wholly-owned subsidiary of a publicly-traded company and that Seller is aware and will instruct its owners, employees and agents that federal and state securities laws prohibit any person who has material, non-public information about a company from purchasing or selling securities of such a company or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities. Seller further agrees that Purchaser shall have the right to disclose the fact that it is contemplating the purchase of the Property and such other details of the transaction to the extent Purchaser reasonably deems necessary to comply with applicable federal or state securities laws, rules or regulations.

10.23 Exculpation of the Seller and Purchaser. Notwithstanding anything to the contrary contained herein, the Seller’s shareholders, partners and members, the partners or members of such partners, the shareholders of such partners and members, and the trustees, officers, directors, employees, agents and security holders of the Seller and the partners or members of the Seller assume no personal liability for any obligations entered into on behalf of the Seller and their individual assets shall not be subject to any claims of any person relating to such obligations. Notwithstanding anything to the contrary contained herein, the Purchaser’s shareholders, partners and members, the partners or members of such partners, the shareholders of such partners and members, and the trustees, officers, directors, employees, agents and security holders of the Purchaser and the partners or members of the Purchaser assume no personal liability for any obligations entered into on behalf of the Purchaser and their individual assets shall not be subject to any claims of any person relating to such obligations. The foregoing shall govern any direct and indirect obligations of the Seller and Purchaser under this Agreement. The provisions of this Section 10.23 shall survive the Closing and any termination of this Agreement.

IN WITNESS WHEREOF, the Seller and Purchaser have caused this Agreement to be executed in their names by their respective duly authorized representatives.

**SELLER**

**MUELLER HOSPITALITY, LP**, a Texas limited partnership

By: /s/ Billy L. Brown

Name: Billy L. Brown

Title: General Partner

**PURCHASER:**

**MOODY NATIONAL REIT I INC.**, a Maryland corporation

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

Brett Moody, President

**JOINDER**

The undersigned hereby joins in this Agreement for the purposes of guarantying the obligations of Seller hereunder, but only to the extent that (a) the Closing occurs, and (b) Seller expressly has liability to Purchaser under this Agreement after Closing.

In witness whereof, the undersigned has executed this Joinder as of \_\_\_\_\_, 2015.

**BENCHMARK DEVELOPMENT, INC.**

By: /s/ Billy L. Brown

Name: Billy L. Brown

Title: President

**EXHIBIT A**  
**LEGAL DESCRIPTION**

## **EXHIBIT B**

### **SUBMISSION MATTERS**

1. All architectural plans, site plans, existing surveys and other specifications for the Property.
2. FF&E inventory schedule.
3. Accounts Receivables schedule and aging.
4. A true, correct and complete list of the Hotel's occupancy, ADR, and levels for the prior twelve (12) months.
5. The previous one (1) year Smith Travel Research Reports and quality assurance reports.
6. A current rent roll (if applicable)
7. A list of all Hotel Agreements in effect as of the date of this Agreement, together with complete and legible copies thereof and all modifications, supplements and amendments thereto.
8. License Agreement and Existing PIPS.
9. All Authorizations including, without limitation, all certificates of occupancy, permits, authorizations, approvals, liquor licenses, liquor license applications and licenses issued by Governmental Authorities having jurisdiction over the Property and copies of all certificates issued by the local board of fire underwriters (or other body exercising similar functions) relating to the Property.
10. All Employment Agreements.
11. To the extent in Seller's or Manager's possession, any parking, structural, mechanical or other engineering reports and construction documents prepared for the Seller related to the Property.
12. Real estate and personal property tax statements with respect to the Property for the year of Closing (if received by the Seller) and for the one (1) year preceding the year of Closing together with assessment bills.
13. All leasing or other commission agreements in effect with respect to the Property.
14. One (1) years insurance claims history.
15. A schedule of insurance covering the Property setting forth the name of the carrier, the type of policy, the policy number, the policy term and the annual premium, along with copies of all such insurance policies.

## **EXHIBIT C**

### **PROCEDURE AND METHOD OF PRORATION AND OTHER ADJUSTMENTS**

Prior to the Closing, the Seller and Purchaser shall jointly prepare a proposed closing statement containing the parties' reasonable estimate of the items requiring proration and adjustment under Section 7.6 and other applicable Sections of this Agreement. Subsequent to the Closing, final adjustments and resulting payments between the parties ("true-ups") shall be made in cash or immediately available funds as soon as practical, but not later than one hundred twenty (120) days following the Closing Date.

## EXHIBIT D

### ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENTS (this "Assignment") is made as of \_\_\_\_\_, 2015 (the "Effective Date"), by and between \_\_\_\_\_ ("Assignor") and \_\_\_\_\_ ("Assignee").

WHEREAS, Seller and Purchaser are parties to that certain Agreement of Purchase and Sale dated as of \_\_\_\_\_ (as amended, modified and supplemented, the "Agreement") for the purchase and sale of the land and the improvements as more particularly described in the Agreement ("Property") and the related personal property. All capitalized terms in this Assignment not otherwise defined herein have the same meaning ascribed in the Agreement; and

WHEREAS, in connection with the sale of the Property, Assignor desires to assign, and Assignee desires to assume, all of Assignor's right, title, interest and obligations, if any, in all currently effective Hotel Agreements related to the Property.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound, the parties agree as follows:

1. As of the Effective Date, Assignor does hereby assign and convey to Assignee, its successors and assigns, all of the right, title and interest of Assignor, and of any Named Party (as defined below), in and to the Hotel Agreements and related unforfeited security deposits, and Assignee does hereby assume such right, title and interest in and to the Hotel Agreements and related unforfeited security deposits (excluding any Liability arising prior to the Effective Date). For purposes hereof, "Named Party" shall mean any person or entity that has executed as agent or under apparent authority, on behalf of Assignor or its managing agent, any of the Hotel Agreements.

2. This Assignment and the provisions herein contained shall be binding upon and inure to the benefit of Assignee and Assignor and their respective successors and assigns.

3. This Assignment may be executed in several counterparts and all counterparts so executed shall constitute one Assignment, binding on all the parties hereto and thereto, notwithstanding that all the parties are not signatories to the same counterpart.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment the day and year first above written.

**ASSIGNOR:**

**ASSIGNEE:**

## EXHIBIT E

### BILL OF SALE AND GENERAL ASSIGNMENT

THIS BILL OF SALE AND GENERAL ASSIGNMENT (this "Bill of Sale") is made as of \_\_\_\_\_, 2015, by and between \_\_\_\_\_ (collectively, "Assignor") and \_\_\_\_\_ ("Purchaser").

WHEREAS, Assignor and Assignee are parties to that certain Agreement of Purchase and Sale dated as of \_\_\_\_\_, ("Agreement") for the purchase and sale of real property for the purchase and sale of the land and the improvements as more particularly described in the Agreement ("Property") and the related personal property. Capitalized terms used, but not defined herein, shall have the meaning ascribed to such term in the Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Assignor has GRANTED, CONVEYED, SOLD, TRANSFERRED, SET-OVER, and DELIVERED, and by these presents does hereby GRANT, CONVEY, SELL, TRANSFER, SET-OVER, and DELIVER unto Assignee, all of its right, title and interest (if any), all items personal property of every kind and nature located on the Property, including, but not limited to, Assignor's rights and interest, in, to: (a) all Tangible Personal Property; (b) all Intangible Personal Property; (d) Warranties and Guaranties, and (d) Advanced Bookings.

2. This Bill of Sale and the provisions herein contained shall be binding upon and inure to the benefit of Purchaser and Seller and their respective successors and assigns.

3. This Bill of Sale may be executed in several counterparts and all counterparts so executed shall constitute one Assignment, binding on all the parties hereto and thereto, notwithstanding that all the parties are not signatories to the same counterpart.

*[Signature page follows.]*

IN WITNESS WHEREOF, Assignor has executed and delivered this Bill of Sale the day and year first above written.

**ASSIGNOR:**

**EXHIBIT "F"**

**SPECIAL WARRANTY DEED**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

THE STATE OF TEXAS       §  
  §     KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF TRAVIS       §

THAT, \_\_\_\_\_ ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid by \_\_\_\_\_ ("Grantee"), whose address is \_\_\_\_\_, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto Grantee, that certain tract of real property situated in       Harris County, Texas, and described in Exhibit "A" attached hereto and made a part hereof for all purposes, together with all and singular the rights, privileges, hereditaments, and appurtenances pertaining to such real property, including any and all improvements and fixtures currently attached to and located thereon (the "Property").

The conveyance of the Property is being made by Grantor and accepted by Grantee subject to all matters set forth in Exhibit B, attached hereto and incorporated herein by reference (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with, all and singular, the rights and appurtenances thereto in anywise belonging, to Grantee and Grantee's successors and assigns forever; Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, legal representatives, successors, and assigns to warrant and forever defend, all and singular, the Property unto the Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by through or under Grantor, but not otherwise, subject however, to the Permitted Exceptions.

*[The remainder of this page is intentionally blank.]*

EXECUTED to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**GRANTOR:**

THE STATE OF TEXAS     §

COUNTY OF HARRIS     §

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by \_\_\_\_\_, President of \_\_\_\_\_, known or proved to me on satisfactory evidence to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in the capacity and for the purposes and consideration therein expressed, on behalf of such company.

(S E A L)

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**EXHIBIT “G”**  
**Leased Property Agreements**

**EXHIBIT “H”**  
**Occupancy Agreements**

**EXHIBIT “I”**  
**Off-Site Facility Agreements**

**EXHIBIT “J”**  
**Occupancy Agreements**

## ASSIGNMENT AND ASSUMPTION OF AGREEMENT OF PURCHASE AND SALE

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT OF PURCHASE AND SALE (this “Assignment”), is made and entered into as of the 15th day of October, 2015, by and between MOODY NATIONAL REIT II, INC., a Maryland corporation (“Assignor”), MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC, a Delaware limited liability company (“Fee Owner”) and MOODY NATIONAL LANCASTER-AUSTIN MT, LLC, a Delaware limited liability company (“Master Tenant”, Fee Owner and Master Tenant are collectively referred to herein as “Assignee”).

### W I T N E S S E T H :

WHEREAS, Assignor, as successor-in-interest to Purchaser, entered into that certain Agreement of Purchase and Sale for the purchase and sale of the land and the improvements located at 1200 Barbara Jordan Boulevard, Building 4, Austin, Travis County, Texas (“Hotel Site”) dated as of May 11, 2015 (as amended, modified and supplemented, the “Agreement”). Any terms not defined herein shall have the meaning as set forth in the Agreement.

WHEREAS, Assignor now wishes to assign all of its right, title and interest under the Agreement in and to the Property, excluding the Hotel Agreements, the Lease dated December 30, 2014 by and between Seller and Eugene Catenacci, and the Lease dated December 29, 2014 by and between Seller and Tiff’s Treats, Ltd. (the “Primary Property”), to Fee Owner, and Fee Owner desires to assume and perform the obligations of Assignor as Purchaser under the Agreement, with respect to the Primary Property.

WHEREAS, Assignor now wishes to assign all of its right, title and interest as Purchaser under the Agreement in and to Hotel Agreements to Master Tenant, and Master Tenant desires to assume and perform the obligations of the Assignor as purchaser under the Agreement, with respect to the Hotel Agreements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor, Fee Owner and Master Tenant hereby agree as follows:

1. Assignment to Fee Owner. Assignor does hereby SELL, GRANT, ASSIGN, TRANSFER, CONVEY, RELINQUISH AND SET OVER unto Fee Owner all of Assignor’s right, title and interest in and to the Primary Property.

2. Assignment to Master Tenant. Assignor does hereby SELL, GRANT, ASSIGN, TRANSFER, CONVEY, RELINQUISH AND SET OVER unto Master Tenant all of Assignor’s right, title and interest in and to the Hotel Agreements, the Lease dated December 30, 2014 by and between Seller and Eugene Catenacci, and the Lease dated December 29, 2014 by and between Seller and Tiff’s Treats, Ltd.

3. Assumption by Assignee. Assignee, hereby accepts the foregoing assignment, agrees to jointly and severally assume and perform all the duties and obligations to be performed by the Purchaser under the Agreement therein mentioned to the same extent as if Assignee had originally been named as the Purchaser in that Agreement, and to indemnify and hold Assignor harmless for any liability for performance or nonperformance of the duties and obligations assumed by Assignee.

4. Governing Law. This Agreement shall be governed by, and be construed in accordance with, the laws of the State of Texas.

5. Counterparts. To facilitate execution, this Assignment may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

6. Entire Agreement. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signature page follows.]

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Assignment as of the date and year first above written.

**ASSIGNOR:**

**MOODY NATIONAL REIT II INC., a Maryland corporation**

By:



\_\_\_\_\_  
Brett C. Moody, President

**FEE OWNER:**

**MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC, a Delaware limited liability company**

By:



\_\_\_\_\_  
Name: Brett C. Moody  
Title: President

**MASTER TENANT:**

**MOODY NATIONAL LANCASTER-AUSTIN MT, LLC, a Delaware limited liability company**

By:



\_\_\_\_\_  
Name: Brett C. Moody  
Title: President

**HOTEL LEASE AGREEMENT**

**EFFECTIVE October 15, 2015**

**BETWEEN**

**Moody National Lancaster-Austin Holding, LLC, a  
Delaware limited liability company**

**AS LESSOR**

**AND**

**Moody National Lancaster-Austin MT, LLC, a  
Delaware limited liability company**

**AS LESSEE**

## HOTEL LEASE AGREEMENT

THIS HOTEL LEASE AGREEMENT (hereinafter called "*Lease*"), effective as of the 15th day of October, 2015, by and between Moody National Lancaster-Austin Holding, LLC, a Delaware limited liability company (hereinafter called "*Lessor*"), and Moody National Lancaster-Austin MT, LLC, a Delaware limited liability company (hereinafter called "*Lessee*"), provides as follows:

### AGREEMENT:

Lessor, for and in consideration of the payment of rent by Lessee to Lessor, the covenants and agreements to be performed by Lessee, and upon the terms and conditions hereinafter stated, does hereby rent and lease unto Lessee, and Lessee does hereby rent and lease from Lessor, the Leased Property.

### ARTICLE 1 LEASED PROPERTY; TERM

1.1 Leased Property. The Leased Property shall mean and is comprised of Lessor's interest in the following:

- (a) the land described in Exhibit A attached hereto and by reference incorporated herein (the "*Land*");
- (b) all buildings, structures and other improvements of every kind including, but not limited to, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and offsite), parking areas and roadways appurtenant to such buildings and structures presently situated upon the Land (collectively, the "*Leased Improvements*");
- (c) all easements, rights and appurtenances relating to the Land and the Leased Improvements;
- (d) all equipment, machinery, fixtures, and other items of property required for or incidental to the use of the Leased Improvements as a hotel, including all components thereof, now and hereafter permanently affixed to or incorporated into the Leased Improvements, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, all of which to the greatest extent permitted by law are hereby deemed by the parties hereto to constitute real estate, together with all replacements, modifications, alterations and additions thereto (collectively, the "*Fixtures*");
- (e) all furniture and furnishings and all other items of personal property (excluding Inventory and personal property owned by Lessee, if any) located on, and used in connection with, the operation of the Leased Improvements as a hotel, together with all replacements, modifications, alterations and additions thereto.

THE LEASED PROPERTY IS DEMISED IN ITS PRESENT CONDITION WITHOUT REPRESENTATION OR WARRANTY (EXPRESSED OR IMPLIED) BY LESSOR AND SUBJECT TO THE RIGHTS OF PARTIES IN POSSESSION, AND TO THE EXISTING STATE OF TITLE INCLUDING ALL COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND OTHER MATTERS OF RECORD INCLUDING ALL APPLICABLE LEGAL REQUIREMENTS AND OTHER MATTERS WHICH WOULD BE DISCLOSED BY AN INSPECTION OF THE LEASED PROPERTY OR BY AN ACCURATE SURVEY THEREOF.

1.2 Term. The term of this Lease (the "*Term*") shall commence on the date hereof (the "*Commencement Date*") and shall end on the tenth (10<sup>th</sup>) anniversary of the last day of the month in which the Commencement Date occurs, unless sooner terminated in accordance with the provisions hereof; provided, however, in the event that the Initial Loan is not repaid on or before this termination date, the term of this Lease shall automatically renew for a one-year extension from the initial termination date.

(a) Option to Terminate Lease. In the event Lessor enters into a contract to sell the Leased Property to a non-Affiliate, Lessor may terminate the Lease by giving not less than forty-five (45) days' prior written notice of the election to terminate the Lease effective upon the consummation of such transaction. Effective upon such termination date, the Lease shall terminate and be of no further force and effect as to any obligations of the parties existing as of such date that survive termination of this Lease. Lessor shall pay to Lessee, or reimburse Lessee for any assignment or termination fees or other liabilities arising under the Management Agreement or any Franchise Agreement solely as a result of the termination or assignment of such agreements in connection with a termination of the Lease under this Section 1.2(a).

1.3 Transition Procedures. Upon the expiration or termination of the Term of this Lease, Lessor and Lessee shall do the following (and the provisions of this Section 1.3 shall survive the expiration or termination of this Lease until they have been fully performed) and, in general, shall cooperate in good faith to effect an orderly transition of the management and/or lease of the Hotel:

(a) Transfer of Licenses. Lessee shall use reasonable efforts (i) to transfer to Lessor or Lessor's nominee all licenses, operating permits and other governmental authorizations and all contracts, including contracts with governmental or quasi-governmental entities, that may be necessary for the operation of the Hotel (collectively, "*Licenses*"), or (ii) if such transfer is prohibited by law or Lessor otherwise elects, to cooperate with Lessor or Lessor's nominee in connection with the processing by Lessor or Lessor's

nominee of any applications for, all Licenses; provided, in either case, that the costs and expenses of any such transfer or the processing of any such application shall be paid by Lessor or Lessor's nominee.

(b) Leases and Concessions. Lessee shall assign to Lessor or Lessor's nominee simultaneously with the termination of this Lease, and the assignee shall assume, all leases and concession agreements in effect with respect to the Hotel then in Lessee's name.

(c) Books and Records. All books and records for the Hotel kept by Lessee pursuant to Section 4.2 shall be delivered promptly to Lessor or Lessor's nominee, simultaneously with the termination of this Lease, but such books and records shall thereafter be available to Lessee at all reasonable times for inspection, audit, examination, and transcription for a period of one (1) year and Lessee may retain (on a confidential basis) copies or computer records thereof.

(d) Receivables and Payables. Lessee shall be entitled to retain all cash, bank accounts and house banks, and to collect all Gross Revenues and accounts receivable accrued through the termination date. In addition, Lessee shall be entitled to retain any amounts remaining of the monthly furniture and equipment funded by Lessee as required by the Loan Documents and/or the Management Agreement. Lessee shall be responsible for the payment of Rent, all Gross Operating Expenses and all other obligations of Lessee accrued under this Lease as of the termination date, and Lessor or Lessor's nominee shall be responsible for all Gross Operating Expenses of the Hotel accruing after the termination date.

(e) Final Accounting. Lessee shall, within forty five (45) days after the expiration or termination of the Term, prepare and deliver to Lessor a final accounting statement, dated as of the date of the expiration or termination, along with a statement of any sums due from Lessee to Lessor pursuant hereto and payment of such funds.

(f) Inventory. Lessee shall insure that the Leased Property, at the date of such termination or expiration, has Inventory of a substantially equivalent nature and amount as exists at the Leased Property on the Commencement Date, and Lessor or its designee shall acquire such Inventory from Lessee for a sale price equal to the fair market value of such Inventory to the extent that such Inventory is the personal property of the Lessee.

(g) Surrender. Lessee will, upon the expiration or prior termination of the Term, vacate and surrender the Leased Property to Lessor in the condition in which the Leased Property was originally received from Lessor, except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Lease and except for ordinary wear and tear (subject to the obligation of Lessee to maintain the Leased Property in good order and repair, as would a prudent owner, during the entire Term of the Lease), or damage by casualty or Condemnation (subject to the obligations of Lessee to restore or repair as set forth in the Lease).

The provisions of this Section 1.3 shall survive the expiration or termination of this Lease until they have been fully performed. Nothing contained herein shall limit Lessor's rights and remedies.

1.4 Holding Over. If Lessee for any reason remains in possession of the Leased Property after the expiration or earlier termination of the Term, such possession shall be as a tenant at sufferance during which time Lessee shall pay as rental each month 125% of the aggregate of (a) one-twelfth of the aggregate Base Rent and Percentage Rent payable with respect to the last Fiscal Year of the Term, (b) all Additional Charges accruing during the applicable month and (c) all other sums, if any, payable by Lessee under this Lease with respect to the Leased Property. During such period, Lessee shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenancies at sufferance, to continue its occupancy and use of the Leased Property. Nothing contained herein shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease.

1.5 Forfeiture. In the event that any of Lessee's Personal Property is retained by Lender in a foreclosure or otherwise due to Lessor's failure to satisfy amounts due under the Loan Documents that are not an obligation of the Lessee pursuant to the terms of this Lease, Lessor shall pay to Lessee a fee in the amount of \$100,000.

## **ARTICLE 2 DEFINITIONS**

2.1 Definitions. For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as are at the time applicable, (c) all references in this Lease to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease and (d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision:

Additional Charges: As defined in Section 3.3.

Affiliate: The term "Affiliate" of a Person shall mean (a) any Person that, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any other Person that owns, beneficially, directly or indirectly, ten percent (10%) or

more of the outstanding capital stock, shares or equity interests of such Person, or (c) any officer, director, employee, partner, manager or trustee of such Person or any Person controlling, controlled by or under common control with such Person or any Person that owns, beneficially, directly or indirectly, ten percent (10%) or more of the outstanding capital stock, shares or equity interests of such Person (excluding trustees and Persons serving in similar capacities who are not otherwise an Affiliate of such Person). For the purposes of this definition, “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean 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, partnership interests or other equity interests.

Annual Budget: The operating and capital budget prepared by Lessee and delivered to Lessor in accordance with Section 4.1.

Annual Revenues Computation: As defined in Subsection 3.1(b) and set forth on Exhibit C.

Base Rate: The rate of interest announced publicly by Citibank, N.A., in New York, New York, from time to time, as such bank’s base rate. If no such rate is announced or if such rate becomes discontinued, then such other rate as Lessor may reasonably designate.

Base Rent: As defined in Section 3.1(a).

Business Day: Each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which national banks in the City of Houston, Texas are closed.

CERCLA: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

Change of Control: The sale, conveyance, assignment, encumbering, pledging, hypothecation, granting a security interest in, granting of options with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration) of any class stock or other equity interests in a Person (other than among existing holders of interests in such Person on the Commencement Date and/or family members of such holders and/or trusts for the benefit of any of the foregoing) that, upon a transfer of any portion thereof, will create in the transferee thereof, directly or indirectly, a majority of any class of stock or other equity interests of such Person.

Claims: As defined in Section 12.2.

COBRA: As defined in Subsection 8.2(b).

Code: The Internal Revenue Code of 1986, as amended.

Commencement Date: As defined in Section 1.2

Condemnation Proceeding: Any action or proceeding brought by competent authority for the purpose of any taking of the fee of the Leased Property or any part thereof or estate therein as a result of the exercise of the power of eminent domain, including, but not limited to, a voluntary conveyance to such authority under either threat of or in lieu of condemnation or while such action or proceeding is pending.

Consolidated Financials: For any fiscal year or other accounting period for Lessee and its consolidated subsidiaries, if any, statements of earnings and retained earnings and of changes in financial position for such period and for the period from the beginning of the respective fiscal year to the end of such period and the related balance sheet as at the end of such period, together with the notes thereto, all in reasonable detail and setting forth in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, and prepared in accordance with generally accepted accounting principles and audited by independent certified public accountants acceptable to Lessor in its sole discretion.

Encumbrance: As defined in Section 22.1.

Environmental Audit: As defined in Subsection 8.3(b).

Environmental Authority: Any department, agency or other body or component of any Government that exercises any form of jurisdiction or authority under any Environmental Law.

Environmental Authorization: Any license, permit, order, approval, consent, notice, registration, filing or other form of permission or authorization required under any Environmental Law.

Environmental Laws: All applicable federal, state, local and foreign laws and regulations relating to pollution of the environment (including without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including without limitation laws and regulations relating to emissions, discharges, Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials. Environmental Laws include but are not limited to CERCLA, FIFRA, RCRA, SARA and TSCA.

**Environmental Liabilities:** Any and all obligations to pay the amount of any judgment or settlement, the cost of complying with any settlement, judgment or order for injunctive or other equitable relief, the cost of compliance or corrective action in response to any notice, demand or request from an Environmental Authority, the amount of any civil penalty or criminal fine, and any court costs and reasonable amounts for attorney's fees, fees for witnesses and experts, and costs of investigation and preparation for defense of any claim or any Proceeding, regardless of whether such Proceeding is threatened, pending or completed, that may be or have been asserted against or imposed upon Lessor, Lessee, any Predecessor, the Leased Property or any property used therein and arising out of:

- (a) Failure of Lessee, Lessor, any Predecessor or the Leased Property to comply at any time with all Environmental Laws;
- (b) Presence of any Hazardous Materials on, in, under, at or in any way affecting the Leased Property;
- (c) A Release at any time of any Hazardous Materials on, in, at, under or in any way affecting the Leased Property;
- (d) Identification of Lessee, Lessor or any Predecessor as a potentially responsible party under CERCLA or under any Environmental Law similar to CERCLA;
- (e) Presence at any time of any above-ground and/or underground storage tanks, as defined in RCRA or in any applicable Environmental Law on, in, at or under the Leased Property or any adjacent site or facility; or
- (f) Any and all claims for injury or damage to Persons or property arising out of exposure to Hazardous Materials originating or located at the Leased Property, or resulting from operation thereof or any adjoining property.

**Event of Default:** As defined in Section 16.1.

**FIFRA:** The Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

**Fiscal Year:** The twelve (12) month period from January 1 to December 31, or any shorter period at the beginning or end of the Term.

**Fixtures:** As defined in Section 1.1.

**Force Majeure:** An Unavoidable Occurrence, generally affecting travel and/or the hotel or lodging business in the market and/or submarket in which the Hotel is located.

**Franchise Agreement:** any franchise agreement or license agreement with a franchisor (such as Marriott) under which the Hotel is operated.

**Furniture and Equipment:** For purposes of this Lease, the terms "*furniture and equipment*" shall mean collectively all furniture, furnishings, wall coverings, fixtures and hotel equipment and systems located at, or used in connection with, the Hotel, together with all replacements therefor and additions thereto, including, without limitation, (i) all equipment and systems required for the operation of kitchens and bars, laundry and dry cleaning facilities, (ii) office equipment, (iii) material handling equipment, cleaning and engineering equipment, (iv) telephone and computerized accounting systems, and (v) vehicles.

**Government:** The United States of America, any state, district or territory thereof, any foreign nation, any state, district, department, territory or other political division thereof, or any agency or political subdivision of any of the foregoing.

**Gross Operating Expenses:** The term "*Gross Operating Expenses*" shall include (i) all costs and expenses of operating the Hotel included within the meaning of the term "*Total Costs and Expenses*" contained in the Uniform System and, (ii) without duplication, the following: all salaries and employee expense and payroll taxes (including salaries, wages, bonuses and other compensation of all employees of the Hotel, and benefits including life, medical and disability insurance and retirement benefits), expenditures described in Section 9.1, operational supplies, utilities, insurance to be provided by Lessee under the terms of this Lease, governmental fees and assessments, common area maintenance costs and other common area fees and assessments, food, beverages, laundry service expense, the cost of Inventories, license fees, advertising, marketing, reservation systems and any and all other operating expenses as are reasonably necessary for the proper and efficient operation of the Hotel and the Leased Property incurred by Lessee in accordance with the provisions hereof (excluding, however, (i) federal, state and municipal excise, sales and use taxes collected directly from patrons and guests or as a part of the sales price of any goods, services or displays, such as gross receipts, admissions, cabaret or similar or equivalent taxes paid over to federal, state or municipal governments, (ii) the cost of insurance to be provided under Article 13, (iii) expenditures by Lessor pursuant to Article 13 and (iv) payments on any Mortgage or other mortgage or security instrument on the Hotel); all determined in accordance with generally accepted accounting principles. No part of Lessee's central office overhead or general or administrative expense (as opposed to that of the Hotel), shall be deemed to be a part of Gross Operating Expenses, as herein provided. Reasonable out-of-pocket expenses of Lessee incurred for the account of or in connection with the Hotel operations, including but not limited to postage, telephone charges and reasonable travel expenses of employees, officers and other representatives and consultants of Lessee and its Affiliates, shall be deemed to be a part of Gross Operating Expenses and such Persons shall be afforded

reasonable accommodations, food, beverages, laundry, valet and other such services by and at the Hotel without charge to such Persons or Lessee.

**Gross Operating Profit:** For any Fiscal Year, the excess of Gross Revenues for such Fiscal Year over Gross Operating Expenses for such Fiscal Year.

**Gross Revenues:** All revenues, receipts, and income of any kind derived directly or indirectly by Lessee from or in connection with the Hotel (including rentals or other payments from tenants, lessees, licensees or concessionaires but not including their gross receipts) whether on a cash basis or credit, paid or collected, determined in accordance with generally accepted accounting principles, excluding, however: (i) funds furnished by Lessor, (ii) federal, state and municipal excise, sales, and use taxes collected directly from patrons and guests or as a part of the sales price of any goods, services or displays, such as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments, (iii) the amount of all credits, rebates or refunds to customers, guests or patrons, and all service charges, finance charges, interest and discounts attributable to charge accounts and credit cards, to the extent the same are paid to Lessee by its customers, guests or patrons, or to the extent the same are paid for by Lessee to, or charged to Lessee by, credit card companies, (iv) gratuities or service charges actually paid to employees, (v) proceeds of insurance and condemnation, (vi) proceeds from sales other than sales in the ordinary course of business, (vii) all loan proceeds from financing or refinancings of the Hotel or interests therein or components thereof, (viii) judgments and awards, except any portion thereof arising from normal business operations of the Hotel, and (ix) items constituting “allowances” under the Uniform System.

**Hazardous Materials:** All chemicals, pollutants, contaminants, wastes and toxic substances, including without limitation:

- (a) Solid or hazardous waste, as defined in RCRA or any other Environmental Law;
- (b) Hazardous substances, as defined in CERCLA or any other Environmental Law;
- (c) Toxic substances, as defined in TSCA or any other Environmental Law;
- (d) Insecticides, fungicides, or rodenticides, as defined in FIFRA or any other Environmental Law; and
- (e) Gasoline or any other petroleum product or byproduct, polychlorinated biphenyl, asbestos and urea formaldehyde.

**Hotel:** The hotel and/or other facility offering lodging and other services or amenities being operated or proposed to be operated on the Leased Property.

**Impositions:** Collectively, all taxes (including, without limitation, all ad valorem, sales and use, single business, gross receipts, transaction, privilege, rent or similar taxes as the same relate to or are imposed upon Lessee or its business conducted upon the Leased Property), assessments (including, without limitation, all assessments for public improvements or benefit, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term), ground rents, water, sewer or other rents and charges, excises, tax inspection, authorization and similar fees and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Property or the business conducted thereon by Lessee (including all interest and penalties thereon caused by any failure in payment by Lessee), which at any time prior to, during or with respect to the Term hereof may be assessed or imposed on or with respect to or be a lien upon (a) Lessor's interest in the Leased Property, (b) the Leased Property, or any part thereof or any rent therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on or in connection with the Leased Property, or the leasing or use of the Leased Property or any part thereof by Lessee. Nothing contained in this definition of Impositions shall be construed to require Lessee to pay (1) any tax based on net income (whether denominated as a franchise or capital stock or other tax) imposed on Lessor or any other Person, or (2) any net revenue tax of Lessor or any other Person, or (3) any tax imposed with respect to the sale, exchange or other disposition by Lessor of any Leased Property or the proceeds thereof, or (4) any single business, gross receipts (other than a tax on any rent received by Lessor from Lessee), transaction, privilege or similar taxes as the same relate to or are imposed upon Lessor, except to the extent that any tax, assessment, tax levy or charge that Lessee is obligated to pay pursuant to the first sentence of this definition and that is in effect at any time during the Term hereof is totally or partially repealed, and a tax, assessment, tax levy or charge set forth in clause (1) or (2) is levied, assessed or imposed expressly in lieu thereof. Notwithstanding anything contained herein to the contrary, Lessor shall fund all tax escrows required to be reserved pursuant to the Loan Documents and Lessee shall not be responsible for the payment of such amounts.

**Indemnified Party:** Either of a Lessee Indemnified Party or a Lessor Indemnified Party.

**Indemnifying Party:** Any party obligated to indemnify an Indemnified Party pursuant to Sections 8.3 or 18.1.

**Insurance Requirements:** All terms of any insurance policy required by this Lease and all requirements of the issuer of any such policy.

**Initial Lender:** KeyBank National Association, and its successors and assigns.

Initial Loan: The loan in the original principal amount of \$16,575,000 made by the Initial Lender to Lessor concurrently herewith.

Initial Loan Documents: The (a) (i) Loan Agreement, (ii) Cash Management Agreement, (iii) Assignment of Management Agreement and Subordination of Management Fees, (iv) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, (v) Deposit Account Control Agreement, (vi) Environmental Indemnity, (vii) Assignment of Leases and Rents, (viii) Promissory Note, (ix) Collateral Assignment of Escrow Rights, (x) Assignment of Leases and Rents and Security Agreement, and (xi) Master Lease Subordination and Attornment Agreement; and (b) any other documents executed by Lessor, Lessee (where applicable) and Initial Lender evidencing the Initial Loan.

Inventory: All “*Inventories of Merchandise*” and “*Inventories of Supplies*” as defined in the Uniform System, including without limitation linens, china, silver, glassware and other non-depreciable personal property, and including any property of the type described in Section 1221(1) of the Code.

Land: As defined in Section 1.1.

Lease: This Lease by and between the Lessor and Lessee.

Leased Improvements; Leased Property: Each as defined in Section 1.1.

Legal Requirements: All federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting either the Leased Property or the maintenance, construction, use or alteration thereof (whether by Lessee or otherwise), whether now in force or hereafter enacted and in force, including (a) all laws, rules or regulations pertaining to the environment, occupational health and safety and public health, safety or welfare, and (b) any laws, rules or regulations that may (1) require repairs, modifications or alterations in or to the Leased Property or (2) in any way adversely affect the use and enjoyment thereof; 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 Lessee (other than encumbrances created by Lessor without the consent of Lessee), at any time in force affecting the Leased Property.

Lender: The Initial Lender or any lender under a Permitted Mortgage.

Lessee: The Lessee designated in this Lease and its respective permitted successors and assigns.

Lessee Indemnified Party: Lessee, any Affiliate of Lessee, any other Person against whom any claim for indemnification may be asserted hereunder as a result of a direct or indirect ownership interest (including a stockholder’s or member’s interest) in Lessee, the officers, directors, stockholders, members, managers, employees, agents and representatives of Lessee, and the respective heirs, personal representatives, successors and assigns of any such officer, director, stockholder, member, manager, employee, agent or representative.

Lessee’s Personal Property: As defined in Section 6.2.

Lessor: The Lessor designated in this Lease and its respective successors and assigns.

Lessor Capital Improvements: All capital expenditures attributable to the foundation, structural walls and the roof of the Leased Property, but excluding windows and plate glass, mechanical, electrical and plumbing systems and equipment, including conduit and ductware, and non-load bearing walls and parking lot surfaces.

Lessor Indemnified Party: Lessor, any Affiliate of Lessor, any other Person against whom any claim for indemnification may be asserted hereunder as a result of a direct or indirect ownership interest (including a stockholder’s or partnership interest) in Lessor, the officers, directors, stockholders, members, managers, employees, agents and representatives of the general partner of Lessor and any partner, agent, or representative of Lessor, and the respective heirs, personal representatives, successors and assigns of any such officer, director, stockholder, partner, member, manager, employee, agent or representative.

Licenses: As defined in Subsection 1.3(a).

Loan Documents: The Initial Loan Documents or any documents comprising a Permitted Mortgage.

Management Agreement: That certain Hotel Management Agreement dated concurrently herewith to which Moody National Hospitality Management, LLC and the Lessee are the current parties (as amended and assigned) or any agreement pursuant to which a successor manager operates the Hotel.

Manager: Moody National Hospitality Management, LLC, or any successor manager that is retained by Lessee to operate the Hotel pursuant to this Lease and any Franchise Agreement.

Notice: As defined in Article 26.

Officer's Certificate: A certificate of Lessee reasonably acceptable to Lessor, signed by the chief financial officer or another officer authorized so to sign by the board of directors or other governing body of Lessee, or bylaws or limited liability company agreement of Lessee, or any other Person whose power and authority to act has been authorized by delegation in writing by any such officer.

Overdue Rate: On any date, a rate equal to the Base Rate plus 1.25% per annum, but in no event greater than the maximum rate then permitted under applicable law.

Payment Date: Any due date for the payment of any installment of Base Rent.

Percentage Rent: As defined in Subsection 3.1(b).

Permitted Mortgage: The mortgage, deed of trust or other similar documents ("Mortgage") securing the Initial Loan or any subsequent mortgage placed on the Leased Property by Lessor and Lessee in compliance with the terms of this Lease.

Person: Any Government, natural person, corporation, general or limited partnership, limited liability company, stock company or association, joint venture, association, company, trust, bank, trust company, land trust, business trust, or other entity.

Personal Property Taxes: All personal property taxes imposed on the furniture, furnishings or other items of personal property located on, and used in connection with, the operation of the Leased Improvements as a hotel (other than such Inventory and other personal property that is owned by Lessee), together with all replacement, modifications, alterations and additions thereto.

Predecessor: Any Person whose liabilities arising under any Environmental Law have or may have been retained or assumed by Lessor or Lessee, either contractually or by operation of law, relating to the Leased Property.

Primary Intended Use: As defined in Subsection 7.2(b).

Proceeding: Any judicial action, suit or proceeding (whether civil or criminal), any administrative proceeding (whether formal or informal), any investigation by a governmental authority or entity (including a grand jury), and any arbitration, mediation or other non-judicial process for dispute resolution.

RCRA: The Resource Conservation and Recovery Act, as amended.

Real Estate Taxes: All real estate taxes, including general and special assessments, if any, which are imposed upon the Land, and any improvements thereon.

Release: A "Release" as defined in CERCLA or in any Environmental Law, unless such Release has been properly authorized and permitted in writing by all applicable Environmental Authorities or is allowed by such Environmental Law without authorizations or permits.

Rent: Base Rent, Percentage Rent and Additional Charges, collectively.

Repositioning: As defined in Section 3.6.

Restoration: The restoration, repair, replacement, rebuilding or alteration of the Leased Property following a casualty or a partial Taking (including, without limitation, the cost of all temporary repairs for the protection of property pending the completion of permanent restoration, repair, replacement, rebuilding or alteration), to a complete architectural unit of as nearly as possible the same value, condition and character that existed immediately prior to such casualty or Taking, to the extent permissible under applicable Legal Requirements, including without limitation, all zoning and use requirements and regulations.

SARA: The Superfund Amendments and Reauthorization Act of 1986, as amended.

Solvent: As to any Person, (a) the sum of the assets of such Person exceeds its liabilities and (b) such Person has sufficient capital with which to conduct its business as presently conducted and as proposed to be conducted.

State: The state or commonwealth in which the Hotel is located, namely Texas.

Subsidiaries: Persons in which Lessee owns, directly or indirectly, more than fifty percent (50%) of the voting stock or control, as applicable.

Surplus: As defined in Section 15.2(c).

Taking: The event of vesting of title to the Project or any part thereof or estate therein in the condemning authority as the result of any Condemnation Proceeding.

Term: As defined in Section 1.2.

TSCA: The Toxic Substances Control Act, as amended.

Unavoidable Occurrence. The occurrence of strikes, lockouts, labor unrest, gasoline and other energy shortages, widespread disruption of air, auto or other travel, inability to procure materials or services, power or other utility failure, acts of God (such as hurricanes, tornadoes, earthquakes, floods and mud slides), governmental restrictions, war or other enemy or terrorist action, civil commotion, fire, casualty, condemnation or other similar causes, in each case, if such cause is beyond the reasonable control of Lessee; provided that (i) lack of funds shall not be deemed a cause beyond the reasonable control of either party hereto unless such lack of funds is caused by the failure of the other party hereto to perform any obligations of such party under this Lease or any guaranty of this Lease, and (ii) any such occurrence is an extraordinary, as opposed to a routine or cyclical, material event that was not reasonably foreseeable when the then-applicable Annual Budget was prepared.

Uniform System: The Uniform System of Accounts for Hotels (9th Revised Edition, 1996) as published by the American Hotel and Lodging Association, with such later revisions as may be agreed to by both Lessor and Lessee.

Unsuitable for its Primary Intended Use: A state or condition of the Hotel such that, in the good faith judgment of Lessee, reasonably exercised and evidenced by the resolution of the board of directors or other governing body of Lessee, due to casualty damage or loss through Condemnation, the Hotel cannot function as an integrated hotel facility consistent with standards applicable to a well maintained and operated hotel.

Vesting Date. The date of any Taking.

WARN Act: As defined in Subsection 8.2(b).

Working Capital: Funds reasonably necessary for the day-to-day operation of the Hotel's business for a thirty (30) day period, including, without limitation, amounts sufficient for the maintenance of change and petty cash funds, operating bank accounts, payrolls, accounts payable, accrued current liabilities, and funds required to maintain Inventories.

### **ARTICLE 3 RENT; RENT ADJUSTMENTS**

3.1 Rent. Lessee will pay to Lessor in lawful money of the United States of America, in immediately available funds, at Lessor's address set forth in Article 26 hereof or at such other place or to such other Person as Lessor from time to time may designate in a Notice, all Base Rent, Percentage Rent and Additional Charges, during the Term, as follows:

(a) Base Rent: The annual sum specified in Exhibit B, as adjusted pursuant to Subsection 3.1(e) hereof, payable in advance in equal, consecutive monthly installments, on or before the tenth day of each calendar month of the Term ("*Base Rent*"); provided, however, that the first monthly payment of Base Rent shall be payable during the second calendar month of the Term, and that the first and last monthly payments of Base Rent shall be pro rated as to any partial month (subject to adjustment as provided in Sections 14.4 and 15.3). Within thirty (30) days prior to the fifth (5<sup>th</sup>) anniversary of the Commencement Date, Lessor and Lessee shall determine the Base Rent for the next five (5) years at a market rate mutually agreed upon by the parties. If the parties cannot, within thirty (30) days, agree on the new Base Rent, either party may require that the matter be submitted to binding arbitration as set forth in Section 25.1. On each subsequent five (5) year anniversary, Base Rent shall be determined as set forth in this Section 3.1(a).

(b) Percentage Rent: For each year of the Term commencing with the Commencement Date, Lessee shall pay percentage rent ("*Percentage Rent*"), to the extent that such Percentage Rent is greater than the Base Rent due for such period.

Percentage Rent shall be an amount equal to the applicable Annual Revenues Computation (as set forth on Exhibit C) less an amount equal to the Base Rent paid with respect to such year. The Annual Revenues Computation shall be adjusted beginning on the fifth (5<sup>th</sup>) anniversary of the Commencement Date, and each 5 year anniversary thereafter, in the same manner as Base Rent is adjusted pursuant to Section 3.1(a). During the first year of the Lease, the Percentage Rent shall be calculated in November and May, and to the extent that any Percentage Rent is due, shall be payable within 15 days following the end of November and May. Beginning on the first anniversary of the Commencement Date, Percentage Rent shall be payable each calendar month on or before the last day of the calendar month in an amount equal to the excess, if any, of the budgeted Percentage Rent payable with respect to the then current calendar month (which budgeted amount shall be equal to one-twelfth (1/12) of the annual estimate of Percentage Rent included in the Annual Budget for the year in which the calendar month occurs) over Base Rent for such calendar month. In November and May of each year, the actual Percentage Rent due shall be calculated.

There shall be no reduction in the Base Rent regardless of the result of any Annual Revenues Computation.

(c) Reserved

(d) Officer's Certificates. In May and November of each year of the Lease term, Lessee shall deliver to Lessor an Officer's Certificate reasonably acceptable to Lessor setting forth the computation of the Percentage Rent that accrued for the specified semi-annual period. If the Percentage Rent due and payable for such period exceeds the amount actually paid by Lessee for such year, Lessee shall pay such excess to Lessor at the time the Officer's Certificate is delivered. If the actual Percentage Rent due and payable is less than the amount actually paid for such period, Lessor, at its option, shall reimburse such amount to Lessee or credit such

amount against subsequent months' Base Rent. Any credit to Base Rent shall not be applied for purposes of calculating Percentage Rent payable for any subsequent month.

The obligation to pay Percentage Rent shall survive the expiration or earlier termination of the Term, and a final reconciliation, taking into account, among other relevant adjustments, any adjustments which are accrued after such expiration or termination date but which related to Percentage Rent accrued prior to such termination date, and Lessee's good faith best estimate of the amount of any unresolved contractual allowances, shall be made not later than two (2) years after such expiration or termination date, but Lessee shall advise Lessor within sixty (60) days after such expiration or termination date of Lessee's best estimate at that time of the approximate amount of such adjustments, which estimate shall not be binding on Lessee or have any legal effect whatsoever.

(e) Allocation of Rent. The parties hereto acknowledge and agree that the Base Rent paid or payable by Lessee to Lessor hereunder shall, to the extent relevant, be allocated between the personal property and real property constituting Leased Property hereunder in direct proportion to the then recognizable fair market value of such personal property and real property. Percentage Rent in excess of Base Rent shall be allocated solely to real property.

3.2 Confirmation of Percentage Rent. Lessee shall utilize, or cause to be utilized, an accounting system for the Leased Property in accordance with its usual and customary practices, and in accordance with generally accepted accounting principles, that will accurately record all data necessary to compute Percentage Rent, and Lessee shall retain, for at least four (4) years after the expiration of each semi-annual period (and in any event until the reconciliation described in Subsection 3.1(d) for such period has been made), reasonably adequate records conforming to such accounting system showing all data necessary to compute Percentage Rent for the applicable period. Lessor, at its expense (except as provided hereinbelow), shall have the right from time to time, upon prior written notice to Lessee and Manager, by its accountants or representatives to audit the information that formed the basis for the data set forth in any Officer's Certificate provided under Subsection 3.1(d) and, in connection with such audits, to examine all Lessee's records (including supporting data and sales and excise tax returns) reasonably required to verify Percentage Rent, subject to any prohibitions or limitations on disclosure of any such data under Legal Requirements; provided, however that Lessor may only inspect or audit records in Manager's possession subject to the terms of Lessee's access thereto under the Management Agreement. If any such audit discloses a deficiency in the payment of Percentage Rent, and either Lessee agrees with the result of such audit or the matter is otherwise determined or compromised, Lessee shall forthwith pay to Lessor the amount of the deficiency, as finally agreed or determined, together with interest at the Overdue Rate from the date when said payment should have been made to the date of payment thereof; provided, however, that as to any audit that is commenced more than two (2) years after the date Percentage Rent for any period is reported by Lessee to Lessor, the deficiency, if any, with respect to such Percentage Rent shall bear interest at the Overdue Rate only from the date such determination of deficiency is made unless such deficiency is the result of gross negligence or willful misconduct on the part of Lessee, in which case interest at the Overdue Rate will accrue from the date such payment should have been made to the date of payment thereof. If any such audit discloses that the Percentage Rent actually due from Lessee for any Fiscal Year exceed those reported by Lessee by more than three percent (3%), Lessee shall pay the cost of such audit and examination. Any proprietary information obtained by Lessor pursuant to the provisions of this Section shall be treated as confidential, except that such information may be used, subject to appropriate confidentiality safeguards, in any litigation between the parties and except further that Lessor may disclose such information to prospective lenders or as required to comply with applicable Legal Requirements, including without limitation, reporting requirements under state and federal securities laws. The obligations of Lessee contained in this Section shall survive the expiration or earlier termination of this Lease.

3.3 Additional Charges. In addition to the Base Rent and Percentage Rent, (a) Lessee also will pay and discharge as and when due and payable all other amounts, liabilities, obligations and Impositions that Lessee assumes or agrees to pay under this Lease, and (b) in the event of any failure on the part of Lessee to pay any of those items referred to in clause (a) of this Section 3.3, Lessee also will promptly pay and discharge every fine, penalty, interest and cost that may be added for non-payment or late payment of such items (the items referred to in clauses (a) and (b) of this Section 3.3 being additional rent hereunder and being referred to herein collectively as the "Additional Charges"), and Lessor shall have all legal, equitable and contractual rights, powers and remedies provided either in this Lease or by statute or otherwise in the case of non-payment of the Additional Charges as in the case of non-payment of the Base Rent. If any installment of Base Rent and Percentage Rent or Additional Charges (but only as to those Additional Charges that are payable directly to Lessor) shall not be paid on its due date, Lessee will pay Lessor on demand, as Additional Charges, a late charge (to the extent permitted by law) computed at the Overdue Rate on the amount of such installment, from the due date of such installment to the date of payment thereof. To the extent that Lessee pays any Additional Charges to Lessor pursuant to any requirement of this Lease, Lessee shall be relieved of its obligation to pay such Additional Charges to the entity to which they would otherwise be due and Lessor shall pay same from monies received from Lessee.

3.4 Net Lease. The Rent shall be paid absolutely net to Lessor, so that this Lease shall yield to Lessor the full amount of the installments of Base Rent, Percentage Rent and Additional Charges throughout the Term, all as more fully set forth in Article 5, but subject to any other provisions of this Lease that expressly provide for adjustment or abatement of Rent or other charges or expressly provide that certain expenses or maintenance shall be paid or performed by Lessor.

3.5 No Termination or Abatement. Except as otherwise specifically provided in this Lease, and except for loss of the Management Agreement solely by reason of any action or inaction by Lessor, Lessee, to the extent permitted by law, shall remain bound

by this Lease in accordance with its terms and shall neither take any action without the written consent of Lessor (which shall not be unreasonably withheld or delayed) to modify, surrender or terminate the same, nor seek nor be entitled to any abatement, deduction, deferment or reduction of the Rent, or setoff against the Rent, nor shall the obligations of Lessee be otherwise affected by reason of (a) any damage to, or destruction of, any Leased Property or any portion thereof from whatever cause or any Taking of the Leased Property or any portion thereof, (b) the lawful or unlawful prohibition of, or restriction upon, Lessee's use of the Leased Property, or any portion thereof, or the interference with such use by any Person other than Lessor, (c) any claim which Lessee has or might have against Lessor by reason of any default or breach of any warranty by Lessor under this Lease or any other agreement between Lessor and Lessee, or to which Lessor and Lessee are parties, (d) any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceedings affecting Lessor or any assignee or transferee of Lessor, or (e) for any other cause whether similar or dissimilar to any of the foregoing other than a discharge of Lessee from any such obligations as a matter of law. Lessee hereby specifically waives all rights, arising from any occurrence whatsoever, which may now or hereafter be conferred upon it by law to (1) modify, surrender or terminate this Lease or quit or surrender the Leased Property or any portion thereof, or (2) entitle Lessee to any abatement, reduction, suspension or deferment of the Rent or other sums payable by Lessee hereunder, except as otherwise specifically provided in this Lease. The obligations of Lessee hereunder shall be separate and independent covenants and agreements and the Rent and all other sums payable by Lessee hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease or by termination of this Lease other than by reason of an Event of Default.

3.6 Rent Adjustment: Change in Franchise Affiliation or Change in Scope of Work. Except to the extent that doing so would cause Lessor to recognize income other than "*rents from real property*" as defined in Section 856(d) of the Code, notwithstanding anything herein (other than Article 19) to the contrary, if (i) the facts and circumstances underlying the documented, basic assumptions upon which both Lessor and Lessee have relied in determining the Base Rent and the Percentage Rent payable hereunder become materially incorrect solely as a result of (A) a decision to re-brand the Hotel that is made after the Commencement Date, (B) the scope or cost of substantial renovations or other capital improvements to the Hotel (that were not planned as of the Commencement Date), or (C) the implementation of any other hotel repositioning strategies (that were not planned as of the Commencement Date) resulting in significant disruption of the operations of the Hotel (collectively, a "*Repositioning*"), and (ii) Lessor and Lessee so agree in writing, then Lessor and Lessee shall, in good faith, negotiate modifications to the Base Rent and Percentage Rent to adjust (i.e., increase, decrease or reallocate among revenue categories) such Base Rent and Percentage Rent to reflect such change in basic assumptions for the affected periods, using the same methodology and other basic assumptions as were initially utilized in determining the Base Rent and Percentage Rent hereunder. If Lessor and Lessee are unable to agree, within thirty (30) days after the date of written certification from either Lessee or Lessor to the other party that a good faith dispute exists, as to the existence of the occurrence of a Repositioning or the adjustments to be made to the amounts or percentages for the Base Rent and Percentage Rent hereunder as a result of any repositioning, the dispute may be submitted by either party to arbitration under Section 25.1 hereof for resolution (during which period Lessee shall continue to pay Base Rent and Percentage Rent as required under Section 3.1 of this Lease).

#### **ARTICLE 4 BUDGETS; BOOKS AND RECORDS**

4.1 Annual Budget. Not later than twenty (20) days prior to the commencement of each Fiscal Year, Lessee shall submit the Annual Budget to Lessor. The Annual Budget shall contain the following, to the extent included in the operating budgets and capital budgets provided to Lessee by Manager under the Management Agreement for the Hotel:

(a) Lessee's reasonable estimate of Gross Revenues (including room rates and Room Revenues), Gross Operating Expenses, and Gross Operating Profits for the forthcoming Fiscal Year itemized on schedules on a monthly basis as approved by Lessor and Lessee, as same may be revised or replaced from time to time by Lessee and approved by Lessor, together with the assumptions, forming the basis of such schedules.

(b) An estimate of the amounts to be spent for the repair, replacement, or refurbishment of Furniture and Equipment and/or Fixtures or otherwise.

(c) An estimate of any amounts Lessor will be required to provide for required or desirable capital improvements to the Hotel or any of its components.

(d) A cash flow projection.

(e) A business plan, which shall describe business objectives and strategies for the forthcoming Fiscal Year, and shall include without limitation an analysis of the market area in which the Hotel competes, a comparison of the Hotel and its business with competitive hotels, an analysis of categories of potential guests, and a description of sales and marketing activities designed to achieve and implement identified objectives and strategies.

4.2 Books and Records. Lessee shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel on an accrual basis, all in accordance with generally accepted accounting principles and the obligations of Lessee under this Lease. The books of account and all other records relating to or reflecting the operation of the Hotel shall be kept either at the

Hotel or at Lessee's offices in Houston, Texas or at Manager's central offices, and shall be available to Lessor and its representatives and its auditors or accountants, at all reasonable times, upon prior written notice to Lessee and Manager, for examination, audit, inspection, and transcription; provided, however that Lessor may only inspect or audit records in Manager's possession subject to the terms of Lessee's access thereto under the Management Agreement. All of such books and records pertaining to the Hotel including, without limitation, books of account, guest records and front office records, at all times shall be the property of Lessor and shall not be removed from the Hotel or Lessee's offices or Manager's central offices (but may be moved among any of the foregoing) by Lessee without Lessor approval.

## **ARTICLE 5 IMPOSITIONS AND OTHER COSTS**

5.1 Payment of Impositions. Subject to Article 12 (relating to permitted contests), Lessee will pay, or cause to be paid, all Impositions, provided that such Impositions shall not include any taxes for which Lessor is required to reserve funds pursuant to the Loan Documents, before any fine, penalty, interest or cost may be added for non-payment, such payments to be made directly to the taxing or other authorities where feasible, and will promptly furnish to Lessor copies of official receipts or other satisfactory proof evidencing such payments. Lessee's obligation to pay such Impositions shall be deemed absolutely fixed upon the date such Impositions become a lien upon the Leased Property or any part thereof. If any such Imposition may, at the option of the taxpayer, lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments during the Term hereof (subject to Lessee's right of contest pursuant to the provisions of Article 12) as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto. Lessor, at its expense, shall, to the extent required or permitted by applicable law, prepare and file all tax returns in respect of Lessor's net income, gross receipts, sales and use, single business, transaction privilege, rent, ad valorem, franchise taxes, Real Estate Taxes, Personal Property Taxes and taxes on its capital stock, and Lessee, at its expense, shall, to the extent required or permitted by applicable laws and regulations, prepare and file all other tax returns and reports in respect of any Imposition as may be required by governmental authorities. If any refund shall be due from any taxing authority in respect of any Imposition paid by Lessee, the same shall be paid over to or retained by Lessee if no Event of Default shall have occurred hereunder and be continuing. If an Event of Default shall have occurred and be continuing, any such refund shall be paid over to or retained by Lessor. Any such funds retained by Lessor due to an Event of Default shall be applied as provided in Article 16. Lessor and Lessee shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Property as may be necessary to prepare any required returns and reports. Lessee shall file all Personal Property Tax returns in such jurisdictions where it is legally required so to file. Lessor, to the extent it possesses the same, and Lessee, to the extent it possesses the same, will provide the other party, upon request, with cost and depreciation records necessary for filing returns for any property classified as personal property. Where Lessor is required to file Personal Property Tax returns, Lessee shall provide Lessor with copies of assessment notices in sufficient time for Lessor to file a protest. Lessor may, upon Notice to Lessee, at Lessor's option and at Lessor's sole expense, protest, appeal, or institute such other proceedings (in its or Lessee's name) as Lessor may deem appropriate to effect a reduction of real estate or personal property assessments for those Impositions to be paid by Lessor, and Lessee, at Lessor's expense as aforesaid, shall fully cooperate with Lessor in such protest, appeal, or other action. Lessor hereby agrees to indemnify, defend, and hold harmless Lessee from and against any claims, obligations, liabilities and loss against or incurred by Lessee in connection with such cooperation. Billings by Lessor to Lessee for reimbursement of any Personal Property Taxes paid by Lessor shall be accompanied by copies of a bill therefor and payments thereof which identify the personal property with respect to which such payments are made. Lessor, however, reserves the right to effect any such protest, appeal or other action and, upon Notice to Lessee, shall control any such activity, which shall then go forward at Lessor's sole expense. Upon such Notice, Lessee, at Lessor's expense, shall cooperate fully with such activities.

5.2 Notice of Impositions. Lessor shall give prompt Notice to Lessee of all Impositions payable by Lessee hereunder of which Lessor at any time has knowledge, provided that Lessor's failure to give any such Notice shall in no way diminish Lessee's obligations hereunder to pay such Impositions, but such failure to provide notice shall obviate any default hereunder for a reasonable time after Lessee receives Notice of any Imposition which it is obligated to pay during the first taxing period applicable thereto.

5.3 Adjustment of Impositions. Impositions imposed in respect of any taxing period during which the Term terminates shall be adjusted and prorated between Lessor and Lessee, whether or not such Imposition is imposed before or after such termination, and Lessee's obligation to pay its prorated share thereof after termination shall survive such termination.

5.4 Utility Charges. Lessee will be solely responsible for obtaining and maintaining utility services to the Leased Property and will pay or cause to be paid all charges for electricity, gas, oil, water, sewer and other utilities used in the Leased Property during the Term.

5.5 Insurance Premiums. Lessee will pay or cause to be paid all premiums for the insurance coverage's required to be maintained by Lessee under Article 13. Lessor will pay all premiums for the insurance coverage's required to be maintained by Lessor under Article 13.

5.6 Management or Franchise Fees. Lessee will maintain in full force and effect, and pay or cause to be paid all fees and other charges payable pursuant to the Franchise Agreement and any Management Agreement with respect to the Hotel.

## **ARTICLE 6**

### **LEASED PROPERTY; PERSONAL PROPERTY**

6.1 Ownership of the Leased Property. Lessee acknowledges that the Leased Property is the property of Lessor and that Lessee has only the right to the possession and use of the Leased Property upon the terms and conditions of this Lease.

6.2 Lessee's Personal Property. Lessee may acquire and maintain throughout the Term such Inventory as is required to operate the Leased Property in the manner contemplated by this Lease, in addition to any Inventory that is part of the Leased Property owned by Lessor or purchased by reserved funds of the Lessor. Lessee may (and shall as provided hereinbelow), at its expense, install, affix or assemble or place on any parcels of the Land or in any of the Leased Improvements, any items of personal property (including Inventory) owned by Lessee. Lessee, at the commencement of the Term, and from time to time thereafter, shall provide Lessor with an accurate list of all such items of Lessee's personal property (collectively, the "*Lessee's Personal Property*"). Lessee may, subject to the first sentence of this Section 6.2 and the conditions set forth below, remove any of Lessee's Personal Property set forth on such list at any time during the Term or upon the expiration or any prior termination of the Term. All of Lessee's Personal Property, other than Inventory, not removed by Lessee within ten (10) days following the expiration or earlier termination of the Term shall be considered abandoned by Lessee and may be appropriated, sold, destroyed or otherwise disposed of by Lessor without first giving Notice thereof to Lessee, without any payment to Lessee and without any obligation to account therefor. Lessee will, at its expense, restore the Leased Property to its original condition (ordinary wear and tear excepted), including repair of all damage to the Leased Property caused by the removal of Lessee's Personal Property, whether effected by Lessee or Lessor. Upon the expiration or earlier termination of the Term, Lessor or its designee shall have the option to purchase all Inventory on hand at the Leased Property at the time of such expiration or termination for a sale price equal to the fair market value of such Inventory. Lessee may make such financing arrangements, title retention agreements, leases or other agreements with respect to Lessee's Personal Property as it sees fit provided that Lessee first advises Lessor of any such arrangement and such arrangement expressly provides that in the event of Lessee's default thereunder, Lessor (or its designee) may assume Lessee's obligations and rights under such arrangement. Notwithstanding anything in this Section 6.2 to the contrary, Lessee shall not remove any of Lessee's Personal Property and/or enter into any financing arrangements, title retention agreements, leases or other agreements with respect to Lessee's Personal Property to the extent such actions violate the Loan Documents.

6.3 Lessor's Option to Purchase Assets of Lessee. Effective on not less than ninety (90) days' prior Notice given at any time within one hundred eighty (180) days before the expiration of the Term, but not later than ninety (90) days prior to such expiration, or upon such shorter Notice period as shall be appropriate if this Lease is terminated prior to its expiration date, Lessor shall have the option to purchase all (but not less than all) of the assets of Lessee, tangible and intangible, relating to the Leased Property (other than this Lease), at the expiration or termination of this Lease for an amount (payable in cash on the expiration date of this Lease) equal to the fair market value thereof. In the event that Lessor and Lessee cannot agree upon the fair market value of such property, the fair market value shall be determined by binding arbitration pursuant to Section 25.1.

## **ARTICLE 7**

### **CONDITION AND USE OF LEASED PROPERTY**

7.1 Condition of the Leased Property. Lessee acknowledges receipt and delivery of possession of the Leased Property. Lessee has examined and otherwise has knowledge of the condition of the Leased Property and has found the same to be satisfactory for its purposes hereunder. Lessee is leasing the Leased Property "*as is*" in its present condition. Lessee waives any claim or action against Lessor in respect of the condition of the Leased Property. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PROPERTY, OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. LESSEE ACKNOWLEDGES THAT THE LEASED PROPERTY HAS BEEN INSPECTED BY LESSEE AND IS SATISFACTORY TO IT. Provided, however, to the extent permitted by law, Lessor hereby assigns to Lessee all of Lessor's rights, if any, to proceed against any predecessor in title (other than any Affiliate of Lessee, which conveyed the Leased Property to Lessor) for breaches of warranties or representations or for latent defects in the Leased Property. Lessor shall fully cooperate with Lessee in the prosecution of any such claim, in Lessor's or Lessee's name, all at Lessee's sole cost and expense. Lessee hereby agrees to indemnify, defend and hold harmless Lessor from and against any claims, obligations and liabilities against or incurred by Lessor in connection with such cooperation.

#### 7.2 Use of the Leased Property.

(a) Lessee covenants that it will exercise reasonable efforts to obtain and to maintain all approvals needed to use and operate the Leased Property for its Primary Intended Purpose, as defined in Section 7.2(b) below, and applicable Legal Requirements.

(b) Lessee shall use or cause to be used the Leased Property only as a Residence Inn hotel facility, and for such other uses as may be necessary or incidental to such use or such other use as otherwise approved by Lessor (the "*Primary Intended*

Use"). Lessee shall not use the Leased Property or any portion thereof for any other use without the prior written consent of Lessor, which consent may be granted, denied or conditioned in Lessor's sole discretion. No use shall be made or permitted to be made of the Leased Property, and no acts shall be done, which will cause the cancellation or increase the premium of any insurance policy covering the Leased Property or any part thereof (unless another adequate policy satisfactory to Lessor is available and Lessee pays any premium increase), nor shall Lessee sell or permit to be kept, used or sold in or about the Leased Property any article which may be prohibited by law or fire underwriter's regulations. Lessee shall, at its sole cost, comply with all of the requirements pertaining to the Leased Property of any insurance board, association, organization or company necessary for the maintenance of insurance, as herein provided, covering the Leased Property and Lessee's Personal Property.

(c) Subject to the provisions of Articles 14, 15, 18 and 21, Lessee covenants and agrees that during the Term it will (1) operate continuously the Leased Property as a hotel facility, (2) keep in full force and effect and comply with all the provisions of the Franchise Agreement, (3) not terminate or amend the Franchise Agreement without the consent of Lessor (which shall not be unreasonably withheld or delayed), and (4) maintain appropriate certifications and Licenses for such use.

(d) Lessee shall not commit or suffer to be committed any waste on the Leased Property, or in the Hotel, nor shall Lessee cause or permit any nuisance thereon.

(e) Lessee shall neither suffer nor permit the Leased Property or any portion thereof, or Lessee's Personal Property, to be used in such a manner as (1) might reasonably tend to impair Lessor's (or Lessee's, as the case may be) title thereto or to any portion thereof, or (2) may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Leased Property or any portion thereof, except as necessary in the ordinary and prudent operation of the Hotel on the Leased Property.

7.3 Lessor to Grant Easements, Etc. Subject to the terms of the Loan Documents, Lessor will, from time to time, so long as no Event of Default has occurred and is continuing, at the request of Lessee and at Lessee's cost and expense (but subject to the approval of Lessor, which approval shall not be unreasonably withheld or delayed), (a) grant easements and other rights in the nature of easements with respect to the Leased Property to third parties, (b) release existing easements or other rights in the nature of easements which are for the benefit of the Leased Property, (c) dedicate or transfer unimproved portions of the Leased Property for road, highway or other public purposes, (d) execute petitions to have the Leased Property annexed to any municipal corporation or utility district, (e) execute amendments to any covenants and restrictions affecting the Leased Property and (f) execute and deliver to any Person any instrument appropriate to confirm or effect such grants, releases, dedications, transfers, petitions and amendments (to the extent of its interests in the Leased Property), but only upon delivery to Lessor of an Officer's Certificate stating that such grant, release, dedication, transfer, petition or amendment does not interfere with the proper conduct of the business of Lessee on the Leased Property and does not materially reduce the value of the Leased Property.

7.4 Engagement of a Manager. Lessee shall not engage a Manager for the Leased Property other than a qualified manager without the written consent of the Lessor, which may be given or withheld in Lessor's reasonable discretion. The parties hereby agree that Moody National Hospitality Management, LLC is a qualified manager. Any management contract, agreement or other arrangement entered into by Lessee shall not relieve Lessee of any of Lessee's obligation hereunder and any such agreement shall be expressly subordinate to the terms and conditions of this Lease.

7.5 Change in Franchise Affiliation. Lessee shall not, without the prior written consent of Lessor, which consent may be granted or withheld in Lessor's sole discretion, replace the existing franchise affiliation.

## **ARTICLE 8**

### **LESSEE'S COMPLIANCE WITH LEGAL REQUIREMENTS AND INSURANCE REQUIREMENTS**

8.1 Compliance with Legal and Insurance Requirements, Etc. Subject to Section 8.3(b) below and Section 12.2 (relating to permitted contests), Lessee, at its expense, will promptly (a) comply with all applicable Legal Requirements and Insurance Requirements in respect of the use, operation, maintenance, repair and restoration of the Leased Property, and (b) procure, maintain and comply with all appropriate Licenses and other authorizations required for any use of the Leased Property and Lessee's Personal Property then being made, and for the proper erection, installation, operation and maintenance of the Leased Property or any part thereof.

#### **8.2 Legal Requirement Covenants.**

(a) Subject to Section 8.3 below, Lessee covenants and agrees that the Leased Property and Lessee's Personal Property, if any, shall not be used for any unlawful purpose, and that Lessee shall not permit or suffer to exist any unlawful use of the Leased Property by others. Lessee shall acquire and maintain all appropriate licenses, certifications, permits and other authorizations and approvals needed to operate the Leased Property in its customary manner for the Primary Intended Use, and any other lawful use conducted on the Leased Property as may be permitted from time to time hereunder. Lessee further covenants and agrees that Lessee's use of the Leased Property and maintenance, alteration, and operation of the same, and all parts thereof, shall at all times conform to all Legal Requirements, unless the same are finally determined by a court of competent jurisdiction to be unlawful (and Lessee shall cause all sub-tenants, invitees or others within its control so to comply with all Legal Requirements). Lessee may, however, upon prior Notice

to Lessor, contest the legality or applicability of any such Legal Requirement or any licensure or certification decision if Lessee maintains such action in good faith, with due diligence, without prejudice to Lessor's rights hereunder, and at Lessee's sole expense. If by the terms of any such Legal Requirement compliance therewith pending the prosecution of any such proceeding may legally be delayed without the occurrence of any charge or liability of any kind, or the filing of any lien, against the Hotel or Lessee's leasehold interest therein and without subjecting Lessee or Lessor to any liability, civil or criminal, for failure so to comply therewith, Lessee may delay compliance therewith until the final determination of such proceeding. If any lien, charge or civil or criminal liability would be incurred by reason of any such delay, Lessee, on the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed, may nonetheless contest as aforesaid and delay as aforesaid provided that such delay would not subject Lessor to criminal liability and Lessee both (a) furnishes to Lessor security reasonably satisfactory to Lessor against any loss or injury by reason of such contest or delay and (b) prosecutes the contest with due diligence and in good faith.

(b) As between Lessor and Lessee, Lessee is solely responsible for all liabilities or obligations of any kind with respect to employees at the Leased Property during the Term. Without limiting the generality of the foregoing sentence, Lessee is solely responsible for any required compliance with the Worker Adjustment, Retraining and Notification Act of 1988 (the "*WARN Act*") or any similar state law applicable to the Leased Property; any required compliance with the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("*COBRA*"); and all alleged and actual obligations and claims arising from or relating to any employment agreement, collective bargaining agreement or employee benefit plans, any grievances, arbitration's, or unfair labor practice charges, and relating to compliance with any applicable state or federal labor employment law, including but not limited to all laws pertaining to discrimination, workers' compensation, unemployment compensation, occupational safety and health, unfair labor practices, family and medical leave, and wages, hours or employee benefits. Lessee agrees to indemnify and defend and hold harmless Lessor from and against any claims relating to any of the foregoing matters. Lessee further agrees to reimburse Lessor for any and all losses, damages, costs, expenses, liabilities and obligations of any kind, including without limitation reasonable attorney's fees and other legal costs and expenses, incurred by Lessor in connection with any of the foregoing matters.

8.3 Environmental Covenants. Lessor and Lessee additionally covenant and agree as follows:

(a) At all times hereafter until the later of (i) such time as all liabilities, duties or obligations of Lessee to Lessor under the Lease have been satisfied in full and (ii) such time as Lessee completely vacates the Leased Property and surrenders possession of the same to Lessor, Lessee shall fully comply with all Environmental Laws applicable to the Leased Property and the operations thereon. Lessee agrees to give Lessor prompt Notice of (1) all Environmental Liabilities; (2) all pending, threatened or anticipated Proceedings, and all notices, demands, requests or investigations, relating to any Environmental Liability or relating to the issuance, revocation or change in any Environmental Authorization required for operation of the Leased Property; (3) all Releases at, on, in, under or in any way affecting the Leased Property, or any Release known by Lessee at, on, in or under any property adjacent to the Leased Property; and (4) all facts, events or conditions that could reasonably lead to the occurrence of any of the above-referenced matters.

(b) Lessor hereby agrees to defend, indemnify and save harmless any and all Lessee Indemnified Parties from and against any and all Environmental Liabilities other than (i) Environmental Liabilities resulting from conditions disclosed in any environmental audit obtained by Lessor and provided to Lessee prior to the execution of this Lease (the "*Environmental Audit*"), and (ii) Environmental Liabilities which were caused by the acts or grossly negligent failures to act of Lessee.

(c) Lessee hereby agrees to defend, indemnify and save harmless any and all Lessor Indemnified Parties from and against any and all Environmental Liabilities which were (i) resulting from conditions disclosed in the Environmental Audit, and (ii) caused by the acts or grossly negligent failures to act of Lessee.

(d) If any Proceeding is brought against any Indemnified Party in respect of an Environmental Liability with respect to which such Indemnified Party may claim indemnification under either Subsection 8.3(b) or (c), the Indemnifying Party, upon request, shall at its sole expense resist and defend such Proceeding, or cause the same to be resisted and defended by counsel designated by the Indemnified Party and approved by the Indemnifying Party, which approval shall not be unreasonably withheld or delayed; provided, however, that such approval shall not be required in the case of defense by counsel designated by any insurance company undertaking such defense pursuant to any applicable policy of insurance. Each Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel will be at the sole expense of such Indemnified Party unless such counsel has been approved by the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. The Indemnifying Party shall not be liable for any settlement of any such Proceeding made without its consent, which shall not be unreasonably withheld or delayed, but if settled with the consent of the Indemnifying Party, or if settled without its consent (if its consent shall be unreasonably withheld or delayed), or if there be a final, nonappealable judgment for an adversary party in any such Proceeding, the Indemnifying Party shall indemnify and hold harmless the Indemnified Parties from and against any liabilities and loss incurred by such Indemnified Parties by reason of such settlement or judgment.

(e) At any time any Indemnified Party has reason to believe circumstances exist which could reasonably result in an Environmental Liability, upon reasonable prior Notice to Lessee and Manager stating such Indemnified Party's basis for such belief, an Indemnified Party shall be given immediate access to the Leased Property (including, but not limited to, the right to enter upon, investigate, drill wells, take soil borings, excavate, monitor, test, cap and use available land for the testing of remedial

technologies), Lessee's employees, and to all relevant documents and records regarding the matter as to which a responsibility, liability or obligation is asserted or which is the subject of any Proceeding; provided that such access may be conditioned or restricted as may be reasonably necessary to ensure compliance with law and the safety of personnel and facilities or to protect confidential or privileged information. All Indemnified Parties requesting such immediate access and cooperation shall endeavor to coordinate such efforts to result in as minimal interruption of the operation of the Leased Property as practicable.

(f) The indemnification rights and obligations provided for in this Article 8 shall be in addition to any indemnification rights and obligations provided for elsewhere in this Lease.

(g) The indemnification rights and obligations provided for in this Article 8 shall survive the termination of this Lease.

For purposes of this Section 8.3, all amounts for which any Indemnified Party seeks indemnification shall be computed net of (a) any actual income tax benefit resulting therefrom to such Indemnified Party, (b) any insurance proceeds received (net of tax effects) with respect thereto, and (c) any amounts recovered (net of tax effects) from any third parties based on claims the Indemnified Party has against such third parties which reduce the damages that would otherwise be sustained; provided that in all cases, the timing of the receipt or realization of insurance proceeds or income tax benefits or recoveries from third parties shall be taken into account in determining the amount of reduction of damages. Each Indemnified Party agrees to use its reasonable efforts to pursue, or assign to Lessee or Lessor, as the case may be, any claims or rights it may have against any third party that would materially reduce the amount of damages otherwise incurred by such Indemnified Party.

Notwithstanding anything to the contrary contained in this Lease, if Lessor shall become entitled to the possession of the Leased Property by virtue of the termination of the Lease or repossession of the Leased Property, then Lessor may assign its indemnification rights under this Section 8.3 (but not any other rights under this Section 8.3) to any Person to whom Lessor subsequently transfers the Leased Property, subject to the following conditions and limitations, each of which shall be deemed to be incorporated into the terms of such assignment, whether or not specifically referred to therein:

(i) The indemnification rights referred to in this section may be assigned only if a known Environmental Liability then exists or if a Proceeding is then pending or, to the knowledge of Lessee or Lessor, then threatened with respect to the Leased Property;

(ii) Such indemnification rights shall be limited to Environmental Liabilities relating to or specifically affecting the Leased Property; and

(iii) Any assignment of such indemnification rights shall be limited to the immediate transferee of Lessor, and shall not extend to any such transferee's successors or assigns.

## **ARTICLE 9 MAINTENANCE AND REPAIRS**

### **9.1 Maintenance and Repairs.**

(a) Lessee, at its sole expense, will keep the Leased Property, and all private roadways, sidewalks and curbs appurtenant thereto that are under Lessee's control, including windows and plate glass, mechanical, electrical and plumbing systems and equipment (including conduit and ductware), and non-load bearing interior walls, and parking lot surfaces, in good order and repair, except (i) for ordinary wear and tear (whether or not the need for such repairs occurred as a result of Lessee's use, any prior use, the elements or the age of the Leased Property, or any portion thereof) and (ii) to the extent of damage caused by Lessor's gross negligence or willful misconduct or that of its employees or agents, and, except as otherwise provided in Subsection 9.1(b), Article 14 or Article 15, with reasonable promptness, make all necessary and appropriate repairs replacements, and improvements thereto of every kind and nature, whether interior or exterior ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Term of this Lease (concealed or otherwise), or required by any governmental agency having jurisdiction over the Leased Property, except as to the roof, structural walls or foundation of the Leased Improvements. Lessee will not take or omit to take any action, the taking or omission of which might materially impair the value or the usefulness of the Leased Property or any part thereof for its Primary Intended Use.

(b) Notwithstanding Lessee's obligations under Subsection 9.1(a) above, except to the extent of damage caused by Lessee's negligence or willful misconduct or that of its employees or agents, Lessor shall be required to bear the cost of maintaining any of the roof, structural walls or foundation of the Leased Improvements, but excluding windows and plate glass, mechanical, electrical and plumbing systems and equipment, including conduit and ductware, and non-load bearing walls, and parking lot surfaces. Except as set forth in the preceding sentence and in Section 10.3, Lessor shall not under any circumstances be required to build or rebuild any improvement on the Leased Property, or to make any repairs, replacements, alterations, restorations or renewals of any nature or description to the Leased Property, whether ordinary or extraordinary, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto, in connection with this Lease, or to maintain the Leased Property in any way. Lessee hereby waives, to the extent permitted by law, the right to make repairs at the expense of Lessor, pursuant to any law in effect at the time of the execution of this

Lease or hereafter enacted, except following default by Lessor under this Lease, to the extent of repairs (for which Lessor is obligated hereunder) required to be made in order for the Hotel, and Lessee's use thereof, to comply with Lessee's obligations under the Management Agreement or any Franchise Agreement, as applicable. Lessor shall have the right to give, record and post, as appropriate, notices of nonresponsibility under any mechanic's lien laws now or hereafter existing.

(c) Nothing contained in this Lease and no action or inaction by Lessor shall be construed as (i) constituting the request of Lessor, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair or demolition of or to the Leased Property or any part thereof, or (ii) giving Lessee any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Lessor in respect thereof or to make any agreement that may create, or in any way be the basis for any right, title, interest, lien, claim or other encumbrance upon the estate of Lessor in the Leased Property, or any portion thereof.

9.2 Encroachments, Restrictions, Etc. Lessor represents and warrants that the Leased Improvements do not materially encroach upon any property, street or right-of-way adjacent to the Leased Property, or violate the agreements or conditions contained in any lawful restrictive covenant or other agreement affecting the Leased Property, or any part thereof, or impair the rights of others under any easement or right-of-way to which the Leased Property is subject. Except to the extent that such representation and warranty is breached by Lessor, if any of the Leased Improvements, at any time hereafter, materially encroach upon any property, street or right-of-way adjacent to the Leased Property, or violate the agreements or conditions contained in any lawful restrictive covenant or other agreement affecting the Leased Property, or any part thereof, or impair the rights of others under any easement or right-of-way to which the Leased Property is subject, then promptly upon the request of Lessor or at the behest of any Person affected by any such encroachment, violation or impairment, Lessee shall, at its expense, subject to its right to contest the existence of any encroachment, violation or impairment and in such case, in the event of an adverse final determination, either (a) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect Lessor or Lessee or (b) make such changes in the Leased Improvements, and take such other actions, as Lessee in the good faith exercise of its judgment deems reasonably practicable to remove such encroachment, and to end such violation or impairment, including, if necessary, the alteration of any of the Leased Improvements, and in any event take all such actions as may be necessary in order to be able to continue the operation of the Leased Improvements for the Primary Intended Use substantially in the manner and to the extent the Leased Improvements were operated prior to the assertion of such violation, impairment or encroachment. Any such alteration shall be made in conformity with the applicable requirements of Article 10. Lessee's obligations under this Section 9.2 shall be in addition to and shall in no way discharge or diminish any obligation of any insurer under any policy of title or other insurance held by Lessor.

## **ARTICLE 10 ALTERATIONS AND IMPROVEMENTS; FF&E RESERVE**

10.1 Alterations. After receiving approval of Lessor, which approval shall not be unreasonably withheld or delayed, Lessee shall have the right to make such additions, modifications or improvements to the Leased Property from time to time as Lessee deems desirable for its permitted uses and purposes, provided that such action will not significantly alter the character or purposes or significantly detract from the value or operating efficiency thereof and will not significantly impair the revenue-producing capability of the Leased Property or adversely affect the ability of Lessee to comply with the provisions of this Lease. The cost of such additions, modifications or improvements to the Leased Property shall be paid by Lessee, and all such additions, modifications and improvements shall, without payment by Lessor at any time, be included under the terms of this Lease and upon expiration or earlier termination of this Lease shall pass to and become the property of Lessor.

10.2 Salvage. All materials which are scrapped or removed in connection with the making of repairs required by Articles 9 or 10 shall be or become the property of Lessor or Lessee depending on which party is paying for or providing the financing for such work.

10.3 Furniture, Fixture and Equipment Allowance. Upon the execution of this Lease, Lessor shall have funded a \$0 reserve ("PIP Reserve") as required under the Initial Loan Documents to meet the requirements for periodic repair, replacement or refurbishing of furniture, fixtures and equipment that constitute Leased Property. Additional monthly reserves for such purpose required to meet the terms of the Loan Documents shall be the obligation of the Lessor. Any requirements in addition to the Loan Documents pursuant to the Management Agreement (or Franchise Agreement, if applicable) shall be the obligation of the Lessee. Subject to the provisions of the Loan Documents, the PIP Reserve shall be made available by Lessor for use by Lessee for replacement or refurbishing of furniture, fixtures and equipment that constitute Leased Property in connection with the Primary Intended Use; provided, however, that no amounts made available under this Article shall be used to purchase property (other than "*real property*" within the meaning of Treasury Regulations Section 1.856-3(d)), to the extent that doing so would cause Lessor to recognize income other than "*rents from real property*" as defined in Section 856(d) of the Code. Lessor's obligation shall be cumulative, but not compounded, and any amounts that have accrued hereunder shall be payable in future periods for such uses and in accordance with the procedure set forth herein. Lessee shall have no interest in any accrued obligation of Lessor hereunder after the termination of this Lease.

## ARTICLE 11 COMPLIANCE WITH OTHER AGREEMENTS

11.1 Compliance with Franchise Agreement and Management Agreement. To the extent any of the provisions of the Management Agreement or Franchise Agreement, as applicable, impose a greater obligation on Lessee than the corresponding provisions of the Lease, then Lessee shall be obligated to comply with, and to take all reasonable actions necessary to prevent breaches or defaults under, the provisions of the Franchise Agreement and the Management Agreement, as applicable. It is the intent of the parties hereto that Lessee shall comply in every respect with the provisions of the Management Agreement or any Franchise Agreement so as to avoid any material default thereunder during the term of this Lease. Lessee shall not terminate, extend or enter into any material modification of the Management Agreement or Franchise Agreement, as applicable, without in each instance first obtaining Lessor's prior written consent, which shall not be unreasonably withheld, and consent of the Lender, if required by the Loan Documents. Lessor and Lessee agree to cooperate with each other in the event it becomes necessary to obtain a Management Agreement extension or modification (or, at Lessor's option, a new franchise) for the Leased Property, and in any transfer of the Management Agreement or any Franchise Agreement to Lessor or any designee of Lessor or any successor to Lessee upon the termination of this Lease. In the event of expiration or termination of the Management Agreement or any Franchise Agreement, for whatever reason, Lessor will have the right, in the exercise of its sole discretion, to approve any new Franchise Agreement or Management Agreement for the Hotel and such new Franchise Agreement or Management Agreement shall also be subject to the consent of the Lender, if required by the Loan Documents.

## ARTICLE 12 PERMITTED LIENS AND CONTESTS

12.1 Liens. Subject to the provisions of Section 12.2 relating to permitted contests, Lessee will not directly or indirectly create or allow to remain and will promptly discharge at its expense any lien, encumbrance, attachment, title retention agreement or claim upon the Leased Property or any attachment, levy, claim or encumbrance in respect of the Rent, not including, however, (a) this Lease, (b) the matters included as exceptions in the title policy insuring Lessor's interest in the Leased Property, (c) restrictions, liens and other encumbrances which are consented to in writing by Lessor or any easements granted pursuant to the provisions of Section 7.3 of this Lease, (d) liens for those taxes upon Lessor or the Leased Property which Lessee is not required to pay hereunder, (e) subleases permitted by Article 20 hereof, (f) liens for Impositions or for sums resulting from noncompliance with Legal Requirements so long as (1) the same are not yet payable or are payable without the addition of any fine or penalty or (2) such liens are in the process of being contested as permitted by Section 12.2, (g) liens of mechanics, laborers, materialmen, suppliers or vendors for sums either disputed or not yet due provided that (1) the payment of such sums shall not be postponed under any related contract for more than sixty (60) days after the completion of the action giving rise to such lien and such reserve or other appropriate provisions as shall be required by law or generally accepted accounting principles shall have been made therefor or (2) any such liens are in the process of being contested as permitted by Section 12.2 hereof, and (h) any liens which are the responsibility of Lessor pursuant to the provisions of Article 22 of this Lease.

12.2 Permitted Contests. Lessee shall have the right to contest the amount or validity of any Imposition to be paid by Lessee or any Legal Requirement or Insurance Requirement or any lien, attachment, levy, encumbrance, charge or claim ("*Claims*") not otherwise permitted by Section 12.1, by appropriate legal proceedings in good faith and with due diligence (but this shall not be deemed or construed in any way to relieve, modify or extend Lessee's covenants to pay or its covenants to cause to be paid any such charges at the time and in the manner as in this Section provided), on condition, however, that such legal proceedings shall not operate to relieve Lessee from its obligations hereunder and shall not cause the sale or risk the loss of any portion of the Leased Property, or any part thereof, or cause Lessor or Lessee to be in default under any mortgage, deed of trust, security deed or other agreement encumbering the Leased Property or any interest therein. Upon the request of Lessor, Lessee shall either (a) provide a bond or other assurance reasonably satisfactory to Lessor that all Claims which may be assessed against the Leased Property together with interest and penalties, if any, thereon will be paid, or (b) deposit within the time otherwise required for payment with a bank or trust company as trustee upon terms reasonably satisfactory to Lessor, as security for the payment of such Claims, money in an amount sufficient to pay the same, together with interest and penalties in connection therewith, as to all Claims which may be assessed against or become a Claim on the Leased Property, or any part thereof, in said legal proceedings. Lessee shall furnish Lessor and any lender of Lessor with reasonable evidence of such deposit within five (5) days of the same. Lessor agrees to join in any such proceedings if the same be required legally to prosecute such contest of the validity of such Claims; provided, however, that Lessor shall not thereby be subjected to any liability or loss for the payment of any costs or expenses in connection with any proceedings brought by Lessee; and Lessee covenants to indemnify and save harmless Lessor from any such liabilities, losses, costs or expenses. Lessee shall be entitled to any refund of any Claims and such charges and penalties or interest thereon which have been paid by Lessee or paid by Lessor and for which Lessor has been fully reimbursed. In the event that Lessee fails to pay any Claims when due or to provide the security therefor as provided in this Section and diligently to prosecute any contest of the same, Lessor may, upon ten (10) days' advance Notice to Lessee, and Lessee's failure to correct the same within such ten (10) day period, pay such charges together with any interest and penalties and the same shall be repayable by Lessee to Lessor as Additional Charges at the next Payment Date provided for in this Lease; provided, however, that should Lessor reasonably determine that the giving of such Notice would risk loss to the Leased Property or cause damage to Lessor, then Lessor shall give such Notice as is practical under the circumstances. Lessor reserves the right to contest any of the Claims at its expense not pursued by Lessee. Lessor and Lessee agree to cooperate in coordinating the contest of any Claims.

## ARTICLE 13 INSURANCE REQUIREMENTS

13.1 General Insurance Requirements. During the Term of this Lease, Lessee shall at all times keep the Leased Property insured with the kinds and amounts of insurance described below, or such other insurance coverage(s) as may be required by the Management Agreement and the Loan Documents; provided, however, all insurance coverage for which Lessor is required to reserve funds pursuant to the Loan Documents shall be the obligation of the Lessor. This insurance shall be written by companies authorized to issue insurance in the State. The policies must name Lessor and/or Lessee, as applicable, as the insured or as an additional named insured, as the case may be. Losses shall be payable to Lessor or Lessee as provided in this Lease. Any loss adjustment shall require the written consent of Lessor and Lessee, each acting reasonably and in good faith. Evidence of insurance shall be deposited with Lessor. The policies on the Leased Property, including the Leased Improvements, Fixtures and Lessee's Personal Property, if any, shall include the following:

- (i) All Risks Property insurance on the Leased Improvements in an amount not less than 100% of the full replacement cost of the Leased Improvements with a Replacement Cost Endorsement. "Full replacement cost" as used herein means the cost of replacing the Leased Improvements (exclusive of the cost of excavations, foundation and footings below the lowest basement floor) without deduction for physical depreciation thereof;
- (ii) Boiler and Machinery insurance as may reasonably be required to cover physical damage to the Improvements and to the major components of any central heating, air-conditioning or ventilation systems;
- (iii) Provided that the Leased Property, or any portion thereof, is located in an area designated as a flood prone area participating in the National Flood Insurance Program, flood insurance in an amount equal to the full replacement cost or the maximum amount then available, unless neither the Leased Property, nor any portion thereof, is located within a 100 year flood plain as determined by the Federal Insurance Administration;
- (iv) During any changes or alternations of the Leased Property or any part thereof and during any Restoration following a Taking or a casualty, all risk builder's risk insurance in an amount not less than 100% of the full replacement cost of the Improvements;
- (v) Insurance against loss of profits or rental under a business interruption insurance policy or under a rental value insurance policy covering risk of loss due to the occurrence of any of the hazards covered by the policies described in (i), (ii), and (iii) above, and (to the extent insurance covering hazards is generally obtainable) in (iv) in an amount not less than the aggregate requirements for the period of 12 months following the occurrence of the insured casualty for: (i) Base Rent and Percentage Rent, and (ii) Additional Charges, including premiums on insurance required to be carried pursuant to this Section;
- (vi) Comprehensive general liability insurance including contractual liability insurance specifically covering the indemnification obligations of Lessee under this Lease, on an occurrence basis against claims for personal injury, (including, without limitation, elevators and/or escalators) and the sidewalks, driveways and curbs adjacent thereto with limits not less than \$1,000,000 combined single limit and \$2,000,000 in the annual aggregate in the event of bodily injury or death to any number of persons in any accident; and
- (vii) Any other insurance or coverages applicable to the Leased Property which are required to be maintained by the owner or operator of the Leased Property pursuant to the terms of any Permitted Mortgage; provided that such insurance shall only be required to be maintained by Lessee during the term of the Permitted Mortgage.

13.2 Reserved.

13.3 Waiver of Subrogation. All insurance policies carried by Lessor or Lessee covering the Leased Property, the Fixtures, the Hotel or Lessee's Personal Property, including, without limitation, contents, fire and casualty insurance, shall expressly waive any right of subrogation on the part of the insurer against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement so long as the same are obtainable without extra cost, and in the event of such an extra charge the other party, at its election, may pay the same, but shall not be obligated to do so. Each party agrees to seek recovery from any applicable insurance coverage prior to seeking recovery against the other.

13.4 Form Satisfactory, Etc.

(a) All of the policies of insurance referred to in this Article 13 to be maintained by Lessee shall be written in a form, with deductibles and by insurance companies satisfactory to Lessor. Lessee shall pay all of the premiums therefor, and deliver such policies or certificates thereof to Lessor prior to their effective date (and, with respect to any renewal policy, thirty (30) days prior to the expiration of the existing policy), and in the event of the failure of Lessee either to effect such insurance as herein called for or to pay the premiums therefor, or to deliver such policies or certificates thereof to Lessor at the times required, Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, and Lessee shall reimburse Lessor for any premium or

premiums paid by Lessor for the coverages required of Lessee under this Article 13 upon written demand therefor, and Lessee's failure to repay the same within thirty (30) days after Notice of such failure from Lessor shall constitute an Event of Default within the meaning of Section 16.1. Each insurer mentioned in this Article 13 shall agree, by endorsement to the policy or policies issued by it, or by independent instrument furnished to Lessor, that it will give to Lessor thirty (30) days' written notice before the policy or policies in question shall be materially altered, allowed to expire or canceled.

(b) All of the policies of insurance referred to in this Article 13 to be maintained by Lessor shall be written in a form, with deductibles and by insurance companies satisfactory to Lessee. Lessor shall pay all of the premiums therefor, and deliver such policies or certificates thereof to Lessee prior to their effective date (and, with respect to any renewal policy, thirty (30) days prior to the expiration of the existing policy), and in the event of the failure of Lessor either to effect such insurance as herein called for or to pay the premiums therefor, or to deliver such policies or certificates thereof to Lessee at the times required, Lessee shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, and Lessor shall reimburse Lessee for any premium or premiums paid by Lessee for the coverages required under this Section upon written demand therefor. Each insurer mentioned in this Article 13 shall agree, by endorsement to the policy or policies issued by it, or by independent instrument furnished to Lessee, that it will give to Lessee thirty (30) days' written notice before the policy or policies in question shall be materially altered, allowed to expire or canceled.

13.5 Increase in Limits. If either Lessor or Lessee at any time deems the limits of the personal injury or property damage under the comprehensive public liability insurance then carried to be either excessive or insufficient, Lessor and Lessee shall endeavor in good faith to agree on the proper and reasonable limits for such insurance to be carried and such insurance shall thereafter be carried with the limits thus agreed on until further change pursuant to the provisions of this Article 13.

13.6 Blanket Policy. Notwithstanding anything to the contrary contained in this Article 13, Lessee or Lessor may bring the insurance provided for herein within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee (or Manager) or Lessor; provided, however, that the coverage afforded to Lessor and Lessee will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Article 13 are otherwise satisfied.

13.7 No Separate Insurance. Lessee shall not, on Lessee's own initiative or pursuant to the request or requirement of any third party, take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article to be furnished, or increase the amount of any then existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Lessor, are included therein as additional insured, and the loss is payable under such additional separate insurance in the same manner as losses are payable under this Lease. Lessee shall immediately notify Lessor of any such separate insurance that Lessee has obtained or of the increase of any of the amounts of the then existing insurance.

13.8 Reports On Insurance Claims. Lessee shall promptly investigate and make a complete and timely written report to the appropriate insurance company as to all accidents, claims for damage relating to the ownership, operation, and maintenance of the Hotel, any damage or destruction to the Hotel and the estimated cost of repair thereof and shall prepare any and all reports required by any insurance company in connection therewith. All such reports shall be timely filed with the insurance company as required under the terms of the insurance policy involved, and a final copy of such report shall be furnished to Lessor. Lessee shall be authorized to adjust, settle, or compromise any insurance loss, or to execute proofs of such loss, in the aggregate amount of \$30,000 or less, with respect to any single casualty or other event.

## **ARTICLE 14 DAMAGE OR DESTRUCTION**

14.1 Insurance Proceeds. Subject to the provisions of Section 14.4, all proceeds payable by reason of any loss or damage to the Leased Property, or any portion thereof, insured under any policy of insurance required by Article 13 of this Lease, shall be paid to Lessor and held in trust by Lessor in an interest-bearing account, shall be made available, if applicable, for reconstruction or repair, as the case may be, of any damage to or destruction of the Leased Property, or any portion thereof, and, if applicable, shall be paid out by Lessor from time to time for the reasonable costs of such reconstruction or repair upon satisfaction of reasonable terms and conditions specified by Lessor; provided, however, if the Initial Loan secured by the Leased Property requires that such funds be held by the Lender, any such proceed shall be held and applied in accordance with the terms of the Loan Documents. Any excess proceeds of insurance (and accrued interest) remaining after the completion of the restoration or reconstruction of the Leased Property, as hereinafter set forth, shall be paid to Lessee, except for any excess funds attributable to Lessor Capital Improvements which shall be retained by Lessor. If neither Lessor nor Lessee is required or elects to repair and restore, and the Lease is terminated without purchase by Lessee as described in Section 14.2, all such insurance proceeds shall be retained by Lessor. All salvage resulting from any risk covered by insurance shall belong to Lessor.

14.2 Material Casualty. In the event of any material casualty to the Project, Lessee shall promptly give written notice to Lessor thereof. Except as set forth herein, Lessee shall be responsible for the Restoration of the Leased Property and Lessee shall be entitled to the use of all available proceeds from any insurance for purposes of completing the Restoration. In such event this Lease shall continue in full force and effect, without abatement, unless otherwise set forth below. If the proceeds from any casualty insurance are insufficient to complete the Restoration, Lessee shall fund any excess required to complete the Restoration except for funds attributed to Lessor Capital Improvements. Lessor shall provide Lessee with the funds necessary to fund any costs to complete the Restoration for Lessor Capital Improvements. Absent receipt of Lessor's agreement to fund such excess amounts within 30 days, Lessee may elect to terminate this Lease upon notice to Lessor within 20 days after the expiration of the 30 day period.

14.3 Lessee's Property. All insurance proceeds payable by reason of any loss of or damage to any of Lessee's Personal Property shall be paid to Lessee; provided, however, no such payments shall diminish or reduce the insurance payments otherwise payable to or for the benefit of Lessor hereunder.

14.4 Abatement of Rent. In the event that this Lease is terminated pursuant to this Section 14, then the rental payments and other charges due under this Lease shall be prorated to the date of termination. In the event that some or all of the Leased Property cannot be restored, and Lessor and Lessee elect not to terminate this Lease, then the Base Rent and Percentage Rent shall be reduced by an amount reasonably determined by Lessor and Lessee. If Lessor and Lessee cannot, within 30 days, agree on the new Base Rent and Percentage Rent, either may require that the matter be settled by arbitration as set forth in Section 25.1. Except as provided herein, no destruction of or damage to the Leased Property or any part thereof by fire or any other casualty shall permit Lessee to surrender this Lease or shall relieve Lessee from Lessee's liability to pay the full Base Rent and Percentage Rent and other charges due under this Lease or from any of Lessee's other obligations under this Lease.

14.5 Damage Near End of Term. Notwithstanding any other provisions of this Section 14 to the contrary, if damage to or destruction of the Hotel rendering it unsuitable for its Primary Intended Use occurs during the last twenty-four (24) months of the Term, then Lessee shall have the right to terminate this Lease by giving Notice to Lessor within thirty (30) days after the date of damage or destruction, whereupon all accrued Rent shall be paid immediately, and this Lease shall automatically terminate five (5) days after the date of such Notice. Notwithstanding the foregoing, Lessee may not elect to terminate this Lease pursuant to the preceding sentence if such termination would constitute a default under the Initial Loan, or if Restoration is otherwise required by the Loan Documents, Lessee shall complete the Restoration in accordance with the terms of this Section.

14.6 Waiver. Lessee waives any rights now or hereafter conferred upon Lessee by statute or otherwise to quit or surrender this Lease or the Leased Property or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage except as expressly set forth herein.

## **ARTICLE 15 CONDEMNATION; AWARD ALLOCATION**

15.1 Total Taking. Subject to any Loan Documents, in case of a Taking of all of the Leased Property, this Lease shall terminate and expire as of the Vesting Date and the Base Rent, Percentage Rent and Additional Charges under this Lease shall be apportioned and paid to the Vesting Date.

15.2 Partial Taking. Subject to any Loan Documents, in case of a Taking of less than all of the Leased Property, Lessor shall receive the entire award for the Taking and, except as specifically set forth in this Section, no claim or demand of any kind shall be made by Lessee against Lessor or any other party who could, by virtue of a claim against it, make a claim against Lessor by reason of such Taking.

(a) In the case of a Taking of a portion, but less than all, of the Leased Property, Lessee shall determine, in Lessee's reasonable discretion, whether the remaining Project (after Restoration referred to in (c), below (i) can be used for the Primary Intended Use and (ii) will allow Lessee to complete the Restoration for an amount not to exceed the proceeds from the Taking. If it is determined by Lessee that the remaining Leased Property cannot be used for the Primary Intended Use, then and in such event this Lease shall terminate as of the Vesting Date and the Base Rent, Percentage Rent and Additional Charges shall be apportioned and paid to the date of termination and no other claim or demand of any kind shall be made by Lessor against Lessee by reason of such termination. If it is determined that Lessee cannot complete the Restoration for an amount that is less than or equal to the proceeds from the Taking then and in such event Lessee can elect to terminate this Lease as of the Vesting Date and the Base Rent, Percentage Rent and Additional Charges shall be apportioned and paid to the date of termination and no other claim or demand of any kind shall be made by Lessor against Lessee by reason of such termination; provided, however, that if there is at least 24 months remaining in the Term, Lessor may agree to pay the excess Restoration expenses in which case this Lease shall not terminate and Lessee shall undertake the Restoration of the Project in accordance with the terms of (c), below.

(b) If, in the case of a Taking of less than all of the Leased Property, this Lease is not terminated in accordance with the provisions of (a) above, this Lease shall continue in full force and effect as to the remaining portion of the Leased Property without any reduction in the Base Rent and Percentage Rent, except as expressly provided in Section 15.3. No such partial taking shall operate as or be deemed an eviction of Lessee from that portion of the Leased Property not affected by such partial Taking or in any

way terminate, diminish, suspend, abate or impair the obligation of Lessee to observe and perform fully all the covenants of this Lease on the part of Lessee to be performed with respect to the remainder of the Leased property unaffected by the partial Taking, except as to any reduction (if any) in the Base Rent and Percentage Rent as expressly provided in Section 15.3.

(c) If, in the case of a Taking of less than all of the Leased Property, this Lease is not terminated in accordance with the provisions of (a) above, Lessee shall, prior to the expiration of the Term of this Lease, commence and proceed with reasonable diligence to complete the Restoration provided, however, that Lessor shall, in this case, make the award in the Condemnation Proceedings and, in the case of (a) above, such award plus any excess funds due from Lessor, available to Lessee to be utilized for Restoration of the Leased Property in the following manner, and subject to the following conditions and provisions. Lessor shall be entitled to receive and retain the remainder of the award not needed to complete the Restoration (the "Surplus").

15.3 Rent Reduction. In case of a Taking of less than all of the Leased Property and if (i) this Lease shall not terminate as provided in Section 15.2 (a), and (ii) Restoration has been undertaken by Lessee pursuant to the provisions of Section 15.2(c), then commencing as of the Vesting Date, the amount of the Base Rent and Percentage Rent payable by Lessee under this Lease shall be reduced (and Lessee shall be credited for prior overpayments) by an amount reasonably determined by Lessor and Lessee. If Lessor and Lessee cannot, within 30 days, agree on the new Base Rent and Percentage Rent, either may require that the matter be submitted to Binding Arbitration as set forth in Section 25.1. The new Base Rent and Percentage Rent shall be established to provide Lessee and Lessor with the same economic return that each were entitled to prior to the Taking.

15.4 Notice of Condemnation. Each of Lessor and Lessee shall promptly deliver to the other any notices it receives with respect to a Condemnation Proceeding or threatened Condemnation Proceeding.

15.5 Additional Lender Provision. Notwithstanding anything herein to the contrary, Lessee's and Lessor's rights and obligations in and to any Condemnation Proceeding or related proceeds derived therefrom shall, in all cases, be subject to the rights of the holder of any Permitted Mortgage.

## **ARTICLE 16**

### **LESSEE EVENTS OF DEFAULT; LESSOR REMEDIES**

16.1 Events of Default. If any one or more of the following events (individually, an "*Event of Default*") occurs:

(a) if Lessee fails to make payment of the Base Rent within fifteen (15) days after the same becomes due and payable; or

(b) if Lessee fails to make payment of Percentage Rent within fifteen (15) days after the same becomes due and payable and such condition continues for a period of thirty (30) days after the end of the applicable period; or

(c) if Lessee fails to observe or perform any other term, covenant or condition of this Lease and such failure is not cured by Lessee within a period of thirty (30) days after receipt by Lessee of Notice thereof from Lessor, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case it shall not be deemed an Event of Default if Lessee proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof provided, however, in no event shall such cure period extend beyond ninety (90) days after such Notice; or

(d) if Lessee shall file a petition in bankruptcy or reorganization for an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, or shall be adjudicated a bankrupt or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law shall be filed in any court and Lessee shall be adjudicated a bankrupt and such adjudication shall not be vacated or set aside or stayed within sixty (60) days after the entry of an order in respect thereof, or if a receiver of Lessee or of the whole or substantially all of the assets of Lessee shall be appointed in any proceeding brought by Lessee or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and shall not be vacated or set aside or stayed within sixty (60) days after such appointment; or

(e) if Lessee is liquidated or dissolved, or begins proceedings toward such liquidation or dissolution, or, in any manner, permits the sale or divestiture of substantially all of its assets; or

(f) if the estate or interest of Lessee in the Leased Property or any part thereof is voluntarily or involuntarily transferred, assigned, conveyed, levied upon or attached in any proceeding (unless Lessee is contesting such lien or attachment in good faith in accordance with Section 12.2 hereof) or there is a Change of Control of Lessee; or

(g) if, except as a result of damage, destruction or a partial or complete Condemnation as contemplated by this Lease, Lessee voluntarily ceases operations on the Leased Property for a period in excess of thirty (30) days; or

(h) if an event of default has been declared by franchisor under any Franchise Agreement with respect to the Hotel as a result of any action or failure to act by Lessee or any Person with whom Lessee contracts for management services at the Hotel, and such default is not cured by the earlier of (A) ten (10) days following notice from Lessor or (B) such earlier date as is required for Lessee to avoid termination of the Franchise Agreement by the franchisor, as applicable;

then, and in any such event, Lessor may exercise one or more remedies available to it herein or at law or in equity, including but not limited to its right to terminate this Lease by giving Lessee not less than ten (10) days' Notice of such termination.

If litigation is commenced with respect to any alleged default under this Lease, the prevailing party in such litigation shall receive, in addition to its damages incurred, such sum as the court shall determine as its reasonable attorneys' fees, and all costs and expenses incurred in connection therewith.

No Event of Default (other than a failure to make a payment of money) shall be deemed to exist under clause (d) during any time the curing thereof is prevented by an Unavoidable Delay, provided that upon the cessation of such Unavoidable Delay, Lessee remedies such default or Event of Default without further delay.

16.2 Surrender. If an Event of Default occurs (and the event giving rise to such Event of Default has not been cured within the curative period relating thereto as set forth in Section 16.1) and is continuing, whether or not this Lease has been terminated pursuant to Section 16.1, Lessee shall, if requested by Lessor so to do, immediately surrender to Lessor the Leased Property including, without limitation, any and all books, records, files, licenses, permits and keys relating thereto, and quit the same and Lessor may enter upon and repossess the Leased Property by summary proceedings, ejectment or otherwise, and may remove Lessee and all other Persons and any and all personal property from the Leased Property, subject to rights of any hotel guests and to any requirement of law. Lessee hereby waives any and all requirements of applicable laws for service of notice to re-enter the Leased Property. Lessor shall be under no obligation to, but may if it so chooses, relet the Leased Property or otherwise mitigate Lessor's damages.

16.3 Damages. Neither (a) the termination of this Lease, (b) the repossession of the Leased Property, (c) the failure of Lessor to relet the Leased Property, nor (d) the reletting of all or any portion thereof, shall relieve Lessee of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting. In the event of any such termination, Lessee shall forthwith pay to Lessor all Rent due and payable with respect to the Leased Property to and including the date of such termination. Damages shall also consist of all reasonable and documented legal expenses and other related reasonable and documented out-of-pocket costs incurred by Lessor following the Event of Default, all reasonable and documented out-of-pocket costs incurred by Lessor in restoring the Leased Property to good order and condition; and any other damages available to Lessor under applicable law.

16.4 Waiver. If this Lease is terminated pursuant to Section 16.1, Lessee waives, to the extent permitted by applicable law, (a) any right to a trial by jury in the event of summary proceedings to enforce the remedies set forth in this Article 16, and (b) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

16.5 Application of Funds. Any payments received by Lessor under any of the provisions of this Lease during the existence or continuance of any Event of Default shall be applied to Lessee's obligations in the order that Lessor may determine or as may be prescribed by the laws of the State.

16.6 Lessor's Right to Cure Lessee's Default. If Lessee fails to make any payment or to perform any act required to be made or performed under this Lease, including, without limitation, Lessee's failure to comply with the terms of the Management Agreement or any Franchise Agreement, and fails to cure the same within the relevant time periods provided in Section 16.1, Lessor, without waiving or releasing any obligation of Lessee, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Lessee, and may, to the extent permitted by law, enter upon the Leased Property for such purpose and, subject to Section 16.4, take all such action thereon as, in Lessor's opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All sums so paid by Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, in each case to the extent permitted by law) so incurred, together with a late charge thereon (to the extent permitted by law) at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Lessor, shall be paid by Lessee to Lessor on demand. The obligations of Lessee and rights of Lessor contained in this Article shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 17**

### **LESSOR EVENTS OF DEFAULT; LESSEE'S REMEDIES**

17.1 Breach by Lessor. It shall be a breach of this Lease if Lessor fails to observe or perform any term, covenant or condition of this Lease on its part to be performed and such failure continues for a period of thirty (30) days after Notice thereof from Lessee, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue if Lessor, within such thirty (30) day period, proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof; provided, however, that such default shall be cured by Lessor in any event prior to the date on which the default becomes an event of default under the terms of any Franchise Agreement for the Hotel. The time within which Lessor shall be obligated to cure any such failure also shall be subject to extension of time due to the occurrence of any Unavoidable Delay.

17.2 Lessee's Right to Cure. Subject to the provisions of Section 17.1, if Lessor breaches any covenant to be performed by it under this Lease, Lessee, after Notice to and demand upon Lessor, without waiving or releasing any obligation hereunder, and in addition to all other remedies available to Lessee, may (but shall be under no obligation at any time thereafter to) make such payment or perform such act for the account and at the expense of Lessor. All sums so paid by Lessee and all costs and expenses (including, without limitation, reasonable attorneys' fees) so incurred, together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Lessee, shall be paid by Lessor to Lessee on demand or, following entry of a final, nonappealable judgment against Lessor for such sums, may be offset by Lessee against the Base Rent and/or Percentage Rent payments next accruing or coming due. The rights of Lessee hereunder to cure and to secure payment from Lessor in accordance with this Section 17.2 shall survive the termination of this Lease with respect to the Leased Property.

## **ARTICLE 18 INDEMNIFICATION**

### **18.1 Indemnification.**

(a) Notwithstanding the existence of any insurance, and without regard to the policy limits of any such insurance or self-insurance, but subject to Section 13.3 and Section 8.3, Lessee will protect, indemnify, hold harmless and defend Lessor from and against all liabilities, losses, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), to the extent permitted by law, imposed upon or incurred by or asserted against Lessor Indemnified Parties by reason of: (a) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Leased Property or adjoining sidewalks, including without limitation any claims under liquor liability, "*dram shop*" or similar laws, (b) any use, misuse, non-use, condition, management, maintenance or repair by Lessee or any of its agents, employees or invitees of the Leased Property or Lessee's Personal Property during the Term or any litigation, proceeding or claim by governmental entities or other third parties to which a Lessor Indemnified Party is made a party or participant related to such use, misuse, non-use, condition, management, maintenance, or repair thereof by Lessee or any of its agents, employees or invitees, including any failure of lessee or any of its agents, employees or invitees to perform any obligations under this Lease or imposed by applicable law (other than arising out of Condemnation proceedings), (c) any Impositions that are the obligations of Lessee pursuant to the applicable provisions of this Lease, (d) any failure on the part of Lessee to perform or comply with any of the terms of this Lease, and (e) the non-performance of any of the terms and provisions of any and all existing and future subleases of the Leased Property to be performed by the landlord thereunder.

(b) Notwithstanding the existence of any insurance, and without regard to the policy limits of any such insurance or self-insurance, but subject to Section 13.3 and Section 8.3, Lessor shall indemnify, save harmless and defend Lessee Indemnified Parties from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses imposed upon or incurred by or asserted against Lessee Indemnified Parties as a result of (a) the gross negligence or willful misconduct of Lessor arising in connection with this Lease or (b) any failure on the part of Lessor to perform or comply with any of the terms of this Lease. In addition, to the extent that Lender applies Lessee's funds to the payment of obligations of Lessor under the Loan Documents, such funds, to the extent then owed to Lessor under this Lease, will be deemed paid to Lessor in satisfaction of such obligation of Lessee to Lessor, and Lessor shall indemnify Lessee for any appropriation by Lender of Lessee's funds in excess of amounts then owed to Lessor under this Lease. Any amounts that become payable by an Indemnifying Party under this Section shall be paid within ten (10) days after liability therefor on the part of the Indemnifying Party is determined by litigation or otherwise, and if not timely paid, shall bear a late charge (to the extent permitted by law) at the Overdue Rate from the date of such determination to the date of payment. An Indemnifying Party, at its expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against the Indemnified Party. The Indemnified Party, at its expense, shall be entitled to participate in any such claim, action, or proceeding, and the Indemnifying Party may not compromise or otherwise dispose of the same without the consent of the Indemnified Party, which may not be unreasonably withheld or delayed. Nothing herein shall be construed as indemnifying a Lessor Indemnified Party against its own (or Lessor's) grossly negligent acts or omissions or willful misconduct.

(c) Lessee's or Lessor's liability for a breach of the provisions of this Article shall survive any termination of this Lease.

## **ARTICLE 19 REIT REQUIREMENTS AND RESTRICTIONS**

19.1 Personal Property Limitation. Anything contained in this Lease to the contrary notwithstanding, the average of the fair market value of the items of personal property that are leased to Lessee under this Lease at the beginning and at the end of any Fiscal Year shall not exceed fifteen percent (15%) of the average of the aggregate fair market value of the Leased Property at the beginning and at the end of such Fiscal Year ("Personal Property Limitation"). If Lessor anticipates that the Personal Property Limitation will be exceeded with respect to the Leased Property for any Fiscal Year, Lessor shall notify Lessee and Lessee shall purchase at fair market value any personal property anticipated to be in excess of the Personal Property Limitation and the rent obligation shall be equitably adjusted. This Section 19.1 is intended to ensure that the Rent qualifies as "*rents from real property*," within the meaning of Section 856(d) of the Code, or any similar or successor provisions thereto, and shall be interpreted in a manner consistent with such intent.

19.2 Sublease Rent Limitation. Anything contained in this Lease to the contrary notwithstanding, Lessee shall not sublet the Leased Property on any basis such that the rental to be paid by the sublessee thereunder would be based, in whole or in part, on either (a) the income or profits derived by the business activities of the sublessee, or (b) any other formula such that any portion of the Rent would fail to qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto.

19.3 Sublease Tenant Limitation. Anything contained in this Lease to the contrary notwithstanding, Lessee shall not sublease the Leased Property to any Person in which Lessor owns, directly or indirectly, a ten percent (10%) or more interest, within the meaning of Section 856(d)(2)(B) of the Code, or any similar or successor provisions thereto.

19.4 Lessee Officer and Employee Limitation. If a Person serves as both (a) a director of Lessee (or any Person who furnishes or renders services to the tenants of the Leased Property, or manages or operates the Leased Property) and (b) an officer (or employee) of the Lessor that Person shall not receive any compensation for serving as a director of Lessee (or any Person who furnishes or renders services to the tenants of the Leased Property, or manages or operates the Leased Property). Furthermore, if a Person serves as both (a) a director of the Lessor and (b) an officer (or employee) of Lessee (or any Person who furnishes or renders services to the tenants of the Leased Property, or manages or operates the Leased Property), that Person shall not receive any compensation for serving as a director of the Lessor.

19.5 Payments to Affiliates of Lessee. During the Term, Lessee shall not pay, or become obligated to pay, any fees to any Affiliate of Lessee in connection with the Hotel, other than fees that are subordinated to the payments that are required to be made to Lessor pursuant to this Lease.

19.6 Taxable REIT Subsidiary. Lessee, or the owner of Lessee to the extent Lessee is a disregarded entity for tax purposes, agrees to make an election to be, and to operate as a taxable REIT subsidiary of Moody National REIT I, Inc., within the meaning of Section 856(e) of the Code, or any similar or successor provision thereto.

19.7 Construction of Lease. Both parties agree that no provision of this Lease shall be construed so as to cause Moody National REIT I, Inc. to fail to qualify as a real estate investment trust.

## **ARTICLE 20 SUBLETTING AND ASSIGNMENT**

20.1 Subletting and Assignment. Subject to the provisions of Article 19 and Section 20.2 and any other express conditions or limitations set forth herein, Lessee may (a) assign this Lease or sublet all or any part of the Leased Property to an Affiliate of Lessee, or (b) sublet any retail or restaurant portion of the Leased Improvements in the normal course of the Primary Intended Use; provided that any subletting to any party other than an Affiliate of Lessee shall not individually as to any one such subletting, or in the aggregate, materially diminish the actual or potential Percentage Rent payable under this Lease. In the case of a subletting, the sublessee shall comply with the provisions of Section 20.2, and in the case of an assignment, the assignee shall assume in writing and agree to keep and perform all of the terms of this Lease on the part of Lessee to be kept and performed and shall be, and become, jointly and severally liable with Lessee for the performance thereof. Notwithstanding the above, Lessee may assign the Lease to an Affiliate without the consent of Lessor; provided that any such assignee assumes in writing and agrees to keep and perform all of the terms of the Lease on the part of Lessee to be kept and performed and shall be and become jointly and severally liable with Lessee for the performance thereof. In case of either an assignment or subletting made during the Term, Lessee shall remain primarily liable, as principal rather than as surety, for the prompt payment of the Rent and for the performance and observance of all of the covenants and conditions to be performed by Lessee hereunder. An original counterpart of each such sublease and assignment and assumption, duly executed by Lessee and such sublessee or assignee, as the case may be, in form and substance satisfactory to Lessor, shall be delivered promptly to Lessor. Notwithstanding the foregoing, any such assignment or sublet shall be subject to the terms of the Loan Documents. Any sublet or assignment in violation of the requirements of this Article 20 shall be null and void.

20.2 Attornment. Lessee shall insert in each sublease permitted under Section 20.1 provisions to the effect that (a) such sublease is subject and subordinate to all of the terms and provisions of this Lease and to the rights of Lessor hereunder, (b) if this Lease terminates before the expiration of such sublease, the sublessee thereunder will, at Lessor’s option, attorn to Lessor and waive any right the sublessee may have to terminate the sublease or to surrender possession thereunder as a result of the termination of this Lease, and (c) if the sublessee receives a Notice from Lessor or Lessor’s assignees, if any, stating that an uncured Event of Default exists under this Lease, the sublessee shall thereafter be obligated to pay all rentals accruing under said sublease directly to the party giving such Notice, or as such party may direct. All rentals received from the sublessee by Lessor or Lessor’s assignees, if any, as the case may be, shall be credited against the amounts owing by Lessee under this Lease.

20.3 Conveyance by Lessor. Lessor may assign this Lease to any purchaser of the Leased Property. If Lessor or any successor owner of the Leased Property conveys the Leased Property in accordance with the terms hereof other than as security for a debt, and the grantee or transferee of the Leased Property expressly assumes all obligations of Lessor hereunder arising or accruing from and after the date of such conveyance or transfer, Lessor or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Lessor under this Lease arising or accruing from and after the date of such conveyance or other transfer as to the Leased Property and all such future liabilities and obligations shall thereupon be binding upon the new owner.

**ARTICLE 21**  
**QUIET ENJOYMENT; RISK OF LOSS**

21.1 Quiet Enjoyment. So long as Lessee pays all Rent as the same becomes due and complies with all of the terms of this Lease and performs its obligations hereunder, in each case within the applicable grace periods, if any, Lessee shall peaceably and quietly have, hold and enjoy the Leased Property for the Term hereof, free of any claim or other action by Lessor or anyone claiming by, through or under Lessor, but subject to all liens and encumbrances subject to which the Leased Property was conveyed to Lessor, to the extent not released in connection with the transactions contemplated by this Lease, or hereafter consented to by Lessee or provided for herein. Notwithstanding the foregoing, Lessee shall have the right by separate and independent action to pursue any claim it may have against Lessor as a result of a breach by Lessor of the covenant of quiet enjoyment contained in this Section.

21.2 Risk of Loss. During the Term, the risk of loss or of decrease in the enjoyment and beneficial use of the Leased Property in consequence of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, attachments, levies or executions (other than those caused by Lessor and those claiming from, through or under Lessor) is assumed by Lessee, and, in the absence of gross negligence, willful misconduct or breach of this Lease by Lessor pursuant to Section 17.1, Lessor shall in no event be answerable or accountable therefor, nor shall any of the events mentioned in this Section entitle Lessee to any abatement of Rent except as specifically provided in this Lease.

**ARTICLE 22**  
**LESSOR MORTGAGES; SUBORDINATION OF LEASE**

22.1 Lessor May Grant Liens. Without the consent of Lessee, Lessor may, subject to the terms and conditions set forth below in this Section 22.1, from time to time, directly or indirectly, create or otherwise cause to exist any lien, encumbrance or title retention agreement ("*Encumbrance*") upon the Leased Property, or any portion thereof or interest therein, whether to secure any borrowing or other means of financing or refinancing. Upon the request of Lessor, Lessee shall subordinate this Lease to the lien of a new mortgage on the Leased Property, on the condition that the proposed mortgagee executes a non-disturbance agreement recognizing this Lease in accordance with the provisions of Section 22.2, and agreeing, for itself and its successors and assigns, to comply with the provisions of this Article 22.

22.2 Subordination of Lease. This Lease and Lessee's interest hereunder shall at all times be subject and subordinate to the lien and security title of any deeds to secure debt, deeds of trust, mortgages, or other Encumbrances heretofore or hereafter granted by Lessor or which otherwise encumber or affect the Leased Property (including, for the avoidance of doubt, the Initial Loan Documents) and to any and all advances to be made thereunder and to all renewals, modifications, consolidations, replacements, substitutions, and extensions thereof; provided, however, that with respect to any Mortgage hereafter granted, such subordination is conditioned upon delivery to Lessee of a non-disturbance agreement which provides that Lessee shall not be disturbed in its possession of the Leased Property hereunder following a foreclosure of such Mortgage (or delivery of a deed-in-lieu-of-foreclosure) and that the holder of such Mortgage or the purchaser at a foreclosure sale (or grantee under such deed-in-lieu-of-foreclosure) shall perform all obligations of Lessor under this Lease. In confirmation of such subordination, however, Lessee shall, at Lessor's request, promptly execute, acknowledge and deliver any instrument which may be required to evidence subordination to any Mortgage and to the holder thereof. In the event of Lessee's failure to deliver such subordination and if the Mortgage does not change any term of the Lease, Lessor may, in addition to any other remedies for breach of covenant hereunder, execute, acknowledge, and deliver the instrument as the agent or attorney-in-fact of Lessee, and Lessee hereby irrevocably constitutes Lessor its attorney-in-fact for such purpose, Lessee acknowledging that the appointment is coupled with an interest and is irrevocable.

**ARTICLE 23**  
**ESTOPPEL CERTIFICATES; FINANCIAL STATEMENTS; INSPECTION RIGHTS**

23.1 Estoppel Certificates; Financial Statements.

(a) At any time and from time to time upon not less than ten (10) days Notice by Lessor, Lessee will furnish to Lessor an Officer's Certificate certifying that this Lease is unmodified and in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications), the date to which the Rent has been paid, whether to the knowledge of Lessee there is any existing default or Event of Default exists thereunder by Lessor or Lessee, and such other information as may be reasonably requested by Lessor. Any such certificate furnished pursuant to this Section may be relied upon by Lessor, any lender (including, for the avoidance of doubt, Initial Lender) and any prospective purchaser of the Leased Property.

(b) Lessee will furnish the following statements to Lessor:

(i) with reasonable promptness, such information respecting the financial condition and affairs of Lessee including audited financial statements prepared by the same certified independent accounting firm that prepares the returns for Lessor or such other accounting firm as may be approved by Lessor, as Lessor may request from time to time; and

(ii) the most recent Consolidated Financials of Lessee within forty-five (45) days after each quarter of any Fiscal Year (or, in the case of the final quarter in any Fiscal Year, the most recent audited Consolidated Financials of Lessee within ninety (90) days); and

(iii) on or about the 20th day of each month, a detailed profit and loss statement for the Leased Property for the preceding month, a balance sheet for the Leased Property as of the end of the preceding month, and a detailed accounting of revenues for the Leased Property for the preceding month, each in form acceptable to Lessor.

Lessee will permit the inclusion of such statements in any filings required to be made by Lessor under the Securities Act of 1933 and the Securities Exchange Act of 1934.

(c) At any time and from time to time upon not less than ten (10) days Notice by Lessee, Lessor will furnish to Lessee or to any Person designated by Lessee an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications), the date to which Rent has been paid, whether to the knowledge of Lessor there is any existing default or Event of Default on Lessee's part hereunder, and such other information as may be reasonably requested by Lessee.

23.2 Lessor's Right to Inspect. Lessee shall permit Lessor and its authorized representatives as frequently as reasonably requested by Lessor to inspect the Leased Property and Lessee's accounts and records pertaining thereto and make copies thereof, during usual business hours upon reasonable advance Notice, subject only to any business confidentiality requirements reasonably requested by Lessee.

## **ARTICLE 24 LEASEHOLD MORTGAGES**

24.1 Leasehold Mortgages. To the extent any provision in this Article 24 conflicts or is inconsistent with any other provision of this Lease, the provisions of this Article 24 shall control.

(a) Lessee, and its successors and assigns, shall have the unconditional right to mortgage, pledge and/or assign this Lease without having to obtain the consent of Lessor. Lessee, and its successors and assigns, shall have the unconditional right to sublet all or a portion of the Leased Property without having to obtain the consent of Lessor. Any pledge or assignment of any interests in Lessee shall be permitted without having to obtain the consent of Lessor.

(b) If Lessee, or Lessee's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then so long as any such mortgage shall remain unsatisfied of record, the following provisions shall apply:

(i) Lessor, upon serving Lessee with any notice of default, or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon the holder of such mortgage, at the address provided for in clause (vi) of this Section 24.1(b), and no notice by Lessor to Lessee hereunder shall be deemed to have been duly given unless and until a copy thereof has been so served.

(ii) Any holder of such mortgage, in case Lessee shall be in default hereunder, shall, within the period and otherwise as herein provided, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instance of such holder as if the same had been made by Lessee.

(iii) For the purposes of this Article, no event of default shall be deemed to exist in respect of the performance of work required to be performed, or of acts to be done, or of conditions to be remedied, if steps shall in good faith, have been commenced within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity.

(iv) Notwithstanding anything herein contained to the contrary, upon the occurrence of any event of default, Lessor shall take no action to effect a termination of this Lease without first giving to the holder of such mortgage written notice thereof and a reasonable time thereafter within which either (x) to obtain possession of the mortgaged property (including possession by a receiver) or (y) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Lessee's interest under this Lease. Provided, however, that: (x) such holder shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured and (y) such holder shall agree with Lessor in writing to comply during the period of such forbearance with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such holder. Any default by Lessee, not reasonably susceptible of being cured by such holder shall be deemed to have been waived by Lessor upon completion of such foreclosure proceedings or upon such acquisition of Lessee's interest in this Lease, except that any of such events of default which are reasonably susceptible of being cured after such completion and acquisition shall then be cured with reasonable diligence. Such holder, or his designee, or other purchaser in foreclosure proceedings may become the legal owner and holder of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure.

(v) In the event of the termination of this Lease prior to the expiration of the Term (including, without limitation, in connection with a rejection of this Lease in the event of a bankruptcy of Lessee), Lessor shall serve upon the holder of such mortgage written notice that the Lease has been terminated together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Lessor. Such holder shall thereupon have the option to obtain a new Lease in accordance with and upon the following terms and conditions:

(A) Upon the written request of the holder of such mortgage, within thirty (30) days after service of such notice that the Lease has been terminated, Lessor shall enter into a new lease of the Leased Property with such holder, or his designee, as follows:

(B) Such new lease shall be effective as at the date of termination of this Lease, and shall be for the remainder of the term of this Lease and at the rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal. Upon the execution of such new lease, Lessor shall allow to the tenant named therein and such tenant shall be entitled to an adjustment in an amount equal to the net income derived by Lessor from the Leased Property during the period from the date of termination of this Lease to the date of execution of such new lease.

(vi) Any notice or other communication which Lessor shall desire or is required to give to or serve upon the holder of a mortgage on this Lease shall be in writing and shall be served by registered mail, addressed to such holder at his address as set forth in such mortgage. Any notice or other communication which the holder of a mortgage on this Lease shall desire or is required to give to or serve upon Lessor shall be deemed to have been duly given or served if sent in duplicate by registered mail addressed to Lessor at Lessor's address as set forth in this Lease or at such other addresses as shall be designated by Lessor by notice in writing given to such holder by registered mail.

(vii) Effective upon the commencement of the term of any new lease executed pursuant to paragraph (v) of this Section, all subleases shall be assigned and transferred without recourse by Lessor to the tenant under such new lease, and all moneys on deposit with Lessor which Lessee would have been entitled to use but for the termination or expiration of this Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease. If the holders of more than one such leasehold mortgage shall make written requests upon Lessor for a new lease in accordance with the provisions of this Section, the new lease shall be entered into pursuant to the request of the holder whose leasehold mortgage shall be prior in lien thereto and thereupon the written requests for a new lease of each holder of a leasehold mortgage junior in lien shall be and be deemed to be void and of no force or effect.

(viii) No agreement between Lessor and Lessee modifying, canceling or surrendering this Lease shall be effective without the prior written consent of the leasehold mortgagee.

(ix) The fee title to the Leased Property and the leasehold estate created therein pursuant to the provisions of this Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Lessee, Lessor, or in any other person by purchase, operation of law or otherwise.

(c) If any leasehold mortgagee shall acquire title to Lessee's interest in this Lease, by foreclosure of a mortgage thereon or by assignment in lieu of foreclosure or by an assignment from a designee or wholly owned subsidiary corporation of such mortgagee, or under a new lease pursuant to this Article, such mortgagee may assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on tenant's part to be performed and observed from and after the date of such assignment, provided that such assignee assumes the obligations of Lessee hereunder.

(d) Lessor hereby agrees to deliver to Lessee a ground lessor estoppel certificate in the form reasonably required by any leasehold mortgagee of Lessee.

## **ARTICLE 25 BINDING ARBITRATION**

25.1 Binding Arbitration. Any controversy between the parties hereto arising out of or related to this Lease or the breach thereof shall be settled by arbitration in Harris County, Texas, unless otherwise agreed to by the parties thereto, in accordance with the rules of the American Arbitration Association, and judgment entered upon the award rendered may be enforced by appropriate judicial action. The arbitration panel shall consist of one member, which shall be the mediator if mediation has occurred or shall be a person agreed to by each party to the dispute within 30 days following notice by one party that he or she desires that a matter be arbitrated. If there was no mediation and the parties are unable within such 30 day period to agree upon an arbitrator, then the panel shall be one arbitrator selected by the Harris County office of The American Arbitration Association, which arbitrator shall be experienced in the area of real estate and who shall be knowledgeable with respect to the subject matter area of the dispute. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorneys' fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by the losing party or the prevailing party or such costs shall be allocated

by the arbitrator. The arbitration panel shall render a decision within 30 days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within 30 days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery.

## **ARTICLE 26 NOTICES**

26.1 Notices. All notices, demands, requests, consents approvals and other communications (“*Notice*” or “*Notices*”) hereunder shall be in writing and hand-delivered, sent by FedEx or other nationally recognized overnight courier service, or mailed (by registered or certified mail, return receipt requested and postage prepaid), if to Lessor at 6363 Woodway, Suite 110, Houston, Texas 77057, Attn: Brett C. Moody and if to Lessee at 6363 Woodway, Suite 110, Houston, Texas 77057, Attn: Brett C. Moody or to such other address or addresses as either party may hereafter designate. Personally delivered Notice shall be effective upon receipt, and Notice given by overnight courier service or by mail shall be complete at the time of deposit with the courier service or in the U.S. Mail system, respectively, but any prescribed period of Notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such Notice given by overnight courier service shall be extended one (1) day and by mail shall be extended five (5) days.

## **ARTICLE 27 GENERAL PROVISIONS**

27.1 No Waiver. No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. To the extent permitted by law, no waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

27.2 Remedies Cumulative. To the extent permitted by law and unless otherwise provided herein to the contrary, each legal, equitable or contractual right, power and remedy of Lessor or Lessee now or hereafter provided either in this Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Lessor or Lessee of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Lessor or Lessee of any or all of such other rights, powers and remedies.

27.3 Waiver of Trial by Jury. LESSOR AND LESSEE EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN THE EVENT OF A PROCEEDING WITH RESPECT TO THIS LEASE, INCLUDING, WITHOUT LIMITATION, SUMMARY PROCEEDINGS TO ENFORCE THE REMEDIES SET FORTH IN ARTICLE 16.

27.4 Acceptance of Surrender. No surrender to Lessor of this Lease or of the Leased Property or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Lessor and no act by Lessor or any representative or agent of Lessor, other than such a written acceptance by Lessor, shall constitute an acceptance of any such surrender.

27.5 No Merger of Title. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly: (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate and (b) the fee estate in the Leased Property.

27.6 Waiver of Presentment, Etc. Lessee waives all presentments, demands for payment and for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance and waives all notices of the existence, creation, or incurring of new or additional obligations, except as expressly granted herein.

27.7 Action for Damages. Except as otherwise expressly provided herein, in any suit or other claim brought by either party seeking damages against the other party for breach of its obligations under this Lease, the party against whom such claim is made shall be liable to the other party only for actual damages and not for consequential, punitive or exemplary damages.

27.8 Lease Assumption in Bankruptcy Proceeding. If an Event of Default occurs and Lessee has filed or has had filed against it a petition in bankruptcy or for reorganization or other relief pursuant to the federal bankruptcy code, Lessee shall promptly move the court presiding over the proceeding to assume this Lease pursuant to 11 U.S.C. §365, without seeking an extension of the time to file said motion.

27.9 Enforceability. Anything contained in this Lease to the contrary notwithstanding, all claims against, and liabilities of, Lessee or Lessor arising prior to any date of termination of this Lease shall survive such termination. If any term or provision of this Lease or any application thereof is invalid or unenforceable, the remainder of this Lease and any other application of such term or provisions shall not be affected thereby. If any late charges or any interest rate provided for in any provision of this Lease are based upon a rate in excess of the maximum rate permitted by applicable law, the parties agree that such charges shall be fixed at the maximum permissible rate. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated except by a written instrument in recordable form signed by Lessor and Lessee. All the terms and provisions of this Lease shall be binding upon and inure

to the benefit of the parties hereto and their respective successors and permitted assigns. The headings in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Lease shall be governed by and construed in accordance with the laws of the State, but not including its conflicts of laws rules.

27.10 Memorandum of Lease. Lessor and Lessee shall promptly, upon the request of either party, enter into a short form memorandum of this Lease, in form suitable for recording under the laws of the State in which reference to this Lease, and all options contained herein, shall be made. Lessor shall pay all costs and expenses of recording such memorandum of this Lease.

27.11 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State, without regard to any applicable conflicts of laws principles that would require the application of the law of any other jurisdiction and venue with respect to any action to construe or enforce this Lease shall be laid in the State where the Leased Property is located.

27.12 Counterparts. This Lease may be executed in two or more counterparts, and all such counterparts shall be deemed to constitute but one and the same instrument.

27.13 Special Lender Provisions. Notwithstanding anything to the contrary contained in this Lease or in any other agreement between Lessor and Lessee, the following shall govern at all times while any obligations remains outstanding under the Initial Loan:

(a) Each of Lessor and Lessee hereby acknowledges and agrees that Initial Lender has made the Initial Loan to be secured by a mortgage or deed of trust upon the Leased Property and that for all purposes hereunder such mortgage or deed of trust shall qualify as and be the first lien mortgage or deed of trust encumbering the Leased Property and Initial Lender shall qualify as a Permitted Mortgagee.

(b) Lessee agrees that it (i) will comply with the provisions of the Initial Loan Documents and will operate the Leased Property in accordance therewith, and (ii) not take, or fail to take, any action under this Lease which would result in a violation of the Lessor's obligations under the Initial Loan Documents as they relate to the Leased Property or the operation and maintenance thereof or a violation of the requirements of Article 5 of the Loan Agreement as they apply to Lessee.

(c) While the obligations under the Initial Loan remain outstanding, the Initial Lender will have the right to participate in any arbitration proceeding relating to the termination or amendment of this Lease or with respect to any matter that affects the Initial Lender's rights under the Initial Loan Documents.

(d) No amendment or other modification to this Lease may be made or shall be effective without the prior written consent of Initial Lender.

(e) Lessee and Lessor expressly acknowledge that Initial Lender is an intended third-party beneficiary of the provisions of this Lease relating, directly or indirectly, to the Initial Loan, and Initial Lender is entitled to enforce the provisions hereof.

(f) For so long as the Initial Loan remains outstanding, Initial Lender, at Lessor's expense, shall have the right from time to time, upon prior written notice to Lessee and Manager, by its accountants or representatives, to examine and (at Initial Lender's option) audit the information that formed the data set forth in any Officer's Certificate provided under Subsection 3.1(d) and, in connection with such examinations and/or audits, to examine all of Lessee's records (including supporting data and sales and excise tax returns) reasonably required to verify Percentage Rent.

(g) For so long as the Initial Loan remains outstanding, Initial Lender and its representatives and its auditors or accountants, at all reasonable times, upon prior written notice to Lessee and Manager, shall have the right to examine, audit, inspect and transcribe all such books and records set forth in Section 4.2.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have executed this Lease by their duly authorized officers as of the date first above written.

*“LESSOR”*

Moody National Lancaster-Austin Holding,  
LLC, a Delaware limited liability company

By: /s/ Brett C. Moody

Name: Brett C. Moody

Title: President

*“LESSEE”*

Moody National Lancaster-Austin MT, LLC,  
a Delaware limited liability company

By: /s/ Brett C. Moody

Name: Brett C. Moody

Title: President

Exhibit A  
Leased Property  
**Legal Description**

# EXHIBIT B

## BASE RENT

<u>Year</u>	<u>Annual Rent</u>	<u>Monthly</u>
Year 1.....	\$ 2,800,000	\$ 233,333.34
Year 2.....	\$ 2,800,000	\$ 233,333.34
Year 3.....	\$ 2,800,000	\$ 233,333.34
Year 4.....	\$ 2,800,000	\$ 233,333.34
Year 5.....	\$ 2,800,000	\$ 233,333.34

Base Rent shall be adjusted for Year 6 as set forth in Section 3.1(a), and shall be adjusted every 5 years thereafter until the termination of the Lease.

## EXHIBIT C

### PERCENTAGE RENT

The Annual Revenue Computation is equal to the amount obtained by multiplying the Gross Revenue (“x”) from the prior twelve months by a factor (“y”) as set forth below:

<u>Gross Revenue (x)</u>	<u>Factor (y)</u>
\$0 – 5,500,000 .....	52.0%
Over \$5,500,000 - \$5,700,000 .....	53.0%
Over \$5,700,000 - \$5,900,000 .....	54.0%
Over \$5,900,000 - \$6,100,000 .....	55.0%
Over \$6,100,000 .....	56.0%

The Annual Revenue Computation shall be adjusted for Year 6 as set forth in Section 3.1(b), and shall be adjusted every 5 years thereafter until the termination of the Lease.

**HOTEL MANAGEMENT**  
**AGREEMENT**

**Residence Inn – Austin, Texas**

between

MOODY NATIONAL LANCASTER-AUSTIN MT, LLC

and

MOODY NATIONAL HOSPITALITY MANAGEMENT, LLC

EFFECTIVE DATE: October 15, 2015

## **HOTEL MANAGEMENT AGREEMENT**

This Hotel Management Agreement ("Agreement") is made as of October 15, 2015 by and between MOODY NATIONAL LANCASTER-AUSTIN MT, LLC, a Delaware limited liability company, whose principal place of business is 6363 Woodway, Suite 110, Houston, Texas 77057 ("Owner"), and MOODY NATIONAL HOSPITALITY MANAGEMENT, LLC, a Texas limited liability company, whose principal place of business is 6363 Woodway, Suite 110, Houston, Texas 77057 ("Manager").

### **RECITALS**

WHEREAS, Moody National Lancaster-Austin Holding, LLC ("Landlord") owns that certain tract of land located at 1200 Barbara Jordan Blvd., Building 4, Austin, TX 78723 ("Land"), upon which has been constructed a hotel known as the Residence Inn Austin ("Hotel");

WHEREAS, Owner leases the Hotel from Landlord pursuant to a Hotel Lease Agreement dated concurrently herewith (as it may have been, or may be, subsequently amended, modified or supplemented ("Master Lease"));

WHEREAS, Manager is engaged in the business of managing hotels and Manager is experienced in the various components of managing a hotel;

WHEREAS, subject to the terms and provisions of this Agreement, Owner desires to have Manager manage and operate the Hotel; and

WHEREAS, Manager desires to perform such services on behalf, and for the account, of the Owner in accordance with the terms hereof.

NOW THEREFORE, in consideration of the foregoing recitals and the premises and the mutual covenants herein contained, the parties hereto agree as follows:

### **ARTICLE I**

#### **DEFINED TERMS**

Section 1.1 "Accounting Period" shall mean each of twelve (12) accounting periods of one (1) calendar month occurring each Fiscal Year.

Section 1.2 "Affiliates" (or Affiliate) shall mean any parent, subsidiary, affiliated or related corporation or other entity of Manager or Owner, or any officer, director, employee or stockholder of Manager or Owner or of any said parent, subsidiary, affiliated or related corporation or other entity, except a stockholder owning less than fifty percent (50%) of the issued and outstanding stock of Manager or Owner or of such parent, subsidiary, affiliated or related corporation or other entity directly or indirectly, who controls, is controlled by or is under common control provided however, for the purposes of to whom this Agreement may be assigned under Section 16.1 hereof, officers, directors and employees shall not be deemed to be Affiliates. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of means the possession, directly or indirectly, of the power: (i) to vote more than fifty percent (50%) of the voting stock of any such entity; or (ii) to direct or cause the direction of the management and policies of any such entity, whether through the ownership of voting stock, by contract or otherwise.

Section 1.3 "Annual Business Plan" shall have the meaning set forth in Section 9.1 hereof.

Section 1.4 "Base Management Fee" shall have the meaning set forth in Section 10.1 hereof.

Section 1.5 "Capital Renewals" shall mean a collective term for (a) normal capital replacements of, or additions to, FF&E, and (b) special projects designed to maintain the Hotel in a first-class condition in accordance with the standards contemplated by this Agreement, including without limitation, renovation of the guest room areas, public space, food and beverage facilities, or back of the house areas, which projects will generally comprise replacements of, or additions to, FF&E, but may include revisions and alterations to the Hotel; most of the expenditures for such special projects will be capitalized, but a portion thereof may be currently expended, such as the purchase of smaller items of FF&E, or expenditures which are ancillary to the overall project but which are properly chargeable to "Property Operations and Maintenance" under the Uniform System.

Section 1.6 "Capital Renewals Budget" shall mean a budget covering the estimated Capital Renewals for three (3) years which indicates in reasonable detail the replacements of, or additions to, FF&E, and the nature of the special projects covered thereby, as approved by the Owner.

Section 1.7 "ERISA" shall mean the Employees Retirement Income Security Act of 1974, as amended.

Section 1.8       “Fiscal Year” shall mean a Calendar Fiscal Year starting on January 1 and ending on December 31 or portion thereof depending upon the Management Commencement Date.

Section 1.9       “Franchise Agreement” shall mean that certain Franchise Agreement by and between Franchisor and Owner (as franchisee), as may be amended from time to time, and any subsequent and/or future franchise agreements entered into by Owner (as franchisee) Franchisee regarding the Hotel.

Section 1.10       “Franchisor” shall mean Marriott International, Inc.

Section 1.11       “Furniture, Fixtures, and Equipment” (“FF&E”) shall mean all furniture, furnishings, light fixtures, outfitings, apparatus, equipment and all other items of personal property customarily installed in, held in storage for use in, used in or required for use in connection with the operation of the Hotel.

Section 1.12       “Gross Operating Revenues” shall mean all receipts, revenues, income and proceeds of sales of every kind received by Manager directly or indirectly from the operation of the Hotel, and shall include, without limitation: room rentals; rent or other payments received from sub-tenants, licensees, and occupants of commercial and retail space located in the Hotel; the proceeds of insurance received by Owner or Manager with respect to use and occupancy or business interruption insurance; deposits forfeited and not refunded; frequent guest program payments; and any amount recovered in any legal action or proceeding or settlement thereof which amount represents and was directly related to, the collection of accounts receivables, cancellation fees or other uncollected revenue. Gross Operating Revenues shall exclude all sales and excise taxes and any similar taxes collected as direct taxes payable to taxing authorities; gratuities or service charges collected for payment to and paid to employees; credit or refunds to guests; proceeds of insurance, save and except for proceeds of insurance with respect to use and occupancy or business interruption insurance; proceeds of sales of property attributable under the accrual method of accounting, pursuant to generally accepted accounting practice or the Uniform System to a different Fiscal Year; proceeds from condemnation or casualty; interest earned on the Reserve Fund (as defined herein); and financing proceeds obtained by the Owner.

Section 1.13       “Group Services” shall have the meaning set forth in Section 5.2 hereof.

Section 1.14       “Hazardous Materials” shall mean any substance or material containing one or more of any of the following: “hazardous material,” “hazardous waste,” “hazardous substance,” “regulated substance,” “petroleum,” “pollutant,” “contaminant,” or “asbestos,” as such terms are defined in any applicable environmental law, in such concentration(s) or amount(s) as may impose cleanup, removal, monitoring or other responsibility under any applicable environmental law, or which may present a significant risk of harm to guests, invitees or employees of the Hotel.

Section 1.15       “Hotel” shall mean the Residence Inn referred to in the first recital herein consisting of 208 units.

Section 1.16       “House Profit” shall mean the excess, during each Fiscal Year (and proportionately for any period less than a Fiscal Year), of Gross Operating Revenues over expenses and deductions incurred in the operation of the Hotel by Manager in fulfilling its duties hereunder during such period, determined in accordance with the accounting system established by the Uniform System (except as modified by this Agreement). In arriving at House Profit, the following expenses shall be proper deductions from Gross Operating Revenues insofar as they relate to the operation of the Hotel: salaries, wages, fringe benefits, payroll taxes, workers’ compensation costs, and other costs related to Manager’s employees in or assigned to the Hotel, including Area Manager and Regional Director, including, without limitation, any claim for wrongful discharge and/or discrimination which expenses are not paid by insurance (provided, however, if such claim is determined to have been caused by the negligence or willful misconduct of any Key Employee, the amount for which Manager is required to indemnify Owner pursuant to this Agreement and has in fact paid to Owner, shall not be a deduction); department expenses; administrative and general expenses; credit card and collection expenses; and the cost of Hotel advertising and business promotion and public relations; heat, light and power; routine repairs, maintenance, landscaping, snow removal, and minor alterations including the cost of maintenance contracts for equipment and any insurance costs related thereto; costs of sales and the cost of replacing inventories and fixed asset supplies consumed in the operation of the Hotel such as linen, china, glassware, silver, uniforms and similar items; sales or excise taxes on goods or services provided to the Hotel; a reasonable reserve for uncollectible accounts receivable as determined by Manager; all costs and fees of independent accountants or other third parties who perform services required or permitted hereunder on behalf of the Hotel; the cost and expense of technical consultants and operational experts for specialized services provided to the Hotel; the Base Management Fee; rental payments on telephone leases, long distance access systems, and other operational leases approved by Manager; all costs or expenses incurred under any franchise, such as franchise fees if applicable, system charges for such items as reservations, frequent traveler programs, and airline points, system advertising or promotional costs, but excluding the initial fees paid in consideration of granting any franchise; and all other out of pocket actual costs and expenses and fees incurred by the Manager in the proper and efficient operation of the Hotel, including, but not limited to, all licenses, travel costs, and out-of-pocket expenses of employees of Manager or its Affiliates employed at the Hotel or performing services for the Hotel such as fax, postage, telephone and express mail.

Section 1.17       “Independent Auditor” shall mean a reputable national firm of independent certified public accountants having hotel experience, recommended by Manager from time to time and approved by Owner.

Section 1.18 “Key Employees” shall mean (to the extent such positions exist): (a) at the Hotel level, any salaried manager including Area Manager and (b) at the corporate level, positions at or below Vice President Hospitality.

Section 1.19 “Legal Requirements” shall mean all public laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments and governmental authorities, which, now or hereafter, may be applicable to the Hotel premises and the operation thereof, including, without limitation, those relating to zoning, building, life/safety, environmental and health, employee benefits, and providing continued health care coverage under ERISA.

Section 1.20 “Management Commencement Date” shall be October 15, 2015.

Section 1.21 “Manager” shall mean Moody National Hospitality Management, LLC, and its permitted successors and assigns.

Section 1.22 “Net Operating Income” shall mean House Profit less property taxes and insurance expense.

Section 1.23 “Operating Funds” shall have the meaning set forth in Section 7.2 hereof.

Section 1.24 “Operating Supplies” shall mean all chinaware, glassware, linens, silverware, uniforms, utensils and other similar items necessary to the operation of the Hotel.

Section 1.25 “Termination Fee” shall have the meaning set forth in Section 12.3 hereof.

Section 1.26 “Reserve Fund” shall have the meaning set forth in Section 7.3.

Section 1.27 “Uniform System” shall mean the Uniform System of Accounts for the Lodging Industry, “Tenth Revised Edition”, 2006, as revised and adopted by the Hotel Association of New York City, Inc., from time to time and as modified by applicable provisions of this Agreement.

Other terms are defined in the Recitations and the further provisions of this Agreement, and shall have the respective meanings there ascribed to them.

## **ARTICLE II**

### **ENGAGEMENT OF MANAGER AND COMMENCEMENT OF MANAGEMENT OF THE HOTEL**

Section 2.1 Engagement of Manager to Manage Hotel. Owner hereby appoints Manager as Owner’s exclusive independent contractor, subject to the terms of this Agreement, to supervise, direct and control the management and operation of the Hotel, and Manager hereby undertakes and agrees to perform, as an independent contractor of and for the account of Owner, all of the services and to comply with all of the provisions of this Agreement.

Section 2.2 Management Commencement Date and Takeover Activities.

A. Manager shall assume management and operation of the Hotel at 12:00:01 AM on the Management Commencement Date.

B. In connection with assuming management of the Hotel, Manager must undertake certain activities prior to and following the Management Commencement Date. These activities (“Takeover Activities”) shall include, without limitation, the following: (i) recruiting, relocating, training, and employing certain management staff required for the Hotel; (ii) assisting Owner (as requested) in applying for and procuring (in Manager’s name and/or Owner’s name as required by local authorities) all licenses and permits required for the operation of the Hotel, including, but not limited to, all licenses for the sale of alcoholic beverages (if applicable); and (iii) any other activities customarily required in order to assume management responsibilities of a hotel under current operation or newly constructed hotel (as applicable), including, but not limited to verifying inventories and other closing allocations on closing statements.

Section 2.3 Representations of Manager. Manager represents that it is experienced and capable in the planning, decorating, furnishing, equipping, promoting, management, and operation of hotels, and Manager covenants and agrees to manage and operate the Hotel and to protect and preserve the assets that comprise the Hotel. Manager covenants and agrees to manage and operate the Hotel in accordance with the standards and specifications set forth in the Franchise Agreement for the Hotel, so long as Owner provides sufficient capital to enable Manager to operate the Hotel in good standing under the Franchise Agreement, and in accordance with the Annual Business Plan. Manager represents and acknowledges that as of the Management Commencement Date Manager will cause the Hotel to be adequately staffed and capable of operating.

### **ARTICLE III**

#### **OPERATION OF THE HOTEL AFTER THE MANAGEMENT COMMENCEMENT DATE**

Section 3.1 Authority of Manager. On and after the Management Commencement Date, the Manager shall have the exclusive authority and duty to direct, supervise, manage and operate the Hotel in an efficient and economical manner and to determine the programs and policies to be followed in connection therewith, all in accordance with the provisions of this Agreement and the Annual Business Plan. Subject to the provisions of this Agreement and the Annual Business Plan, Manager shall have the discretion and control in all matters relating to the management and operation of the Hotel. Without limiting the generality of the foregoing, Manager shall have the authority and duty consistent with the Annual Business Plan to:

- A. Recruit, employ, relocate, pay, train, supervise, and discharge all employees and personnel necessary for the operation of the Hotel in a manner consistent with Manager's practices at other comparable hotels managed and operated by Manager (taking into account locational differences). Included in the foregoing shall be the determination of all personnel policies, which shall be in writing;
- B. Establish all prices, price schedules, rates and rate schedules, rents, lease charges, concession charges, and, in connection therewith, the supervision, direction and control of the collection, receipt and giving of receipts for all services or income of any nature from the Hotel's operations;
- C. Supervise and maintain complete books and records, including without limitation, the books of accounts and accounting procedures of the Hotel which shall at all times be kept at the Hotel or in its Affiliate's corporate office or other suitable location pursuant to the operation of centralized accounting services;
- D. Administer leases, license and concession agreements for all public space at the Hotel, including all stores, office space and lobby space. Manager shall not, without first obtaining Owner's prior written consent, enter into any space leases. All such leases shall be in Owner's name and may be executed by Manager on Owner's behalf;
- E. Keep the Hotel and the Furniture, Fixtures, and Equipment in good order, repair and condition, including, without limitation, making necessary replacements, improvements, additions and substitutions to the Hotel, subject to the approved Annual Business Plan and in conformity with all Legal Requirements and in accordance with the Franchisor's standards for the operation of the Hotel;
- F. Negotiate and enter into, on behalf of the Owner, service contracts and licenses required in the ordinary course of business in operating the Hotel, including, without limitation, contracts for life/safety systems maintenance, electricity, gas, telephone, cleaning, elevator and boiler maintenance, air conditioning maintenance, master television service, master internet service, laundry and dry cleaning, and other services which Manager deems advisable; provided however, any contract for a term in excess of one (1) year or an annual payment in excess of Ten Thousand and No/100 Dollars (\$10,000.00) shall be approved by Owner, which approval shall not be unreasonably withheld or delayed;
- G. Negotiate and enter into, on behalf of Owner, agreements for banquet facilities and guest rooms and agreements to provide entertainment for the Hotel, and licenses for copyright music and videos;
- H. Supervise and purchase or arrange for the purchase in the most economical manner of all inventories, provisions, and Operating Supplies, which, in the normal course of business, are necessary and proper to maintain and operate the Hotel in accordance with the Annual Business Plan;
- I. Timely prepare and submit to Owner the Annual Business Plan as hereinafter described;
- J. Perform such other tasks as are customary and usual in the operation of a hotel of a class and standing consistent with the Hotel's facilities;
- K. Operate the Hotel in accordance with the standards and specifications set forth in the Franchise Agreement for the Hotel so long as Owner provides sufficient capital to enable Manager to operate the Hotel in good standing under the Franchise Agreement;
- L. Provide risk management services in accordance with the terms of this Agreement;
- M. Manager will not permit the presence, use, storage, handling or disposal of any Hazardous Materials on the Hotel premises and in violation of any Legal Requirements and regardless of whether or not a given Hazardous Material is permitted on the Hotel premises under applicable Legal Requirements, Manager shall only bring on the premises such Hazardous Materials as are needed in the normal course of business of the Hotel; and
- N. Subject to Article XVII, administer and remit all real estate, personal property taxes, and ad valorem property taxes, assessments and similar charges on or relating to the Hotel during the Term of this Agreement.

Section 3.2 Employees. Manager or an Affiliate of Manager shall at all times be the employer of all employees in the Hotel. Owner's and Manager's agents and employees who provide consulting services to Manager in connection with the Hotel, shall be acting as the agent of the Owner. Manager shall have complete authority over pay scales and all benefit plans as long as the pay scales and benefits plans are reasonable and competitive in the market and consistent with those at comparable hotels managed by Manager or its Affiliates.

Section 3.3 Independent Contractors. Manager may hire independent contractors to provide such legal, accounting and other professional services as Manager deems necessary or appropriate in the ordinary course of business in connection with the operation of the Hotel and at an expense approved by Owner and itemized in the Annual Business Plan.

#### **ARTICLE IV**

##### **OPERATING EXPENSES PAID BY OWNER**

Section 4.1 Expenses Incurred by Manager on Behalf of Owner. Everything done by Manager in the performance of its obligations and all expenses incurred under this Agreement shall be for and on behalf of Owner and for its account except the services referred to in Article V hereof, which shall be rendered and performed by Manager or its Affiliates at their expense and not separately charged to Owner, except as otherwise provided in Article V.

Section 4.2 Liabilities to Third Parties. Except to the extent provided in Article XVIII hereof or elsewhere herein, all liabilities to third parties arising in the course of business of the Hotel are and shall be the obligations of Owner, and Manager shall not be liable for any of such obligations by reason of its management, supervision and operation of the Hotel for Owner.

Section 4.3 Manager Not Obligated to Advance Own Funds. Neither Manager nor any of its Affiliates shall be obligated to advance any of its own funds to or for the account of Owner, nor to incur any liability unless Owner shall have furnished Manager with funds necessary for the discharge thereof prior to incurring such liability. If Manager shall have advanced any funds in payment of an expense in the maintenance and operation of the Hotel, Manager shall promptly provide Owner with written notice upon making Owner such advances and Owner shall reimburse Manager therefor no later than five (5) days after receipt of such notice. Notwithstanding the foregoing, Manager shall pay from its own funds the expenses hereinafter described in Section 5.1 hereof.

#### **ARTICLE V**

##### **SUPPORT SERVICES PAID BY MANAGER'S AFFILIATES**

Section 5.1 Normal Consulting Services of Manager's Affiliates. Except as hereinafter provided in Section 5.2, after the Management Commencement Date, the normal consulting services of the corporate officers and employees of Manager's Affiliates, including its corporate executives for operations, room operations, food and beverage, sales and marketing, finance and administration, real estate, and accounting (excluding the Accounting Fee and Revenue Management Fee), to be rendered from time to time to Manager in connection with the operations of the Hotel, shall be provided by Manager's Affiliates to Manager at Manager's sole cost and expense and not charged to Owner.

Section 5.2 Exceptions for Certain Support Services of Manager's Affiliates. Notwithstanding the foregoing, Owner shall reimburse Manager for: (i) the appropriate and pro-rata share of salaries, wages or benefits of any officers, directors or employees of Manager or Manager's Affiliates who shall be regularly or temporarily employed or assigned on a full-time basis at the Hotel or providing regular services to the Hotel, including human resources support, accounting support and the Regional Director of Operations, subject to the prior written approval of Owner, unless included in the Annual Business Plan; (ii) personnel providing legal services to Manager in connection with matters involving the Hotel, which services shall be charged at rates which approximate Manager's Affiliates' costs associated with such personnel and which services, unless included in the Annual Business Plan, shall be subject to the prior written approval of Owner; (iii) the out-of-pocket expenses directly related to the operation and management of the Hotel; and (iv) certain other services ("Group Services") best provided to Owner and Manager's Affiliates on a group rather than on an individual basis, including, without limitation, any insurance program Manager may institute. Manager and its Affiliates may profit from such programs and services through volume rebates, rate reductions, and other incentives from outside vendors, through markups, internal profits, and other benefits. Manager's intention is to make available to Owner certain benefits of group or national purchasing programs on a number of items that can be used by or at the Hotel, although Manager cannot and does not assure or represent that any item or that the total of items purchased through any Group Services program will be at a cost lower than may otherwise be available to Owner or the Hotel from other sources. Owner hereby acknowledges the foregoing disclosure and consents to the retention by Manager or its Affiliates of such rebates, incentives, profits and other benefits which are paid, accrue to, or are retained by Manager in connection with the Group Services programs Owner elects to participate in. Owner specifically acknowledges and stipulates that Manager, in its capacity as operator of the Hotel or otherwise, is not acting as a fiduciary to Owner in connection with any aspect of Group Services. Further, Owner agrees that Manager is not required to disclose to Owner any profit, rebate, markup, incentive or other similar payment that Manager receives or retains from any markup or other source, including third party vendors and suppliers and Affiliates of Manager, such disclosure being specifically waived. Owner hereby waives any claim it might have to any profit, rebate, markup, incentive or similar sum which Manager or an Affiliate of Manager receives or retains in connection with purchases for the Hotel through any Group Services program, if any.

## ARTICLE VI

### **COMPLIANCE WITH LAWS**

Section 6.1 Compliance by Manager and Owner After Management Commencement Date. Manager shall make all reasonable efforts, at expense of Owner, to comply with all Legal Requirements, including but not limited to, all laws, rules, regulations, requirements, orders, notices, determinations and ordinances of any governing authority, including, without limitation, the state and local liquor authorities, and the requirements of any insurance companies covering any of the risks against which the Hotel is insured (provided, however, if such noncompliance is determined to have been caused by the gross negligence or willful misconduct of the Manager, the amount for which Manager is required to indemnify Owner pursuant to Article XVIII hereof shall not be an expense of Owner and Manager shall reimburse Owner or pay same directly). If the cost of compliance exceeds Two Thousand Dollars (\$2,000) in any instance, Manager shall promptly notify Owner, and Owner shall promptly provide Manager with funds for the payment of such costs.

Section 6.2 Owner's Right to Contest or Postpone Compliance. With respect to a violation of any such laws or rules, the Owner shall have the right to contest any of the foregoing and postpone compliance pending the determination of such contest, if so permitted by law and not detrimental to the operation of the Hotel but in such event, Owner shall indemnify and hold harmless Manager from any loss, cost, damage or expense, resulting solely from such postponement.

Section 6.3 Manager's Right to Terminate Agreement. Notwithstanding anything in this Agreement to the contrary and subject to Section 12.4, if within thirty (30) days of receiving Manager's written request, Owner fails to approve the changes, repairs, alterations, improvements, renewals or replacements to the Hotel which Manager determines in its reasonable judgment are necessary to (i) protect the Hotel, Owner and/or Manager from innkeeper liability exposure; or (ii) ensure material compliance with any applicable code requirements pertaining to life safety systems requirements; or (iii) ensure material compliance with any and all Legal Requirements including, but not limited to, all state, local, or federal employment law, including, without limitation, the Americans with Disabilities Act, then Manager may thirty (30) days after providing Owner an additional notice regarding its termination and, terminate this Agreement any time after the expiration of such second thirty (30) day notice period upon seven (7) days' written notice.

## ARTICLE VII

### **OPERATING ACCOUNT AND OPERATING FUNDS**

Section 7.1 Manager shall establish and implement Owner's cash management plan. Manager shall establish, at such bank(s) designated by the Owner, at least two hotel accounts necessary for the operation of the Hotel (collectively, the "Agency Accounts"). The Agency Accounts are the property of Owner and Owner may not more frequently than weekly direct Manager to distribute into the Owner Account, within one (1) business day after receipt of notice from Owner, any funds remaining in the Operating Account after accrued fees and expenses have been either disbursed.

- A. Owner Account. Manager shall deposit all monies from the operation of the Hotel and due to Owner into a depository account for the sole benefit of Owner. Manager may endorse any and all checks drawn to the order of Owner for deposit in the Owner Account, however, Manager shall have no rights to withdrawal any monies from the Owner Account, or otherwise direct, any such funds into the Operating Account (as defined below).
- B. Operating Account. Owner will supply to Manager any working capital for the operation of the Hotel, which sum shall be deposited into one or more separate operating accounts to assure the timely payment of expenses of the Hotel in accordance with the Franchise Agreement and Annual Business Plan (the "Operating Account"). If at any time during the Term, the funds available from the Hotel operations for the payment of any of the costs of the Hotel, including Manager's Management Fee and reimbursable expenses, shall be insufficient to pay the same as they become due and payable, Owner shall within five (5) days of written request from Manager, deposit sufficient funds in the Hotel bank accounts to make such payments. Business days shall exclude Saturdays, Sundays and all statutory holidays observed under the laws of the state where the Hotel is located.

Section 7.2 Operating Funds. From time to time if and as required, Owner shall maintain cash in the Operating Account ("Operating Funds") sufficient in amount to properly operate the Hotel (including amounts sufficient to pay those expenses described as deductions from Gross Operating Revenues). If at any time during the Term, the Operating Funds on hand fall below \$35,000 (the "Minimum Balance"), Owner shall, within five (5) days after Manager's written notice to Owner, deposit in the Operating Account additional funds in an amount equal to the difference between the Operating Funds then on hand and the Minimum Balance. The Operating Funds shall at all times be the property of the Owner.

Section 7.3 Reserve Fund Account. There shall be established the Reserve Fund in an interest bearing account in a bank selected by Owner and approved by Manager which approval shall not be unreasonably withheld. The Reserve Fund shall at all times be the property of the Owner (or, if so provided in the Master Lease, the Landlord). Any amounts remaining in the Reserve Fund at the end of each Fiscal Year will be carried forward until fully expended, but shall not be credited against required contributions to the Reserve Fund for any subsequent Fiscal Year. Owner shall deposit into a reserve fund ("Reserve Fund") an annual amount of up to Four

Percent (4%) of Gross Operating Revenues (the “FF&E Percentage Contribution”). Manager shall deduct the FF&E Percentage Contribution on a monthly basis from Gross Operating Revenues and deposit such amount in the Reserve Fund. The Reserve Fund shall be used only for additions or replacements to FF&E and Capital Renewals as contemplated by the Capital Renewals Budget. It is understood that the amounts to be reserved for Capital Renewals under this Section 7.3 may not represent the amounts which may be required in later years to keep the Hotel in the condition contemplated by this Agreement and, accordingly, the parties recognize that the Capital Renewals Budgets in future years may call for additional expenditures in excess of the amounts being reserved therefor under this Section 7.3 which additional expenditures, if necessary, shall be paid from the Operating Funds (such expenditure shall not be considered an expense in calculating House Profit) and the balance, if any, shall be paid by Owner. Notwithstanding anything herein to the contrary, in the event Owner’s lender (or any other lender for whose benefit the Hotel has been encumbered by mortgage, deed of trust, or like agreement) requires the same or greater reserve requirements, and Owner provides Manager reasonable evidence to this effect, the Reserve Fund shall not be required.

## **ARTICLE VIII**

### **BOOKS, RECORDS AND FINANCIAL STATEMENTS**

Section 8.1 Accounting System. Manager shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel on an accrual basis, all substantially in accordance with the Uniform System. The Fiscal Year used by Manager will consist of twelve (12) Accounting Periods of one (1) calendar month each. Except for such books and records as Manager may elect to keep in its Affiliate’s corporate office or other suitable location pursuant to the operation of centralized accounting services, the books of account and all other records relating to, or reflecting the operation of, the Hotel shall be kept at the Hotel and shall be available to Owner and its representatives at all reasonable times for examination, audit, inspection and transcription. All of such books and records, including, without limitation, books of accounts, guest records and front office records, at all times shall be the property of Owner and shall not be removed from the Hotel by Manager without notifying Owner. Upon termination of this Agreement, all the books and records shall be turned over to Owner to ensure the orderly continuation of the operation of the Hotel, but the books and records shall thereafter be available to the Manager at all reasonable times for inspection, audit, examination and transcription.

Section 8.2 Financial Statements. Manager shall deliver to Owner within twenty-one (21) days after the end of each Accounting Period a profit and loss statement showing the results of the operation of the Hotel for such Accounting Period and the Fiscal Year to date and a balance sheet as of the close of such Accounting Period. Manager shall deliver to Owner within thirty (30) days after the end of each Fiscal Year a profit and loss statement showing the result of operation of the Hotel during such Fiscal Year, and the House Profit, if any, and Net Operating Income, for such Fiscal Year and a balance sheet for the Hotel as of the close of such Fiscal Year. Manager shall, if Owner elects to conduct an audit, cooperate with the Independent Auditor so as to allow the Independent Auditor to deliver audited financial statements to Owner within ninety (90) days after the end of each Fiscal Year. Any disputes as to the contents of any such statements or any accounting matter hereunder, shall be determined by the independent auditor mutually agreed upon by Owner and Manager (the “Independent Auditor”) whose decision shall be final and conclusive on Manager and Owner, the expense for which shall be an operating expense.

Section 8.3 Initial Accounting Records. Owner shall provide Manager with opening balance sheet entries for Manager’s use within fifteen (15) days following the Management Commencement Date, and Manager shall not be responsible for any reconstruction of accounting records prior to the Management Commencement Date. Manager shall not be responsible for the submission of a completed profit and loss statement prior to thirty (30) days after the receipt of the balance sheet entries. Owner acknowledges that Manager has no knowledge of and cannot certify the accuracy of any historical financial information provided to Manager by Owner.

## **ARTICLE IX**

### **ANNUAL BUSINESS PLAN**

Section 9.1 Preparation of Annual Business Plan. Manager shall submit to Owner as soon as reasonably practicable after the Management Commencement Date a forecast of performance for the balance of the year in which the Management Commencement Date Occurs. Thereafter, at least thirty (30) days prior to the end of each Fiscal Year, Manager shall submit an annual business plan for the succeeding Fiscal Year (“Annual Business Plan”). The Annual Business Plan shall include: an operating budget showing estimated Gross Operating Revenues, department profits, operating expenses, House Profit and Net Operating Income for the forthcoming Fiscal Year for the Hotel; a marketing plan; a Capital Renewals Budget; all in reasonable detail and, where appropriate, with the basis for all assumptions expressly set forth. Owner shall review the Annual Business Plan and either approve or notify Manager of any objections to the Annual Business Plan in writing within twenty (20) days of its receipt thereof. Owner’s approval of the Annual Business Plan shall not be unreasonably withheld or delayed. The parties will attempt to resolve in good faith any objections by Owner within thirty (30) days following Manager’s receipt of Owner’s disapproval.

Section 9.2 Annual Business Plan Disputes. If Manager and Owner are unable to agree upon an Annual Business Plan or any details thereof, the final Annual Business Plan shall be determined by arbitration in accordance with the provisions of Section 19.7 hereof, it being understood that only those details, line items or portions of the Annual Business Plan which are in dispute shall be the subject of such arbitration. Pending the conclusion of any such arbitration proceeding, the Annual Business Plan for all purposes under this Agreement shall be as follows: (a) the undisputed items shall be as set forth in the proposed Annual Business Plan and (b) the disputed items shall be modified by increasing the actual expenses incurred by the Hotel during the prior year in accordance with the Consumer Price Index (for purposes hereof, Consumer Price Index shall mean Consumer Price Index-Cities-All Urban Consumers (1982-84=100), issued by the Bureau of Labor Statistics of the United States Department of Labor). Owner and Manager agree that arbitration or mediation shall be the sole procedure for resolving any dispute regarding the Annual Business Plan.

Section 9.3 Deviations from Annual Business Plan. Manager shall diligently pursue all feasible measures to enable the Hotel to adhere to the Annual Business Plan, provided, however, Owner acknowledges and agrees that Manager will not be responsible for any variances from the Annual Business Plan. In the event that Manager determines that circumstances require that there be material changes in the Annual Business Plan, Manager shall so notify Owner as soon as practically possible after the need for such changes becomes apparent. Such determination is made when the annual amount in a specified department described below is forecasted to exceed the budgeted amount set forth in the Annual Business Plan as reflected in the monthly forecast. For purposes of this Section 9.3, (i) a variation of more than ten percent (10%) below or in excess of the amount set forth in the Annual Business Plan for either the Sales & Marketing department or the Repairs & Maintenance department; or (ii) a variation of more than ten percent (10%) in excess of the amount set forth in the Annual Business Plan for any other major deduction category in calculating House Profit (e.g., a department such as General and Administrative), shall be deemed to be material. Any such material change shall be subject to Owner's approval; provided, however, Owner's approval shall not be required to the extent such material change consists of: (a) expenses which are deducted from House Profit, (b) expenses which are nondiscretionary by virtue of being determined by a third party or governmental entity, such as minimum wages under collective bargaining agreements, utility costs, franchise fee increases, changes in franchise standards and sales taxes, (c) the amount of increased expenses resulting directly from increases in volume, provided that, departmental profit margins and House Profit margins are not diminished or otherwise negatively affected or (d) expenditures as may be required if Manager reasonably believes such expenditure to be required by any emergency situation imminently threatening life, health or safety (provided that Manager shall notify Owner of such emergency and the need for such expenditure in advance or if not possible in advance then as soon as practicable). Notwithstanding anything herein to the contrary, Manager is not warranting or guaranteeing in any respect the actual operating results of the Hotel.

## **ARTICLE X**

### **MANAGER'S FEES AND REIMBURSEMENTS**

Section 10.1 Base Management Fee. During each Fiscal Year after the Management Commencement Date (and for a fraction of any partial Fiscal Year), in consideration of the services Manager is to render under this Agreement, Manager will be paid a fee ("Base Management Fee") at the rate of four percent (4%) of Gross Operating Revenues per Fiscal Year. The Base Management Fee will be paid in installments by deducting such fee from Gross Operating Revenues immediately following each Accounting Period at the rate of four percent (4%) of Gross Operating Revenues for that Accounting Period.

Section 10.2 Accounting Fee and Revenue Management Fee. In addition to the Base Management Fee, the Manager shall be paid a fee for centralized accounting services (the "Accounting Fee") equal to \$2,500 per Accounting Period during the Term of this Agreement and for one (1) Accounting Period after the termination of this Agreement. The Accounting Fee shall be increased each year in accordance with increases in the Consumer Price Index-Cities-All Urban Consumers (1982-84 — 100), issued by the Bureau of Labor Statistics of the United States Department of Labor. In addition, the Manager shall be paid a monthly fee for revenue management services (the "Revenue Management Fee") equal to \$1,200 per month.

Section 10.3 Technical, Procurement or Other Services. Service fees for technical or procurement services for the Hotel shall be paid to Manager or its Affiliates if and only if Owner requests such services of Manager, or any other services beyond the scope of services to be provided pursuant to this Agreement. The amount of fees shall be agreed to by Owner and Manager prior to commencing such services. Technical services include renovation coordination, design review, construction management and related services. Procurement services relate to purchase and installation of furniture, fixtures, equipment, and operating equipment of the hotel. Other services may include such services as IT Support.

Section 10.4 Takeover Expenses. Appropriate expenses incurred in connection with the Takeover Activities (the "Takeover Expenses") shall be paid by Owner and advanced to Manager in accordance with an accounting of such expenses and any and all relevant documents to support such accounting prepared by Manager.

## **ARTICLE XI**

### **INSURANCE**

Section 11.1 Insurance Coverage. Manager and/or Owner (as identified in Exhibit A) shall procure and maintain from and after the Management Commencement Date, at Owner's cost and expense, the insurance policies as provided on Exhibit A in amounts sufficient to reasonably and adequately protect Owner and Manager against loss or damage arising in connection with the ownership, management and operation of the Hotel, as well as to satisfy the requirements of Owner's lender and the Franchise Agreement. The Owner shall be responsible for obtaining the insurance coverages identified in Part A to Exhibit A. These policies will be in the name of Owner and will name the Manager as an additional insured. The Manager shall be responsible for obtaining the insurance coverages identified in Part B to Exhibit A. These policies will be in the name of Manager and name the Owner of the Hotel as an additional insured. All insurance policies shall be issued by insurance companies having an A.M. Best's rating of not less than A – IX. Any insurance required to be provided by Manager in Section 11.1 may be provided under the blanket insurance policy of Manager, which policy covers other hotel properties managed by Manager. All premiums, costs and expenses shall be allocated among the properties participating under such program in accordance with generally accepted underwriting standards. Owner assumes no responsibility for, or interest in, additional premiums or proceeds (other than standard audit adjustments) generated by the blanket insurance policy of Manager. Owner shall be provided certificates evidencing the insurance coverages required pursuant to Section 11.1 on or before thirty (30) days after the Management Commencement Date, and upon any and all subsequent renewals thereof. Owner shall have the right at any time for any reasonable period of time to place property and casualty insurance coverage, and with the consent of Manager (which shall not be unreasonably withheld or delayed) any other required coverage under this Section 11.1. If Owner notifies Manager that Owner shall place the insurance coverage, Manager shall cooperate with Owner and shall terminate, with advance notice to Owner, any overlapping insurance coverage.

Section 11.2 Waiver of Subrogation - Owner Assumes Risk of Adequacy. Neither Manager nor Owner shall assert against the other, and do hereby waive with respect to each other, or against any other entity or person named as additional insureds on any policies carried under this Article XI, any claims for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the operation or maintenance of the Hotel, to the extent that the same are covered by the insurance required under this Article XI. Each policy of insurance shall contain a specific waiver of subrogation reflecting the provisions of this Section 11.2, and a provision to the effect that the existence of the preceding waiver shall not affect the validity of any such policy or the obligation of the insurer to pay the full amount of any loss sustained. Owner and Manager acknowledge that they have agreed on the adequacy of the amounts of any insurance coverage provided under this Agreement.

## **ARTICLE XII**

### **TERM**

Section 12.1 Term. This Agreement shall be for a period commencing on the Management Commencement Date and unless sooner terminated as hereinafter provided, shall continue until the end of the Fiscal Year in which the tenth (10th) annual anniversary of the Management Commencement Date occurs (the "Term"). Thereafter, and subject to the mutual written consent of the Owner and Manager, this Agreement shall automatically renew for four (4) consecutive five (5) year renewal terms ("Renewal Terms") unless Manager or Owner provides written notice of termination to the other party at least one hundred and eighty (180) days prior to the end of the then current term. Any reference in this Agreement to "Term" shall be deemed to be a reference to the Initial Term and any Renewal Term.

Section 12.2 Early Termination. Owner and Manager acknowledge that, but for the Term of this Agreement and the parties' commitment to the contemplated relationship for the Term of this Agreement, the Manager would not have made the significant investments of money and time necessary to commence and conduct services under this Agreement and foregone other opportunities. In the event that this Agreement is terminated prior to the expiration of the Term (or any Renewal Term), for any reason other than Manager Default and except as set forth in Section 12.4, then Owner shall pay to Manager the Termination Fee (as calculated below). Owner and Manager further acknowledge and agree that Manager's damages in the event of a termination of this Agreement would be difficult or impossible to determine, including, without limitation, loss of management fees, harm to Manager's reputation, loss of goodwill, disruption of operations, loss of contributions to budgeted system expenses and loss of a hotel with strategic significance to Manager's system, and the Termination Fee is a fair estimate of those damages which has been agreed to in an effort to cause the amount of said damages to be certain.

Section 12.3 Termination Fee. The Termination Fee shall be the sum of the Base Management Fee estimated to be received for each Fiscal Year remaining Term of this Agreement ("Termination Fee"). The fees estimated to be received for any given Fiscal Year shall be determined by increasing the Base Management Fee for the last Fiscal Year prior to the termination of this Agreement (if there has not been one (1) full Fiscal Year under this Agreement prior to such termination, then the fees that would have been earned by Manager for the twelve (12) month period under the Annual Business Plan. Owner and Manager specifically acknowledge that the calculation of the Termination Fee must take into account, and reasonably does take into account, (1) Manager's loss of Management

Fees and the benefit of this Agreement over the full remaining Term of this Agreement, (2) the material impact of inflation on Fees over such an extended period, and (3) the inherent difficulty in predicting or quantifying the measure of damages from the non-fee components of Manager's damages described above.

Section 12.4 Special Lender Provision. Notwithstanding any other provision of this Agreement, so long as the loan to Landlord from KeyBank National Association, or its successors or assigns, remains outstanding, this Agreement may be terminated by Owner upon 30 days prior written notice, with or without cause, and no termination fee shall be payable while the loan is outstanding.

### **ARTICLE XIII**

#### **DEFAULT AND REMEDIES**

Section 13.1 Manager Default. This Agreement and the employment of Manager may be terminated by Owner, at its option, upon the happening of any of the following events: (a) a material breach, default, or noncompliance by Manager with any covenants contained in this Agreement; (b) operation of the Hotel by Manager in such a manner as to cause the Franchisor to require the removal of Manager as the operator of the Hotel or to give notice to the Owner of intent to terminate the Franchise Agreement (unless such termination is due to Owner's failure to provide the funds necessary for any required capital improvements or renovations); or (c) the making by Manager of a general assignment for the benefit of creditors; or a petition of application by either party to any tribunal for the appointment of a trustee, custodian, receiver or liquidator of all or substantially all of its business, estate or assets; or the commencement by Manager of any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment or debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect.

Section 13.2 Owner Default. This Agreement may be terminated by Manager, at its option, upon the happening of any of the following events: (a) failure of Owner to pay or reimburse Manager as stipulated in this Agreement, said termination to become effective within five (5) days after Manager having served Owner notice of the failure and Owner's continued failure to remedy; (b) material breach, default or noncompliance by Owner with any other covenants contained in this Agreement; (c) the making by Owner of a general assignment for the benefit of creditors; or a petition of application by either party to any tribunal for the appointment of a trustee, custodian, receiver or liquidator of all or substantially all of its business, estate or assets; or the commencement by Owner of any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment or debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect.

Section 13.3 Right to Cure. Except with respect to a default under Section 13.2(a) above, the defaulting party shall have a period of thirty (30) days after receipt of written notice from the non-defaulting party to cure the matter giving rise to the default, and if the nature of the default is such that it is not reasonably susceptible to cure within a thirty (30) day period, the defaulting party shall have up to one hundred twenty (120) days after receipt of written notice to cure such default, provided the defaulting party promptly commences and diligently pursues the curing of such default.

Section 13.4 Remedies. Upon the breach of any term or condition of this Agreement by Manager and the expiration of any applicable cure period, the sole remedy of Owner shall be to terminate this Agreement without the payment of any Termination Fee to Manager; except that Owner shall be able to seek actual damages and/or equitable relief in the event that: (a) Manager solely causes a default under the Franchise Agreement, (b) Manager voluntarily ceases operations of the Hotel for more than twenty-four (24) hours; or (c) Manager commits a crime or intentional tort, as the case may be. Upon the breach of any term or condition of this Agreement by Owner and expiration of any applicable cure period, Manager can elect to terminate this Agreement and shall be entitled to the Termination Fee.

### **ARTICLE XIV**

#### **DAMAGE TO AND DESTRUCTION OF THE HOTEL**

Section 14.1 Casualty. In the event that the Hotel shall be substantially destroyed during the term of the Agreement, by fire or other casualty, and the Owner shall elect, for any reason, not to rebuild the Hotel and other improvements, the terms of this Agreement shall cease and terminate as of the date of such destruction and no Termination Fee shall be applicable. If this Agreement is terminated pursuant to the provisions of this Section 14.1 and within a period of two (2) years from the date of termination, Owner commences the construction of a new hotel on the Land, then Manager shall be given a right of first refusal to operate the Hotel on the basis set forth in this Agreement, subject to those changes required by the changes in circumstances and for a term which remained under the Agreement prior to such termination. In the event that the Hotel shall be partially destroyed during the term of the Agreement, by fire or other casualty, and the Owner shall elect to temporarily close all or a portion the Hotel for repair and restoration, Manager shall continue to manage the Hotel and shall be entitled to all Fees described in Article X, including a monthly management fee during the period or reconstruction. The proceeds of any business interruption insurance shall be included in Gross Operating Revenues for the period for which such proceeds are payable. In addition, in the event that Owner engages the Manager to complete the renovations, Manager shall be entitled to a renovation and construction fee of five percent (5%) of the entire cost of reconstruction for the additional time and expense associated with the work as approved by Owner in writing. Upon completion of the reconstruction, Manager shall be entitled to its normal management fee as set forth in Article X.

Section 14.2 Condemnation. If the whole or a substantial portion of the Hotel shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority for any public or quasi-public use of purpose, or if such a portion thereof shall be taken or condemned as to make it imprudent or unreasonable, in either party's reasonable opinion, to use the remaining portion as a Hotel of the type and class immediately preceding such taking or condemnation, then, in either of such events, the terms of this Agreement shall cease and terminate as of the date of such taking or condemnation and no Termination Fee shall be applicable. If this Agreement is terminated pursuant to the provisions of this Section 14.2 and within a period of two (2) years from the date of termination, Owner commences the construction of a hotel on the Land, then Manager shall be given a right of first refusal to operate the Hotel on the basis set forth in this Agreement subject to those changes required by the changes in circumstances and for a term which remained under the Agreement prior to such termination. Any condemnation award or similar compensation shall be the property of Owner, provided that Manager shall have the right to bring a separate proceeding against the condemning authority for any damages and expenses specifically incurred by Manager as a result of such condemnation.

## **ARTICLE XV**

### **EARLY TERMINATION**

Section 15.1 If a termination event occurs pursuant to this Agreement for any reason other than under Section 13.2(a), the party electing to terminate shall give the other party written notice of such election. On the date which is thirty (30) days after the date of such notice, Manager shall cease all activities at the Hotel and shall have no further obligations under this Agreement.

Section 15.2 If a termination occurs pursuant to Section 13.2(a), Manager shall give to Owner notice of such election. Any time thereafter, Manager may, on ten (10) days' written notice, cease all activities at the Hotel and thereafter have no further obligations under this Agreement.

Section 15.3 Manager shall continue to operate the Hotel in good faith in accordance with the terms of this Agreement until the effective date of such termination. Manager shall peacefully vacate and surrender the Hotel to Owner on the effective date of such termination.

Section 15.4 After the notice is given, and prior to the date Manager ceases activities at the Hotel, Manager shall be paid any and all fees or expenses due it pursuant to this Agreement, and Manager shall cooperate with Owner in the orderly transfer of management to Owner or Owner's designated agent.

Section 15.5 Manager shall assign and transfer to Owner:

1. any interest which Manager may have or claim in and to all of Owner's books and records, plans and specifications, architectural or engineering drawings, contracts, leases and other documents respecting the Hotel that are not Manager's proprietary information and are in the custody and control of Manager; and
2. all of Manager's right, title and interest in and to all liquor, restaurant and any other licenses and permits, if any, held by Manager in connection with the operation of the Hotel; but only to the extent such assignment or transfer is permitted under the law of the state in which the Hotel is located; provided, however, that if Manager has expended any of its own funds in the acquisition of licenses or permits, Owner shall reimburse Manager therefore;
3. and any interest which Manager may have or claim in and to the Operating Account(s) (excluding any funds deposited in the payroll account for final payrolls) or the Reserve Fund.

Section 15.6 Non-Solicitation of Employees. During the period ending six (6) months from the termination or expiration of this Agreement, Owner shall not, directly or indirectly, hire or solicit for hire (whether as an employee, consultant or otherwise) any Key Employees of Manager, without the prior written consent of Manager. For the purposes of this Section 15.6 "solicit for hire" shall not include a general advertisement for employment not directed at employees of Manager.

## **ARTICLE XVI**

### **ASSIGNMENT**

Section 16.1 Assignment. Neither party shall assign or transfer or permit the assignment or transfer of this Agreement without the prior written consent of the other; provided, however, that Manager shall have the right, without such consent, to irrevocably and totally assign its interest in this Agreement to (i) any of its Affiliates, (ii) any successor by merger or consolidation with Manager, or (iii) any party succeeding to substantially all of the assets of the Manager.

## **ARTICLE XVII**

### **TAXES**

Section 17.1 Real Estate and Property Taxes. Upon (i) the written request of Owner and (ii) the provision of sufficient funds and the necessary documentation, and unless otherwise required by Owner's lender, all real estate and ad valorem property taxes, assessments and similar charges on or relating to the Hotel during the Term of this Agreement shall be paid by Manager before any fine, penalty or interest is added thereto or lien placed upon the Hotel or this Agreement, unless payment thereof is, in good faith, being contested and enforcement thereof is stayed. Manager shall, within the earlier of thirty (30) days of payment or ten (10) days following written demand by Owner, furnish Owner with copies of official tax bills, assessments and evidence of payment or contest thereof. Owner, or Manager at direction of Owner, at Owner's expense, may contract with a tax consultant firm to review assessments and tax bills, file personal property tax returns as necessary, make recommendations regarding appeals, and to manage the appeals process.

## **ARTICLE XVIII**

### **INDEMNIFICATION AND LIMITATION OF LIABILITY**

Section 18.1 Indemnification by Owner. Owner shall hold harmless, indemnify and defend Manager and its Affiliates and their respective agents, employees, officers, directors and shareholders (collectively, "Manager Indemnities"), from and against any action, cause of action, suit, debt, cost, expense (including, without limitation, reasonable attorneys' fees for pre-trial, trial and appellate proceedings), claim or demand whatsoever brought or asserted by any third person whomsoever, at law or in equity, incurred by Manager Indemnities arising out of, as a result of, or in connection with the operation of the Hotel including, without limitation: (a) the performance by Manager or its Affiliates of its services hereunder, including, without limitation, any and all obligations incurred relating to any agreements with third parties entered into by Manager or Owner in connection with the management or operation of the Hotel in accordance with this Agreement; (b) any act or omission (whether or not willful, tortuous, or negligent) of Owner or any third party; or (c) any other occurrence related to the Hotel or Manager's duties under this Agreement (except for liabilities for which Manager indemnifies Owner). Owner may apply the proceeds of any available insurance to the payment of any claim under the indemnity set for the in this Section 18.1. The provisions of this Section 18.1 shall survive the expiration or termination of this Agreement and shall be binding upon Owner's successors and assigns.

Section 18.2 Indemnification by Manager. Manager shall hold harmless, indemnify and defend Owner and its Affiliates and their respective agents, employees, officers, directors and shareholders (collectively, "Owner Indemnities"), from and against any action, cause of action, suit, debt, cost, expense (including, without limitation, reasonable attorneys' fees for pre-trial, trial and appellate proceedings), claim or demand whatsoever brought or asserted by any third person whomsoever, at law or in equity, incurred by Owner Indemnities, arising by reason of: (a) the gross negligence or willful misconduct of any Key Employees, which results in a claim for bodily injury, death or property damage occurring on, in or in conjunction with the business of the Hotel, to the extent not covered by insurance (including the deductible, if any); (b) Manager's gross negligence or willful misconduct in the selection, hiring, training discharge or supervision of any Hotel employees; or (c) any action taken by Manager, its employee or agent, which is beyond the scope of Manager's authority under this Agreement. Manager may apply the proceeds of any available insurance to the payment of any claim under the indemnity set for the in this Section 18.2. The provisions of this Section 18.2 shall survive the expiration or termination of this Agreement and shall be binding upon Manager's successors and assigns.

Section 18.3 Indemnification Procedure. Upon the occurrence of a claim of an event giving rise to indemnification, the party seeking indemnification shall notify the other party hereto and provide the other party hereto with copies of any documents reflecting the claim, damage, loss or expense. The party seeking indemnification is entitled to engage such attorneys and other persons to defend against the claim, damage, loss or expense, as it may choose. The party providing indemnification shall pay the reasonable charges and expenses of such attorneys and other persons on a current basis within twenty (20) days of submission of invoices or bills. In the event Owner neglects or refuses to pay such charges, Manager may pay such charges out of the Operating Account and deduct such charges from any amounts due Owner or add such charges to any amounts due Manager from Owner.

## **ARTICLE XIX**

### **MISCELLANEOUS**

Section 19.1 Severability. In the event that any portion of this Agreement shall be declared invalid by order, decree or judgment of a court, this Agreement shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship to Manager or Owner or constitute a substantial deviation from the general intent and purpose of said parties as reflected in this Agreement.

Section 19.2 Performance. The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

Section 19.3 Relationship. The relationship of Owner and Manager shall be that of independent contractor. Nothing contained in this Agreement shall be construed to create an agency, partnership or joint venture between them or their successors in interest. Neither party shall borrow money in the name of, or pledge the credit of, the other.

Section 19.4 Meetings. Owner shall meet with representatives of the Manager, from time to time, so that the Manager and Owner may discuss the status of operations and future plans, recommendations and projections. The meetings will be held at mutually convenient dates and locations.

Section 19.5 Consents. Except as herein otherwise provided, whenever in this Agreement the consent or approval of Owner or Manager is required, such consent or approval shall not be unreasonably withheld or delayed. Such consent or approval shall be in writing only and shall be duly executed by an authorized officer or agent of the party granting such consent or approval.

Section 19.6 Applicable Law. This Agreement shall be construed under, and governed in accordance with, the laws of the State of Texas.

Section 19.7 Mediation and Arbitration. Any controversy, dispute or claim arising out of or relating to this Agreement or the performance, enforcement, breach, termination or validity thereof, including the determination of the scope of this Agreement to arbitrate, shall first be submitted to non-binding mediation and shall thereafter be determined by final binding arbitration, and not litigation, the agreed venue for mediation and arbitration being in Houston, Texas. The mediation process shall be administered by a mutually acceptable mediator selected in accordance with the Commercial Mediation Rules of the American Arbitration Association ("AAA"). If any dispute remains unresolved between the parties after the mediation process has been completed, either party may then submit any such unresolved dispute to final and binding arbitration pursuant to the Commercial Arbitration rules of AAA, with all matters related to the enforceability of this arbitration agreement and any award rendered pursuant to this agreement to be governed by the Federal Arbitration Act, 9 U.S.C. Section 1-16. The Arbitration Tribunal shall be formed of three (3) arbitrators each of which shall have at least five (5) years' experience in hotel operation, management, ownership or leasing, one (1) to be appointed by each party and the third (3rd) to be appointed by the American Arbitration Association. The arbitration panel may require and facilitate such discovery as it shall determine is appropriate in the circumstances, taking into account the needs of the parties and the desirability of making discovery expeditious and cost-effective. The arbitration panel shall be empowered to subpoena non-party and party witnesses for deposition and hearing to the full extent provided under the AAA Rules and the Federal Arbitration Act (or the applicable state arbitration statute if the arbitration panel is appointed pursuant to a petition filed in state court). The arbitration panel may also direct the production of documents and other information and the advance identification of witnesses to be called and documents to be admitted. The arbitration panel may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information before it is required to be disclosed in discovery. In addition to monetary damages, or in lieu thereof, the arbitration panel shall have the power to grant all equitable relief (both by way of interim relief and as a part of its final award) as may be granted by any court in the state where the Hotel is located. Monetary damage liability shall be limited to actual damages; the parties hereby waive the right to claim and/or receive punitive damages or exemplary relief. The arbitration panel shall determine whether and to what extent any party is a prevailing party and shall award attorneys' fees and expenses associated with the arbitration proceeding to the "prevailing party, if any. All proceedings shall be reported by a certified shorthand court reporter and written transcripts of the proceedings shall be prepared and made available to the parties. The fees of the arbitration panel, together with all costs and expenses incurred in conducting the arbitration (but excluding the parties' respective attorney, witness and related costs and expenses) shall be borne by the party against whom the arbitral award is made and shall be a (the) component of the arbitral award. The arbitration shall take place in Orlando, Florida, and shall be conducted in the English language. The arbitration award shall be final and binding upon the parties hereto and subject to no appeal. Arbitration expenses shall not be an expense in determining House Profit. Judgment upon the award rendered may be entered into any court having jurisdiction, or applications may be made to such court for an order of enforcement.

Section 19.8 Successors Bound. This Agreement shall be binding upon and inure to the benefit of Owner, its successors and assigns, and shall be binding and inure to the benefit of Manager and its permitted assigns.

Section 19.9 Headings. Headings of Articles and Sections are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Articles or Sections to which they refer.

Section 19.10 Incorporation of Recitals. The recitals set forth in the preamble of this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

Section 19.11 Force Majeure. If any one or more of the following events or circumstances that, alone or in combination, adversely affects the operation of the Hotel: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, acts of terrorism, rebellion, riots or other civil unrest; or any other event beyond Manager's or Owner's, as the case maybe, reasonable control, a party shall be excused from performance of any provision hereof to the extent that such party's ability to comply with such provision is materially impacted by such event.

Section 19.12 Notices. Notices, statements and other communications to be given under the terms of this Agreement shall be in writing and delivered by hand against receipt or sent by certified or registered mail, return receipt requested, or by Federal Express or other similar overnight mail service:

To Owner:

Moody National Lancaster-Austin MT, LLC  
6363 Woodway, Suite 110  
Houston, Texas 77057  
Attn: Vice President - Corporate Asset  
Management  
Phone: 713-977-7500  
Fax: 713-977-7505

To Manager:

Moody National Hospitality  
Management, LLC  
Houston, Texas 77057  
Attn: Vice President - Hospitality  
Phone: 714-977-7500  
Fax: 713-977-7505

or at such other address as from time to time designated by the party receiving the notice.

Section 19.13 Entire Agreement. This Agreement, together with other writings signed by the parties expressly stated to be supplementing hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, and may be changed only by a writing signed by the parties hereto.

Section 19.14 Manager's Authority Limited. Manager's authority shall be derived wholly from this Agreement, and Manager has no authority to act for or represent Owner except as herein specified.

Section 19.15 Exclusive Compensation. The payments to be made to Manager hereunder shall be in lieu of all other or further compensation or commissions of any nature whatsoever for the services described herein and this Agreement shall be considered as a special agreement between the parties hereto covering the appointment and compensation of Manager to the exclusion of any other method of compensation unless otherwise agreed to in writing.

Section 19.16 Time. Time is of the essence with respect to this Agreement.

Section 19.17 Attorneys' Fees. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable costs and expenses, including without limitation, attorneys' fees.

Section 19.18 Complimentary/Discount Policies. Manager will be permitted to provide customary gratuitous accommodations, services and amenities to such employees and representatives of Manager visiting the Hotel in connection with the Hotel's management.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**OWNER:**

MOODY NATIONAL LANCASTER-AUSTIN  
MT, LLC, a Delaware limited liability company

By: /s/ Brett C. Moody

Name: Brett C. Moody

Title: President

**MANAGER:**

MOODY NATIONAL HOSPITALITY  
MANAGEMENT, LLC., a Texas limited liability company

By: /s/ Brett C. Moody

Name: Brett C. Moody

Title: Chief Executive Officer

## **Exhibit A**

### **Insurance**

#### Insurance Requirements for Owner and Manager

##### **PART A – OWNER REQUIREMENTS**

1. Commercial General Liability policy (with respect to the Property) with limits not less than \$1,000,000 per occurrence with a \$2,000,000 annual aggregate.
2. Commercial Umbrella policy (with respect to the Property) with limits not less than \$10,000,000.
3. Business Automobile Insurance with limits not less than a \$1,000,000 Combined Single Limit.
4. Commercial Property policy insuring the building, business personal property, business income and signs at a replacement cost with agreed upon deductibles. The policy shall be written on a special causes of loss form including coverage for flood, wind and earthquake where applicable.
5. Terrorism.
6. Business Interruption.
7. Boiler & Machinery.
8. Garage Keepers Liability.
9. Liquor Liability Insurance policy with limits not less than \$1,000,000 per occurrence (Only when applicable).
10. Insurance against the theft or damage to guests' property in an amount not less than \$25,000 per guest.
11. Insurance against such other operating risks against which it is customary or advisable to insure in the operations of hotels of this nature.

##### **PART B – MANAGER REQUIREMENTS**

1. Commercial General Liability policy (with respect to Management Company) with limits not less than \$1,000,000 per occurrence with a \$2,000,000 annual aggregate.
2. Commercial Umbrella policy (with respect to Management Company) with limits not less than \$10,000,000.
3. Workers Compensation Insurance on all Hotel Employees in compliance with applicable statutory requirements with a \$1,000,000 limit under the employer's liability section.
4. A blanket Fidelity bond with a limit not less than \$500,000 and a deductible of no more than \$25,000, or as may be reasonably requested by the Owner.
5. Employment Practices Liability insurance policy covering all employees with a limit of not less than \$1,000,000 per occurrence.
6. Management Errors and Omissions policy with limits of at least \$1,000,000 per occurrence.
7. Insurance covering such other hazards as in such amounts as may be customary for comparable properties in the areas of the Hotel as may be reasonably requested by the Owner.



RESIDENCE INN BY MARRIOTT  
RELICENSING FRANCHISE AGREEMENT

FRANCHISOR: MARRIOTT INTERNATIONAL, INC.

FRANCHISEE: MOODY NATIONAL LANCASTER-AUSTIN MT, LLC

LOCATION: 1200 BARBARA JORDAN BLVD. BUILDING 4,  
AUSTIN, TX 78723

DATE: OCTOBER 15, 2015

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## RELICENSING FRANCHISE AGREEMENT

This Agreement between Franchisor and Franchisee is executed and becomes effective on the Effective Date.

### RECITALS

A. Franchisor owns the System and Franchisee has requested a license to use the System to operate the Hotel as a System Hotel at the Approved Location.

B. Franchisor has agreed to grant a license to Franchisee subject to the terms of this Agreement.

C. Guarantor will provide the Guaranty.

NOW, THEREFORE, in consideration of the promises in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Franchisor and Franchisee agree as follows:

### 1. LICENSE

**1.1 Limited Grant.** Franchisor grants to Franchisee a limited, non-exclusive license to use the Proprietary Marks and the System to operate the Hotel as a System Hotel at the Approved Location under the terms of this Agreement.

#### **1.2 Franchisor's Reserved Rights.**

A. *Development Activities.* Franchisee agrees that Franchisor and its Affiliates reserve the right to conduct Development Activities at any location, other than the Approved Location, without notice to Franchisee, subject to Item 9 of Exhibit A. Franchisee covenants not to do anything that may interfere with Franchisor's and its Affiliates' exercise of such right to conduct Development Activities.

B. *Territorial Rights.* Franchisee agrees that it is not entitled to any territorial rights or exclusivity, except as stated in Item 9 of Exhibit A.

C. *Use of the System.* Franchisee acknowledges that Franchisor and its Affiliates will allow other Franchisor Lodging Facilities to use various parts of the System and may allow other lodging facilities to use various parts of the System under affiliation or marketing agreements.

### 2. TERM

**2.1 Term.** The term of this Agreement is stated in Item 4 of Exhibit A (the "Term").

**2.2 Not Renewable.** This Agreement expires on the last day of the Term, and the rights granted under it are not renewable and Franchisee has no expectation of any right to extend the Term.

### 3. FEES, CHARGES AND COSTS

**3.1 Application Fee; Expansion Fee.** Franchisee has paid Franchisor the non-refundable application fee stated in Item 10 of Exhibit A. If Franchisor approves an increase in the number of Guestrooms in the Hotel under Section 4.1, Franchisee will pay an expansion fee equal to the then-current per-Guestroom charge for calculating the application fee for System Hotels, multiplied by the number of additional Guestrooms.

**3.2 Franchise Fees.** Beginning on the Opening Date, Franchisee will pay Franchisor for each month an amount equal to the percentage of Gross Room Sales stated in Item 11 of Exhibit A for such month (the "Franchise Fees"). Franchisee will not offer complimentary or reduced-price Guestrooms or food and beverage to benefit any other business at or outside of the Hotel.

**3.3 Franchisor Travel Costs.** If Franchisor requests, Franchisee will reimburse Franchisor for all Travel Costs for individuals designated by Franchisor to provide training, inspections or services for the Hotel, including counseling and advisory services, which will not exceed the amounts permissible under Franchisor's corporate travel policies. If the Hotel is not in a sold-out position, Franchisee will provide complimentary lodging at the Hotel to such individuals while they are providing such training, inspections, or services, and to Franchisor's representatives or independent auditors while conducting audits.

**3.4 Other Fees, Charges and Costs.** Franchisee will pay the fees, charges and costs in the following Sections: Section 4.4 (Design Process); Sections 6.2 and 6.3 (Marketing Fund and Additional Marketing Programs); Section 7 (Electronic Systems); Section 8.3.A. (F&B Support); Section 8.3.C. (Inspections); Section 9.1 (Training); Section 16 (Comfort Letter); Section 17 (Transfer); Section 20.1.B. (Termination); and Exhibit C (Inspections; Additional Work; Site Visits; Extensions). Franchisee will also pay Franchisor for: (i) any goods or services purchased, leased or licensed by Franchisee from Franchisor, including any costs related to purchasing, installing and upgrading any Electronic Systems; (ii) any optional or mandatory programs in which Franchisee participates; (iii) any costs of System modifications; and (iv) any other amounts due under this Agreement and any other Marriott Agreement.

**3.5 Calculation of Fees, Charges and Costs.** The fees, charges and costs under Section 3.4 will be computed on a fair and consistent basis among similarly situated System Hotels. Franchisor may change such fees, charges and costs to reflect: (i) any increase or decrease in the costs of providing the relevant goods or services; (ii) any change in the method Franchisor uses to determine allocation of the applicable charges; or (iii) any change in the competitive needs of the System.

**3.6 Timing of Payments and Performance of Services.**

A. *Timing of Payments.* Franchise Fees are due within 15 days after the end of each month. All other payments are due as invoiced. All payments will be made by wire transfer to the accounts designated by Franchisor or by such other method as Franchisor approves.

B. *Affiliates and Designees.* Any service or obligation of Franchisor under this Agreement may be performed by an Affiliate or designee of Franchisor. Franchisor may designate that payment be made to the Person performing the service. Any reference in this Agreement to Franchisor concerning payments or performance of services includes such Affiliates and designees. Any designation for the performance of services will not relieve Franchisor or Franchisee of any of their obligations under this Agreement.

**3.7 Interest on Late Payments.** If any payment due under this Agreement is not received by its due date, such payment will be overdue, and Franchisor may require Franchisee to pay interest that will accrue at a rate of 18% per annum (or, if less, the maximum interest rate permitted by Applicable Law) from the date such overdue amount was due until paid. Franchisor's right to receive interest is in addition to any other remedies Franchisor may have.

**4. HOTEL CONSTRUCTION, RENOVATION AND MAINTENANCE**

**4.1 Number of Guestrooms; Expansion.** The Hotel will have the number of Guestrooms stated in Item 7 of Exhibit A or such other number approved by Franchisor. Franchisee may expand the Hotel or build additional Guestrooms in compliance with this Agreement only with Franchisor's prior written approval. If additional Guestrooms are approved, Franchisee will pay an expansion fee under Section 3.1.

**4.2 Initial Construction or Renovation of the Hotel.** Franchisee will timely start and complete the initial construction or renovation of the Hotel, as applicable, to Franchisor's satisfaction in accordance with Section 4.4, Exhibit C and the Standards (the "Initial Work").

**4.3 Periodic Renovations.** Franchisee will timely start and complete the periodic renovation of all Guestrooms and Public Facilities to Franchisor's satisfaction in accordance with Section 4.4 and the Standards, including replacing Soft Goods and Case Goods periodically as required by the Standards ("Periodic Renovations"). At the time of any replacement of FF&E, Franchisor may require Franchisee to upgrade the rest of the Hotel to conform to the Standards applicable to similarly situated System Hotels.

**4.4 Design Process.** Franchisee will obtain the Design Criteria from Franchisor within 10 days of the Effective Date for the Initial Work, and in a timely manner for any Periodic Renovation. In connection with the Initial Work and any Periodic Renovation, Franchisee will comply with the following requirements (the "Design Process"):

A. *Design Team.* For the Initial Work, and as needed for Periodic Renovations, Franchisee will retain a qualified registered architect, engineer and interior designer, and based on the nature of the project, Franchisor may require that Franchisee retain other specialty consultants. Franchisee will provide Franchisor the name, address and relevant work experience on similar projects for any such Person that Franchisee proposes to retain, and Franchisor will have 30 days after receipt of such information to notify Franchisee of its election to consent or withhold its consent. Franchisor's election to consent or withhold its consent will be based on prior experiences with such Person and such Person's reputation and experience on similar projects. If Franchisor does not respond to Franchisee within 30 days after Franchisor's receipt of such information, then Franchisee may retain such Person. Neither Franchisor's failure to respond nor Franchisor's consent to the use of such Person will be deemed an endorsement or recommendation by Franchisor. Franchisor is not liable for the unsatisfactory performance of any Person retained by Franchisee.

B. *Submission of Plans.* For the Initial Work and Periodic Renovations, Franchisee will adapt the Design Criteria to the Hotel and Applicable Law, including Accessibility Requirements. For the Initial Work, and if Franchisor requests for any Periodic Renovations, Franchisee will prepare and submit Plans electronically in the phases and with the detail required by the Standards. The Plans will not deviate from the Design Criteria unless previously approved by Franchisor, and any such deviations will be clearly designated in a separate document delivered along with the Plans.

C. *Review of Plans.* Franchisor will promptly review the Plans only for compliance with the Design Criteria and any applicable property improvement plan, and in the case of the Initial Work, to confirm that the number, configuration and location of Guestrooms and the size, configuration and location of Public Facilities are as previously approved by Franchisor. If Franchisor determines that the Plans do not satisfy such requirements, Franchisor may require changes and Franchisee will deliver revised Plans incorporating such changes. If Franchisor determines that the Plans are incomplete, Franchisor may defer its review of the Plans until it receives complete Plans. Based on the level of complexity of the Plans, the custom nature of the project or the services requested or needed, Franchisor may charge its then-current fee for reviewing the Plans and inspecting the Hotel plus Travel

Costs. Franchisee will not begin the Initial Work or any Periodic Renovation requiring submission of Plans until Franchisor confirms in writing that such Plans comply with such requirements. On receipt of Franchisor's confirmation, Franchisee will promptly submit the final Plans electronically. Once finalized, the Plans will not be changed without Franchisor's prior consent. Franchisee will ensure that the renovation of the Hotel is completed in accordance with the Plans.

D. *Compliance with Applicable Law.* Franchisee (and not Franchisor or its Affiliates) is responsible for ensuring that the Plans comply with Applicable Law, including Accessibility Requirements. Franchisor and its Affiliates will have no liability or obligation concerning the means, methods or techniques used in constructing or renovating the Hotel. Franchisee will not reproduce, use or permit the use of any Design Criteria or Plans other than for the Hotel.

**4.5 Maintenance.** Franchisee will maintain the Hotel in good repair and first-class condition and in conformity with Applicable Law and the Standards. Franchisee will make repairs, alterations and replacements to the Hotel as required by the Standards. Franchisee will not make any material alterations to the Hotel without Franchisor's prior consent, unless such alterations are required by Applicable Law or for the continued safe and orderly operation of the Hotel.

## **5. FURNITURE, FIXTURES, EQUIPMENT, INVENTORIES AND SUPPLIERS**

**5.1 Uniformity of System.** Franchisee will use only such FF&E, Inventories and Fixed Asset Supplies that comply with the Standards. The requirements of this Section 5.1 are to ensure that items used at System Hotels are uniform and of high quality to maintain the identity, integrity and reputation of the System. Before purchasing FF&E to be used in constructing or renovating the Hotel, if requested by Franchisor, Franchisee will prepare furnished models of Guestrooms, color boards and drawings for Franchisor's confirmation that such proposed FF&E will meet the Standards. Franchisor will promptly respond to Franchisee's proposal.

**5.2 Suppliers.** Franchisor may designate suppliers, including Franchisor, for certain items related to FF&E, Inventories and Fixed Asset Supplies. Franchisee may propose new suppliers by delivering sufficient information and samples for Franchisor's confirmation that such item meets the Standards and the proposed supplier is capable of providing such item in accordance with the Standards. Franchisor may require: (i) reimbursement for the cost of such review; (ii) that such supplier have insurance protecting Franchisor and Franchisee; and (iii) that any supplier using the Intellectual Property enter into an agreement for its use. Franchisor will have no liability for damage to any sample. Franchisor may refuse to permit future purchases if the supplier fails to meet the requirements of this Section 5.2 or the Standards.

## **6. ADVERTISING AND MARKETING; PRICINGS, RATES AND RESERVATIONS**

### **6.1 Franchisee's Local Advertising and Marketing Programs.**

A. *Local Advertising.* Franchisee will undertake local advertising, marketing, promotional, sales and public relations programs and activities for the Hotel, including preparing and using any Marketing Materials, in accordance with the Standards.

B. *Use of Signs and Marketing Materials.* Franchisee will use signs and other Marketing Materials only in the places and manner approved or required by Franchisor and in accordance with the Standards and Applicable Law. Franchisee will deliver samples of Marketing Materials not provided by Franchisor and obtain prior approval from Franchisor before any use. If Franchisor withdraws its approval, Franchisee will promptly stop using such Marketing Materials. Any Marketing Materials developed by Franchisee may be used or modified by other Franchisor Lodging Facilities without compensation to Franchisee.

### **6.2 Marketing Fund.**

A. *Marketing Fund Activities.* To promote general public recognition of the Proprietary Marks and use of System Hotels, Franchisor may undertake the following activities (the "Marketing Fund Activities"):

1. brand strategy and brand development activities;
2. the creation, production, placement and distribution of Marketing Materials in any form of media;
3. advertising, marketing, promotional, public relations, inventory management, reservation activities and sales campaigns, programs, sponsorships, seminars and other sales activities;
4. market research and oversight and management of the guest satisfaction program and the Loyalty Programs; and
5. the retention or employment of personnel, advertising agencies, marketing consultants and other professionals or specialists to assist in the development, implementation and administration of any such activities.

These activities may be conducted on a local, regional, national or Category basis. Franchisor may modify the Marketing Fund Activities from time to time.

B. *Marketing Fund Contribution.* Beginning on the Opening Date, Franchisee will pay Franchisor for each month an amount equal to the percentage of Gross Room Sales stated in Item 12.A of Exhibit A for such month, which Franchisor will use for the Marketing Fund Activities (the “Marketing Fund Contribution”). Franchisor may change the method of funding the Marketing Fund Activities (including by establishing methods of funding Marketing Fund Activities other than by the Marketing Fund Contribution) or the amount of the Marketing Fund Contribution, subject to Item 12.B of Exhibit A, and Franchisee will be bound by any such changes. System Hotels operated by Franchisor’s Affiliates will make contributions to the Marketing Fund at the same percentage of Gross Room Sales required of System franchisees.

C. *Benefits.* Franchisor may use the Marketing Fund for purposes that benefit or include System Hotels as a whole, groups of System Hotels and other Franchisor Lodging Facilities in addition to System Hotels. Franchisor has no obligation to ensure that any particular System Hotel, including the Hotel, benefits from Marketing Fund Activities on a pro-rata or other basis or that the Hotel will benefit from the Marketing Fund Activities proportionate to the Marketing Fund Contribution paid by Franchisee.

D. *Allotment of Marketing Materials.* If Marketing Materials are produced using funds from the Marketing Fund, all System Hotels will receive an allotment of relevant materials. If Franchisee requests Marketing Materials in addition to the portion allotted to Franchisee, Franchisor may require Franchisee to pay additional costs.

E. *No Fiduciary Duty.* Franchisor and its Affiliates do not hold the Marketing Fund Contribution as a trustee or as a trust fund and have no fiduciary duty to Franchisee for the Marketing Fund. The Marketing Fund Contribution may be commingled with other money of Franchisor and its Affiliates and used to pay all costs, including administrative costs, salaries and overhead, and collection and accounting costs, incurred by Franchisor or any of its Affiliates for the Marketing Fund and the Marketing Fund Activities. Franchisor or its Affiliates may (but are not obligated to): (i) loan money for Marketing Fund Activities and charge interest on any such loan; and (ii) use the Marketing Fund Contribution to repay any such loan plus interest. On request, Franchisor will provide to Franchisee an unaudited accounting of the uses of amounts in the Marketing Fund for any fiscal year of Franchisor if such request is made between 90 and 180 days after the end of such fiscal year.

F. *Permitted Changes.* Franchisor may change the local, country, regional, continental or international scope of the Marketing Fund or the Marketing Fund Activities and discontinue the Marketing Fund or the Marketing Fund Activities.

**6.3 Additional Marketing Programs.** Franchisor may provide, and Franchisee will participate in, Additional Marketing Programs that are mandatory for similarly situated System Hotels. Franchisee may elect to participate in optional Additional Marketing Programs. Franchisee will pay for Additional Marketing Programs in which it participates on the same basis as other participating System Hotels.

#### **6.4 Pricing, Rates and Reservations.**

A. *Pricing and Rates.* Franchisee is responsible for setting its own prices and rates for Guestrooms and other products and services at the Hotel, including determining any prices or rates that appear in the Reservation System. Franchisor may, however: (i) prohibit certain types of charges or billing practices that Franchisor determines are misleading or detrimental to the System, including price-gouging or incremental fees for services that guests would normally expect to be included in the Guestroom charge; (ii) require that Franchisee price consistently in all distribution channels; or (iii) impose other pricing requirements permitted by Applicable Law.

B. *Pricing Recommendations; Participation in Programs.* Franchisor may recommend prices or rates for the products and services offered by Franchisee or require participation in various sales or inventory management programs or promotions offered by Franchisor. Franchisor’s recommendations are not mandatory; Franchisee is ultimately responsible for determining the prices or rates at which it offers its products and services, and Franchisor’s recommendations are not a representation or warranty by Franchisor that the use of such recommended prices or rates will produce, increase, or optimize Franchisee’s profits. Franchisor will have no liability for any such recommendations, including those made in connection with any sales activity or Inventory Management. Franchisor may require Franchisee to participate in Inventory Management or may act as Sales Agent for Franchisee. If Franchisor is acting as Sales Agent for Franchisee, Franchisee consigns hotel inventory to Franchisor, and Franchisee retains all risk of loss of unsold inventory or inventory sold at a reduced price.

C. *Honoring Reservations.* Franchisee will provide its prices and rates for use in the Reservation System in accordance with the Standards. Franchisee will: (i) honor any prices, rates or discounts that appear in the Reservation System or elsewhere; (ii) honor all reservations made through the Reservation System or that are confirmed; and (iii) not charge any Hotel guest a rate higher than the rate specified for the Hotel guest’s reservation in the Reservation System or, if not made through the Reservation System, in the reservation confirmation. Franchisee will also honor all pricing and terms for any other product or service offered in connection with the Hotel.

## **7. ELECTRONIC SYSTEMS**

**7.1 Systems Installation and Use.** At its cost, Franchisee will purchase or lease, install, maintain and use at the Hotel all mandatory Electronic Systems (and optional Electronic Systems that Franchisee elects to use) in compliance with the Standards or other approved specifications. Franchisee will pay all Electronic Systems Fees to Franchisor. Franchisee will not use the Electronic Systems for any purpose except for the benefit of the Hotel.

**7.2 Reservation System.** Subject to Section 19.3, Franchisor will make the Reservation System available to the Hotel. Franchisee will cause the Hotel to participate in the Reservation System in accordance with the Standards and this Agreement. Franchisor is not required to make the Reservation System available to the Hotel for any reservations occurring after the expiration or termination of this Agreement.

**7.3 Electronic Systems Provided Under License.** As a condition to using the Electronic Systems, Franchisee will execute the Electronic Systems License Agreement. The Electronic Systems that are proprietary to Franchisor or third-party vendors, as applicable, will remain their sole property. Franchisee will treat the Electronic Systems as confidential at all times. The Electronic Systems may be modified, replaced or become obsolete, and new Electronic Systems may be created to meet the needs of the System and changes in technology. If Franchisor determines that it is necessary to amend or replace the Electronic Systems License Agreement because of such events, Franchisee will execute the then-current form of, or an amendment to, the Electronic Systems License Agreement.

**7.4 Access to Information.** Franchisor may access the Electronic Systems to obtain marketing, sales and guest information and Franchisee will take all actions reasonably necessary to provide such access. Franchisor and its Affiliates may use any data related to the Hotel, Franchisee and its Affiliates obtained through the Electronic Systems, including Guest Profile Data.

## **8. HOTEL OPERATIONS**

### **8.1 Operator of the Hotel.**

A. *Franchisor Consent Required.* The Hotel will be operated only by Franchisee or a Management Company, in either case, only with the prior consent of Franchisor. Any Management Company and Franchisee will execute and deliver to Franchisor a Management Company Acknowledgment in the form contained in the then-current Disclosure Document. Franchisee will at all times be responsible for complying with the obligations of this Agreement even though Franchisee may retain a Management Company. Franchisor has consented to the Person identified in Item 8 of Exhibit A to operate the Hotel. Franchisor's consent may be withdrawn at any time if Franchisor determines that such Person is no longer qualified to operate the Hotel.

B. *Conditions for Consent.* Franchisor may withhold its consent to any proposed management company that: (i) Franchisor determines (a) is not financially capable, (b) does not have the managerial skills or operational capacity required to operate the Hotel in accordance with the Standards and this Agreement or (c) is a Competitor, an Affiliate of a Competitor, or the principal operator of hotels for a Competitor; (ii) does not provide Franchisor with all information and access that Franchisor reasonably requests; or (iii) has (or any of its Affiliates have) (a) been convicted of a Serious Crime, (b) engaged in conduct that Franchisor determines may adversely affect the Hotel, the System or Franchisor's interests or (c) been a party to any material civil litigation with Franchisor or its Affiliates. Franchisor will not consent to any proposed management company that is a Restricted Person, is an Affiliate of a Restricted Person, or in which a Restricted Person has an interest. Franchisor has the right to review any management agreement between Franchisee and its proposed management company.

C. *Change in Circumstances.* If there is a change in Control of the Management Company or if the Management Company becomes a Competitor (or an Affiliate of a Competitor) or a Restricted Person (or an Affiliate of a Restricted Person), or if Management Company becomes the principal operator for a Competitor or if there is a material adverse change to the financial condition or operational capacity of the Management Company, Franchisee will promptly notify Franchisor of any such event together with such additional information that Franchisor may reasonably request. Based on these changed circumstances, Franchisor may require Franchisee to terminate its agreement with such Management Company and retain a replacement management company that will be subject to Franchisor's consent. After Franchisor receives such notice and any such additional information Franchisor reasonably requests, Franchisor will respond to Franchisee within 30 days.

### **8.2 Employees.**

A. *Hotel Staffing.* Franchisee will ensure that suitable qualified individuals are employed at the Hotel sufficient to staff the Hotel. Managers at the Hotel will devote their full time to the management and operation of the Hotel and supervision of employees. Franchisee will use its best efforts to ensure that Hotel employees at all times comply with the Standards.

B. *Hotel Employment Matters.* All employment decisions at the Hotel will be made solely by Franchisee or the Management Company. Franchisor does not direct or control the employment policies or decisions for the Hotel. All employees at the Hotel are solely employees of Franchisee or the Management Company, not Franchisor, and neither Franchisee nor the Management Company is Franchisor's agent for any purpose with regard to Hotel employees. Franchisee or the Management Company will promptly inform Franchisor whenever it hires a general manager.

C. *Communication with Managers and Management Company.* Franchisor may communicate directly with the managers at the Hotel and the Management Company about day-to-day operations of the Hotel and Franchisor may rely on such statements of the managers and Management Company. Such communications will not affect the requirements of Section 25 or Section 27.7. Franchisor will under no circumstances direct or control such Hotel operations.

### **8.3 Compliance with the Standards.**

A. *Required Activities.* Franchisee will: (i) operate the Hotel at all times in compliance with the Standards; (ii) fully participate in the Quality Assurance Program and all mandatory programs for System Hotels (which may require providing complimentary guestrooms and refunds); (iii) offer all guest services required for System Hotels (which may include complimentary services); (iv) make all payments due in accordance with the terms of all contracts and invoices related to the Hotel, except for payments that are disputed in good faith; and (v) provide all food and beverage service in the Hotel in compliance with the Standards and Applicable Law and pay the F&B Support Fee to Franchisor.

B. *Prohibited Activities.* Except as permitted in the Standards, Franchisee will not, without Franchisor's prior approval: (i) knowingly permit gambling to take place at the Hotel or use the Hotel for any casino, lottery, or other type of gaming activities, or directly or indirectly associate with any gaming activity; (ii) knowingly permit adult entertainment activities at the Hotel; or (iii) sell, display or use in the Hotel any vending machines, honor bars, video or other entertainment devices or similar products.

C. *Inspection Rights.* Franchisee will permit Franchisor's representatives to enter and inspect the Hotel at all reasonable times to confirm that Franchisee is complying with the terms of this Agreement and the Standards, and to test the equipment, food products and supplies at the Hotel. In conducting such inspections, Franchisor will not unduly interfere with the operation of the Hotel. Franchisee will pay any costs related to such inspections, including costs of third-party inspectors, and costs of the development, ongoing sustenance and field support and a reasonable return on capital related to the inspection component of the Quality Assurance Program.

### **8.4 System Promotion; No Diversion to Other Businesses.**

A. *System Promotion.* Franchisee will use reasonable efforts to encourage and promote the use of System Hotels and will refer reservation requests that cannot be fulfilled by the Hotel to other System Hotels or Franchisor Lodging Facilities in accordance with the Standards.

B. *No Diversion to Other Businesses.* Franchisee will not use any part of the Hotel for any business other than operating a System Hotel. Franchisee will not use any part of the Hotel or the System to divert business to, or promote, any other business at or outside of the Hotel. This prohibition includes advertising hotels, vacation or timeshare facilities or any similar product sold on a periodic basis not operated under a trade name or trademark owned by Franchisor or any of its Affiliates (including those which Franchisee or its Affiliates operate or in which they have an Ownership Interest).

## **9. TRAINING, COUNSELING AND ADVISORY SERVICES**

**9.1 Training.** The Hotel will at all times be managed by personnel who have successfully completed all mandatory training under the Standards. Franchisor may offer optional training related to operating System Hotels. Franchisee will pay (i) all tuition, supplies, and Travel Costs and allocations of internal costs and overhead of Franchisor and its Affiliates for any training in which Franchisee participates; (ii) an annual charge based on an allocation among System Hotels for the costs of developing and providing such training; and (iii) a charge for the general manager conference, regardless of whether Franchisee's personnel attend. Franchisee will provide training required by Franchisor for personnel working at the Hotel.

**9.2 Counseling and Advisory Services.** Franchisor will make representatives available at Franchisor's designated offices or at the Hotel to consult with Franchisee about the design and operation of the Hotel as a System Hotel. Franchisor may require Franchisee to pay the Travel Costs of such representatives who consult at the Hotel.

## **10. SYSTEM AND STANDARDS; FRANCHISEE ASSOCIATION**

**10.1 Compliance with System and Standards.** Franchisee agrees that conformity with all aspects of the System and the Standards is essential to maintain the uniform quality and guest service of System Hotels. Franchisee will comply at all times with the Standards and operate the Hotel in compliance with the System and the Marriott Agreements. Franchisor will make the Standards available to Franchisee through the Electronic Systems or in such other manner Franchisor deems appropriate. The Standards will at all times remain the sole property of Franchisor and its Affiliates.

**10.2 Modification of the System and Standards.** Franchisor and its Affiliates may modify the System and Standards, and such modifications may include materially changing, adding or deleting elements of the System or the Standards. Franchisee agrees that modifications to the System may be made for all System Hotels or for any Category of System Hotels. Franchisor may allocate the costs of System modifications among System Hotels or any Category of System Hotels on a fair and consistent basis. Such costs may include development costs and a reasonable return on capital.

**10.3 Franchisee Association.** If Franchisor creates or approves the creation of an association organized to consider and make recommendations on matters related to the operation of System Hotels (the “Association”), Franchisee, Franchisor and other System Hotel franchisees will be eligible for membership. Franchisee will pay any Association dues and assessments, which will be consistently applied to all System Hotel franchisees. The Association will vote on bylaws and election of officers. Franchisor will regard recommendations of the Association as expressing the consensus of members of the Association.

## **11. PROPRIETARY MARKS AND INTELLECTUAL PROPERTY**

### **11.1 Franchisor’s Representations Concerning the Proprietary Marks.**

A. *Representations.* Franchisor represents that:

1. Franchisor and its Affiliates have the right to grant Franchisee the right to use the Proprietary Marks in accordance with this Agreement; and

2. Franchisor and its Affiliates will take all steps reasonably necessary to preserve and protect the ownership and validity of the Proprietary Marks. Franchisor will not be required to maintain any registration for any Proprietary Marks that Franchisor determines, in its sole discretion, cannot or should not be maintained.

B. *Indemnification for Infringement Claims.* Franchisor will indemnify and hold Franchisee harmless against claims that Franchisee’s use of the Proprietary Marks in accordance with this Agreement infringes the rights of any third party unrelated to Franchisee, if Franchisee: (i) is in compliance with this Agreement, (ii) gives prompt notice of any such claim to Franchisor, (iii) permits Franchisor to have sole control over the defense and settlement of the claim and (iv) cooperates fully with Franchisor in defending or settling the claim.

### **11.2 Franchisee’s Use of Intellectual Property and the System.**

A. *Use of the Intellectual Property and the System.* Franchisee agrees that:

1. Franchisee will use the Intellectual Property and the System only for the operation of the Hotel and only in the form and manner as provided in the Standards or approved by Franchisor. Franchisee will offer or sell only those goods and services under the Proprietary Marks that are of a nature and quality that comply with the Standards. Any use of the System not authorized by Franchisor will constitute an infringement of Franchisor’s rights and a default under Section 19.2 of this Agreement;

2. Franchisee will use the Proprietary Marks only in substantially the same places, combination, arrangement and manner as provided in the Standards or approved by Franchisor;

3. Franchisee will identify itself as a franchisee or licensee of Franchisor and the owner or operator of the Hotel only in the form and manner as provided in the Standards. Franchisee will not use any Proprietary Marks in any manner that could imply that Franchisee has an Ownership Interest in the Proprietary Marks;

4. Franchisee has no right to, and will not, Transfer, sublicense or allow any Person to use any part of the System, unless permitted in this Agreement;

5. Franchisee will not use any part of the System to incur any obligation or indebtedness on behalf of Franchisor or any of its Affiliates;

6. Franchisee will not use any of the Proprietary Marks or any names or marks that consist of, contain or are similar to or an abbreviation of any Proprietary Marks, in Franchisor’s sole opinion (“Similar Marks”), as part of Franchisee’s corporate or legal name, in connection with any business activity except the Hotel, or as a road name or address, whether alone or in combination with Other Marks;

7. Franchisee will not register or apply to register any of the Proprietary Marks or Similar Marks, whether alone or in combination with other trademarks;

8. Franchisee will notify Franchisor of any required business, trade, fictitious, assumed or similar name registration, and indicate in the registration that Franchisee may use such name only in accordance with this Agreement;

9. if litigation involving the Intellectual Property is instituted or threatened against Franchisee, or a claim of infringement involving the Intellectual Property is made against Franchisee, or Franchisee becomes aware of any infringement of the Intellectual Property, Franchisee will promptly notify Franchisor and will cooperate fully in any action, defense or settlement of such matters. Franchisee will not make any demand, serve any notice, institute any legal action or negotiate, litigate, compromise or settle any controversy about any such matter without first obtaining Franchisor's prior consent, which may be withheld in Franchisor's sole discretion. Franchisor will have the right to bring any action and to join Franchisee as a party to any action involving the Intellectual Property; and

10. if Franchisor believes, in its sole discretion, that Franchisee's use of the Intellectual Property does not conform with the Marriott Agreements or the Standards, then Franchisee will immediately stop the non-conforming use on notice from Franchisor.

**B. *Ownership of the System.*** Franchisee agrees that:

1. Franchisor and its Affiliates are the owners or licensees of all right, title and interest in and to the System (except certain Electronic Systems provided by third parties), and all goodwill arising from Franchisee's use of the System, including the Proprietary Marks, will inure solely and exclusively to the benefit of Franchisor and its Affiliates. On the expiration or termination of this Agreement, no monetary amount will be attributable to any goodwill associated with Franchisee's use of the System;

2. the Proprietary Marks are valid and serve to identify the System and System Hotels, and any infringement of the Proprietary Marks will result in irreparable injury to Franchisor;

3. the Proprietary Marks may be deleted, replaced or modified by Franchisor or its Affiliates in their sole discretion. Franchisor may require Franchisee, at Franchisee's expense, to discontinue or modify Franchisee's use of any of the Proprietary Marks or to use one or more additional or substitute marks;

4. Franchisee will not directly or indirectly: (i) attack the ownership, title or rights of Franchisor or its Affiliates in the System; (ii) contest the validity of the System or Franchisor's right to grant to Franchisee the right to use the System in accordance with this Agreement; (iii) take any action that could impair, jeopardize, violate or infringe any part of the System; (iv) claim any right, title, or interest in the System except rights granted under this Agreement; or (v) misuse or harm or bring into disrepute the System;

5. Franchisee has no, and will not obtain any, Ownership Interest in any part of the System (including any modifications made by or on behalf of Franchisee or its Affiliates). Franchisee assigns, and will cause each of its employees or independent contractors who contributed to System modifications to assign, to Franchisor, in perpetuity throughout the world, all rights, title and interest (including the entire copyright and all renewals, reversions and extensions of such copyright) in and to such System modifications. Except to the extent prohibited by Applicable Law, Franchisee waives, and will cause each of its employees or independent contractors who contributed to System modifications to waive, all "moral rights of authors" or any similar rights in such System modifications. For the purposes of this Section 11.2.B.5, "modifications" includes any derivatives and additions; and

6. Franchisee will execute, or cause to be executed, and deliver to Franchisor any documents, and take any actions required by Franchisor to protect the Proprietary Marks and the title in any System modifications.

**11.3 Franchisee's Use of Other Marks.** Franchisee will not use any Mark, in connection with the Hotel or the System that is not a Proprietary Mark, including the names of restaurants or other outlets at the Hotel ("Other Marks") without Franchisor's prior approval. Franchisee will not use any Other Marks that may infringe or be confused with a third party's trade name, trademark or other rights in intellectual property. Franchisee consents to the use of the Other Marks by Franchisor and its Affiliates during the Term. Franchisee represents that there are no claims or proceedings that would materially affect Franchisor's use of the Other Marks.

**11.4 Websites and Domain Names.** Franchisee will not display any of the Proprietary Marks on, or associate the System with (through a link or otherwise), any website, electronic Marketing Materials, application or software for mobile devices or other technology or media, domain name, address, designation or listing on the internet or other communication system or medium without Franchisor's consent or as permitted in the Standards. Franchisee will not register or use any internet domain name, address, mobile application or other designation that contains any Proprietary Mark or any mark that is, in Franchisor's sole opinion, confusingly similar. At Franchisor's request, Franchisee will promptly cancel or transfer to Franchisor any such domain name, address or other designation under Franchisee's control.

## **12. CONFIDENTIAL INFORMATION; DATA PROTECTION LAWS**

### **12.1 Confidential Information.**

A. *Confidentiality Obligations.* Franchisee will use Confidential Information only for the benefit of the Hotel. Franchisee will protect Confidential Information and will promptly report to Franchisor the theft or loss of any Confidential Information. Franchisee may divulge Confidential Information only to Franchisee's employees or agents who require access to it to

operate the Hotel, and only after they are advised that such information is confidential and that they are bound by Franchisee's confidentiality obligations under this Agreement. Without Franchisor's prior consent, Franchisee will not copy, reproduce or make Confidential Information available to any Person not authorized to receive it. The Confidential Information is proprietary and a trade secret of Franchisor and its Affiliates. Franchisee agrees that the Confidential Information has commercial value and that Franchisor and its Affiliates have taken reasonable measures to maintain its confidentiality. Franchisee is liable for any breaches of such confidentiality obligations by its employees or agents.

B. *Confidentiality of Negotiated Terms.* Franchisee agrees it will not disclose to any Person the content of the negotiated terms of this Agreement or other Marriott Agreements without the prior consent of Franchisor except: (i) as required by Applicable Law; (ii) as may be necessary in any legal proceedings; and (iii) to those of Franchisee's managers, members, officers, directors, employees, attorneys, accountants, agents or lenders to the extent necessary for the operation or financing of the Hotel and only if Franchisee informs such Persons of the confidentiality of the negotiated terms. Franchisee will be in default under this Agreement for any disclosure of negotiated terms by any such Persons.

**12.2 Data Protection Laws.** Franchisee will comply with all Data Protection Laws and the Standards and take such actions and execute such documents as requested by Franchisor that are necessary for compliance with any of the Data Protection Laws by Franchisor or its Affiliates. Franchisee will not take any action that could cause Franchisor or its Affiliates to violate any of the Data Protection Laws. Franchisee will reimburse Franchisor and its Affiliates for all costs and damages incurred in connection with Franchisee's loss of data, including Guest Profile Data, or Franchisee's non-compliance with Franchisee of the Data Protection Laws or the Standards.

### **13. ACCOUNTING AND REPORTS; TAXES**

**13.1 Accounting.** Franchisee will account for Gross Room Sales and Gross Revenues on an accrual basis and in compliance with this Agreement.

**13.2 Books, Records and Accounts.** Franchisee will maintain and preserve complete and accurate books, records and accounts for the Hotel in accordance with the Uniform System and United States generally accepted accounting principles, consistently applied, Applicable Law and the Standards. Franchisee will preserve these books, records and accounts for at least 5 years from the dates of their preparation.

#### **13.3 Accounting Statements.**

A. *Monthly Statements.* At Franchisor's request, for each full or partial month after the Opening Date, Franchisee will prepare and deliver to Franchisor an operating statement containing the information required by Franchisor, including Gross Revenues and Gross Room Sales for such month.

B. *Annual Statements.* For each full or partial year or fiscal year (whichever is used by Franchisee for income tax purposes), Franchisee will prepare and provide to Franchisor a complete statement of income and expense from the operation of the Hotel for the preceding year. This statement is due within 90 days after each year. This statement will be prepared in accordance with the Uniform System and the United States generally accepted accounting principles, consistently applied, Applicable Law, the Standards, and the Uniform System "Income Statement" with standard line items specified by Franchisor, and Franchisee will provide such supporting documentation and other information that Franchisor may require relating to this statement. In addition, Franchisee will promptly deliver to Franchisor such other reports and financial information relating to Franchisee and the Hotel as Franchisor may request.

#### **13.4 Franchisor Examination and Audit of Hotel Records.**

A. *Examination and Audit.* Franchisor and its authorized representatives may, at any time, but on reasonable notice to Franchisee, examine and copy all books, records, accounts and tax returns of Franchisee related to the operation of the Hotel during the five years preceding such examination. Franchisor may have an independent audit made of any such books, records, accounts and tax returns. Franchisee will provide any assistance reasonably requested for the audit and will provide copies of any documentation requested by Franchisor without charge.

B. *Underreporting.* If an examination or audit reveals that Franchisee has made underpayments to Franchisor, Franchisee will promptly pay Franchisor on demand the amount underpaid plus interest under Section 3.7. If an examination or audit finds that Franchisee has understated payments due Franchisor by 5% or more for the relevant period, or if the examination or audit reveals that the accounting procedures are insufficient to determine the accuracy of the calculation of payments due, Franchisee will reimburse Franchisor for all costs relating to the examination or audit (including reasonable accounting and legal fees). If the examination or audit establishes a pattern of underreporting, Franchisor may require that the annual financial reports due under Section 13.3.B be audited by an independent accounting firm consented to by Franchisor. The rights of Franchisor in this Section 13.4 are in addition to any other remedies that Franchisor may have, including the right to terminate this Agreement.

C. *Overpayments.* If an examination or audit reveals that Franchisee has made overpayments to Franchisor, the amount of such overpayment, without interest, will be promptly credited against future payments due Franchisor.

### **13.5 Taxes.**

A. *Payment of Taxes.* Franchisee will pay when due all Taxes relating to the Hotel, Franchisee, this Agreement, any other Marriott Agreement or in connection with operating the Hotel, except income or franchise taxes assessed against Franchisor.

B. *Withholding Taxes.*

1. The amounts payable to Franchisor will not be reduced by any deduction or withholding for any present or future Taxes.

2. If Applicable Law imposes an obligation on Franchisee to deduct or withhold Taxes directly from any amount paid to Franchisor, then Franchisee will deduct or withhold the required amount and will timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with Applicable Law. The amount paid to Franchisor will be increased so that after the deduction or withholding has been made in accordance with Applicable Law, the net amount actually received by Franchisor will equal the full amount originally invoiced or otherwise payable. If required or permitted, Franchisee must promptly pay any such deduction or withholding directly to the relevant governmental authority and provide Franchisor proof of payment.

3. If Applicable Law does not impose an obligation on Franchisee to deduct or withhold Taxes directly from any amount paid to Franchisor, but requires Franchisor to pay such Taxes, then Franchisee will pay Franchisor, within 15 days after request, the full amount of the Taxes paid or payable by Franchisor with respect to such payment so that the net amount actually retained by Franchisor after payment of Taxes (other than taxes assessed on Franchisor's net income) will equal the full amount originally invoiced or otherwise payable.

C. *Sales Tax & Similar Taxes.* The amounts payable to Franchisor will not be reduced by any sales, goods and services, value added or similar taxes, all of which will be paid by Franchisee. Therefore, in addition to making any payment to Franchisor required under this Agreement, Franchisee will: (i) pay Franchisor the amount of these taxes due with respect to the payment; or (ii) if required or permitted by Applicable Law, pay these taxes directly to the relevant taxing authority.

D. *Tax Disputes.* If there is a Dispute by Franchisee as to any Tax liability, Franchisee may contest the Tax liability in accordance with Applicable Law, but Franchisee will not permit a sale, seizure or attachment to occur against the Hotel. If such Dispute involves payments of Taxes that will be withheld, deducted and paid by Franchisee related to payments to Franchisor as provided in this Section 13.5, Franchisee will notify Franchisor before taking action with regard to the Dispute with the tax authority and, if requested by Franchisor, cooperate with Franchisor in preparing its response. Upon Franchisor's request, Franchisee will pay such Taxes and seek reimbursement from the governmental authority. Franchisee will be responsible for any interest or penalties assessed.

## **14. INDEMNIFICATION**

Franchisee will indemnify, defend and hold harmless Franchisor and its Affiliates (and each of their respective predecessors, successors, assigns, current and former directors, officers, shareholders, subsidiaries, employees and agents), against all Claims and Damages, including allegations of negligence by such Persons, to the fullest extent permitted by Applicable Law, arising from: (i) the unauthorized use of the Proprietary Marks; (ii) the violation of Applicable Law; or (iii) the construction, conversion and renovation, repair, operation, ownership or use of the Hotel or the Approved Location (including Claims and Damages arising from the use of the Other Marks) or of any other business related to the Hotel or the Approved Location. Franchisor will have the right, at Franchisee's cost, to control the defense of any Claim (including the right to select its counsel or defend or settle any Claim) if Franchisor determines such Claim may affect the interests of Franchisor or its Affiliates. Such undertaking by Franchisor will not diminish Franchisee's indemnity obligations. Neither Franchisor nor any indemnified Person will be required to seek recovery from third parties or mitigate its losses to maintain its right to receive indemnification from Franchisee. The failure to pursue such recovery or mitigate its losses will not reduce the amounts recoverable from Franchisee by an indemnified Person. Franchisee's obligation to maintain insurance under Section 15 will not relieve Franchisee of its obligations under this Section 14. Franchisee's obligations under this Section 14 will survive the termination or expiration of this Agreement.

## **15. INSURANCE**

**15.1 Insurance Required.** During the Term, Franchisee will procure and maintain insurance with the coverages, deductibles, limits, carrier ratings, and policy obligations required by the Standards. Such insurance requirements may include: property insurance including business interruption, earthquake, flood, terrorism and windstorm; workers' compensation; commercial general liability; liquor liability; business auto liability; umbrella or excess liability; fidelity coverage; employment practices liability; cyber liability; and such other insurance customarily carried on hotels similar to the Hotel. Franchisor may change such requirements in the Standards and may also require Franchisee to obtain additional types of insurance or increase the amount of coverages. All insurance will be by endorsement specifically:

- A. name as unrestricted additional insureds Franchisor, any Affiliate designated by Franchisor and their employees and agents (except for workers' compensation and fidelity insurance);
- B. provide that the coverages will be primary and that any insurance carried by any additional insured will be excess and non-contributory;
- C. contain a waiver of subrogation in favor of Franchisor and any Affiliate of Franchisor; and
- D. provide that the policies will not be canceled, non-renewed or reduced without at least 30 days' prior notice to Franchisor.

**15.2 Other Requirements.** Franchisee will deliver to Franchisor a certificate of insurance (and certified copy of such insurance policy if requested) evidencing the insurance required. Renewal certificates of insurance will be delivered to Franchisor not less than 10 days before their respective inception dates. If Franchisee fails to procure or maintain the required insurance, Franchisor will have the right and authority to procure (without any obligation to do so) such insurance at Franchisee's cost, including a reasonable fee for Franchisor's procurement and maintenance of such insurance. If Franchisee delegates its insurance obligations to any other Person, Franchisee will ensure that such Person satisfies such obligations. Such delegation will not relieve Franchisee of its obligations under this Section 15 and the Standards. Any failure to satisfy the insurance requirements is a default under this Agreement. Franchisee will cooperate with Franchisor in pursuing any claim under insurance required by this Agreement.

## **16. FINANCING OF THE HOTEL**

Franchisee and each Interestholder in Franchisee may grant a lien or other security interest in the Hotel or the revenues of the Hotel, or pledge Ownership Interests in Franchisee or a Control Affiliate as collateral for the financing of the Hotel. If any Person exercises its rights under such lien, security interest or pledge, Franchisor will have the rights under Section 19.1. Franchisee will not pledge this Agreement as collateral or grant a security interest in this Agreement, but Franchisor may provide a comfort letter to a lender in the form included in the then-current Disclosure Document and, if it does so, Franchisee will pay the then-current lender comfort letter processing fee.

## **17. TRANSFERS**

**17.1 Franchisee's Transfer Rights.** Franchisee agrees that its rights and duties in this Agreement are personal to Franchisee and that Franchisor entered into this Agreement in reliance on the business skill, financial capacity and character of Franchisee and its Affiliates and their principals. Accordingly, any Transfer of the Hotel, or any Ownership Interest in Franchisee, a Control Affiliate or the Hotel, may be made only in accordance with this Section 17 and only if such Transfer does not violate Section 17.6. This Agreement may not be Transferred without Franchisor's prior consent.

**17.2 Transfers Not Requiring Notice or Consent.** As long as the following Transfers of Passive Investor Interests do not result in a change of Control of Franchisee, no notice to or consent by Franchisor is required:

- A. *Publicly-traded Securities.* A Transfer of publicly-traded securities purchased on the open market, pursuant to a registration statement or through a registered broker/dealer or investment adviser;
- B. *10% Threshold.* A Transfer of Passive Investor Interests (other than those held by a Guarantor) to a transferee that immediately before and after the Transfer owns less than 10% of the Ownership Interests in Franchisee; and
- C. *Investment Fund.* A Transfer of limited partnership interests in an investment fund formed by a sponsoring company in the business of raising capital for investment purposes, as long as such fund has at least 20 limited partners, none of which owns (immediately before or after such Transfer) 10% or more of the Ownership Interests in Franchisee or directs the decisions of, or exercises any Control over, the fund or the companies in which the fund invests.

**17.3 Transfers Requiring Notice but Not Consent.** Franchisee must provide notice to Franchisor at least 20 days prior to any of the following Transfers, but no consent by Franchisor is required:

- A. *Passive Investor Transfer.* A Transfer of Passive Investor Interests (not covered in Section 17.2) if the following requirements are met:
  - 1. Franchisee provides Franchisor with the identity of the proposed transferees and their Interestholders, together with all other related information reasonably requested by Franchisor;

2. such Transfer, individually and in the aggregate, will not result in: (i) a change in Control of Franchisee; (ii) any Person and its Affiliates that did not own a majority of the Ownership Interests in Franchisee before such Transfers collectively owning a majority of the Ownership Interests in Franchisee after such Transfer; or (iii) a Transfer of all of Guarantor's Ownership Interest in Franchisee;

3. each new Interestholder meets Franchisor's then-current owner qualifications (which may include that such Interestholder or any of its Affiliates has not been convicted of a Serious Crime and has not engaged in conduct that may adversely affect the Hotel, the System, or Franchisor, and has not been a party to any material civil litigation with Franchisor or its Affiliates), and Franchisee pays the fees for any required background checks; and

4. if Franchisor requests, Franchisee will execute an amendment to this Agreement that updates the ownership information in Exhibit A, and pay Franchisor's outside counsel costs related to such documentation, if any.

B. *Transfer to Affiliates; Transfer for Estate Planning Purposes.* A Transfer of the Hotel or an Ownership Interest in Franchisee to an Affiliate of Franchisee, or a Transfer of an Ownership Interest in Franchisee for estate planning purposes to an immediate family member or to an entity owned by, or a trust for the benefit of, an immediate family member, in the case of each such Transfer, if the following requirements are met:

1. Franchisee or its Control Affiliate owns, directly or indirectly, more than 50% of the economic interests of the proposed transferee, and such Transfer does not otherwise result in a change of Control of Franchisee or the Hotel;

2. Franchisee provides the identity of the proposed transferee and its Interestholders, documentation acceptable to Franchisor evidencing the Transfer, and all other related information reasonably requested by Franchisor;

3. each Guarantor acknowledges the Transfer and reaffirms its obligations under the Guaranty and, if required by Franchisor, another party acceptable to Franchisor executes a guaranty substantially identical to the form in the then-current Disclosure Document;

4. Franchisee is not in breach or default under any of the Marriott Agreements, or if there is a breach or default, there is an agreement to cure such breach or default;

5. each new Interestholder meets Franchisor's then-current owner qualifications (which may include that such Interestholder or any of its Affiliates has not been convicted of a Serious Crime and has not engaged in conduct that may adversely affect the Hotel, the System, or Franchisor, and has not been a party to any material civil litigation with Franchisor or its Affiliates), and Franchisee pays the fees for any required background checks; and

6. if Franchisor requests, Franchisee and such transferee will execute any documents required by Franchisor to reflect the Transfer, and Franchisee will pay Franchisor's outside counsel costs related to such documentation, if any.

**17.4 Transfers Requiring Notice and Consent.** Transfers of the Hotel or a Controlling Ownership Interest in the Franchisee, a Control Affiliate or the Hotel may be made only with at least 30 days' advance notice to Franchisor and Franchisor's prior consent.

A. *Conditions to Transfer.* Franchisor's consent to a Transfer under this Section 17.4 will be subject to satisfaction of the following conditions:

1. Franchisee provides Franchisor the identity of all parties and their Interestholders, a copy of the purchase agreement, the organizational documents of the transferee and its Interestholders, together with all other information reasonably requested by Franchisor;

2. payment by Franchisee of the then-current non-refundable property improvement plan fee, and payment of the then-current application fee for System Hotels to Franchisor by the transferee with its submission of the application. If Franchisor does not consent to the Transfer, Franchisor will refund the application fee, less \$10,000;

3. satisfaction by each Interestholder of the transferee of Franchisor's then-current owner qualifications (which may include that such Interestholder or any of its Affiliates has not been convicted of a Serious Crime and has not engaged in conduct that may adversely affect the Hotel, the System, or Franchisor, and has not been a party to any material civil litigation with Franchisor or its Affiliates);

4. retention of a management company consented to by Franchisor under Section 8.1 if Franchisor determines in its sole discretion that the transferee is not qualified to operate the Hotel;

5. execution by the transferee of the then-current form of franchise and related agreements. The new franchise agreement will contain the standard terms for new franchise System Hotels as of the date of the Transfer, including the then-current fees and charges, except that the duration will be shortened to the remaining Term. The new franchise agreement will also include a property improvement plan requiring the transferee to address any renovations necessary to comply with the Standards;

6. payment of all amounts due Franchisor and execution of a general release of all claims against Franchisor and its Affiliates; and

7. payment of Franchisor's outside counsel costs related to the Transfer.

Prior Transfers of Ownership Interests by or to a Person that already owns Ownership Interests or an Affiliate of such Person will be taken into account in determining whether a Transfer of a Controlling Ownership Interest has occurred. Within 30 days after Franchisor receives notice and all required information, Franchisor will notify Franchisee of its consent to such Transfer or the reason Franchisor is withholding its consent.

B. *Withholding of Consent.* Even if the conditions in Section 17.4.A. are satisfied, Franchisor may withhold its consent to a Transfer under this Section 17.4 if:

1. Franchisor determines that the proposed transferee's debt service or overall financial status will not permit the Hotel to be operated in compliance with the Standards; or

2. an uncured breach or default of a Marriott Agreement exists, and there is no agreement to cure such breach or default in connection with the Transfer; or

3. the Hotel is not in good standing under the Quality Assurance Program.

C. *Mental Incompetency or Death.* If any Person holding a Controlling Ownership Interest in Franchisee becomes mentally incompetent or dies, the interest of such Person may be Transferred subject to the terms of this Section 17.4 and only if: (i) any such Transfer will be made within 12 months after such Person is deemed mentally incompetent or dies; and (ii) the obligations of Franchisee will be satisfied pending the Transfer and the Hotel is operated in compliance with this Agreement. If such Person was a Guarantor, Franchisor may require another party acceptable to Franchisor to execute a Guaranty substantially identical to the form in the then-current Disclosure Document. If an executor, custodian, or other representative is appointed to oversee the management of Franchisee, Franchisee will give Franchisor notice of such appointment within 30 days and the appointee will cause the Hotel to be operated in compliance with this Agreement.

### **17.5 Proposed Transfer to Competitor and Right of First Refusal.**

A. *Right of First Refusal.* If there is a proposed Transfer of the Hotel or an Ownership Interest in Franchisee or a Control Affiliate to a Competitor, Franchisee will notify Franchisor stating the identity of the prospective transferee (including the Interestholders of such prospective transferee), the terms of the proposed transaction, and all other information reasonably requested by Franchisor. Within 30 days after receipt of such notice and information, Franchisor will notify Franchisee of its election of one of the following:

1. if the proposed Transfer is a cash transaction, Franchisor (or its designee) will have the right to purchase or lease the Hotel or acquire the Ownership Interest at the same price and on the same terms as the Competitor, and Franchisee and Franchisor (or its designee) will promptly enter into an agreement on such terms; or

2. if the proposed Transfer is a non-cash transaction or other form of Transfer, Franchisor (or its designee) will have the right to purchase or lease the Hotel or acquire the Ownership Interest for its fair market value; if Franchisee and Franchisor are unable to agree on the fair market value within 14 days of Franchisor's election, Franchisor will promptly provide Franchisee with a list of at least three nationally recognized appraisers of hotel properties, and within five days Franchisee will select one of such appraisers to appraise the Hotel or the Ownership Interest. Franchisor and Franchisee will share the costs of the appraisal equally. Such appraisal will constitute the fair market value of the Hotel or the Ownership Interest for purposes of this Section 17.5.A.2. Within 30 days of receipt of the appraisal, Franchisor (or its designee) may either: (i) enter into an agreement to purchase the Hotel or the Ownership Interest at the fair market value determined by the appraiser; or (ii) place Franchisee in default and give notice of its intent to terminate this Agreement under Section 19.1.B.; or

3. Franchisor may place Franchisee in default and give notice of its intent to terminate this Agreement under Section 19.1.B., in which case either: (i) Franchisee will cancel the Transfer; or (ii) this Agreement will terminate and Franchisee will pay liquidated damages and comply with its post-termination obligations; or

4. Franchisor may consent to such Transfer, which consent will be on such terms as Franchisor may require, in its sole discretion.

B. *Real Estate Interest and Injunctive Relief.* Franchisee acknowledges that Franchisor's rights under Section 17.5.A. are rights in real estate. Franchisor may record such interest in the appropriate real estate records of the jurisdiction where the Hotel is located, and Franchisee will cooperate in such filing. Franchisee agrees that damages are not an adequate remedy if Franchisee breaches its obligations under this Section 17.5, and Franchisor will be entitled to injunctive relief without proving the inadequacy of money damages as a remedy and without posting a bond. If this Agreement is terminated and Franchisor's rights under Section 17.5 are no longer in effect, on request, Franchisor will execute a termination of such interest.

C. *Survival of Right of First Refusal.* Except for termination of this Agreement under Section 17.5.A.3. or in connection with a Transfer consented to by Franchisor under Section 17.5.A.4., Franchisor's rights under Section 17.5.A. survive early termination of this Agreement and will apply to any Transfer to a Competitor that occurs within six months after such termination.

**17.6 Restricted Persons.** No Transfer of any Ownership Interest in Franchisee, the Hotel or any Marriott Agreement will be made to a Restricted Person, an Affiliate of a Restricted Person or a Person in which a Restricted Person has an interest or provides funding. Any such Transfer is a default under Section 19.1.B.

#### **17.7 Transfers by Franchisor.**

A. *Transfer to Affiliates.* Franchisor may Transfer this Agreement to any of its Affiliates that assumes Franchisor's obligations to Franchisee and is reasonably capable of performing Franchisor's obligations, without prior notice to, or consent of, Franchisee.

B. *Transfer to Other Persons.* Franchisor may Transfer this Agreement to any Person that assumes Franchisor's obligations to Franchisee, is reasonably capable of performing Franchisor's obligations and acquires substantially all of Franchisor's rights in System Hotels, without prior notice to, or consent of, Franchisee. Franchisee agrees that any such Transfer will constitute a release of Franchisor and a novation of this Agreement.

C. *Franchisor's Successors and Assigns.* This Agreement will be binding on and inure to the benefit of Franchisor and its permitted successors and assigns.

### **18. PROSPECTUS REVIEW**

**18.1 Franchisor's Review of Prospectus.** Except as stated in Section 18.2, if any Prospectus uses the Proprietary Marks, identifies the Hotel or Franchisor or its Affiliates or describes the relationship between Franchisor or Franchisee and their respective Affiliates, Franchisee will:

A. deliver to Franchisor for its review a copy of such Prospectus and all related materials at least 30 days before the earlier of the date such Prospectus is delivered to a potential purchaser, a potential investor or filed with the Securities and Exchange Commission or other governmental authority. Franchisor may require Franchisee to pay its outside counsel costs for the review of such Prospectus;

B. indemnify, defend and hold harmless Franchisor and its Affiliates in connection with such Prospectus and the offering; and

C. use any Proprietary Marks in such Prospectus and in any related materials only as consented to by Franchisor.

Franchisor's review of any Prospectus is conducted solely to determine the accuracy of any description of Franchisor's relationship with Franchisee and compliance with this Agreement, including the requirements of Section 12.1 and this Section 18, and not to benefit any other Person. Such consent will not constitute an endorsement or ratification of the proposed offering or Prospectus.

**18.2 Exemption from Review.** Franchisor will waive the requirement for its review of a Prospectus if such Prospectus: (i) only uses the Proprietary Marks in block letters to identify the Hotel, (ii) provides a clear statement that the Hotel is operated under a license from Franchisor, and (iii) provides that Franchisor has not reviewed, endorsed or ratified the proposed offering or Prospectus.

### **19. DEFAULT AND TERMINATION**

**19.1 Immediate Termination.** Franchisee will be in default and Franchisor may terminate this Agreement without providing Franchisee any opportunity to cure the default, effective on notice to Franchisee (or on the expiration of any notice or cure period given by Franchisor in its sole discretion or required by Applicable Law), if any of the following occurs:

A. *Financial Defaults.*

1. Franchisee or any Guarantor files a voluntary petition or a petition for reorganization under any bankruptcy, insolvency or similar law;
2. Franchisee or any Guarantor consents to an involuntary petition under any bankruptcy, insolvency or similar law or fails to vacate any order approving such an involuntary petition within 90 days from the date the order is entered;
3. Franchisee or Guarantor is unable to pay its debts as they become due;
4. Franchisee or Guarantor is adjudicated to be bankrupt, insolvent or of similar status by a court of competent jurisdiction;
5. A receiver, trustee, liquidator or similar authority is appointed over the Hotel;
6. Execution is levied against the Hotel, Franchisee or any material real or personal property in the Hotel in connection with a final judgment; or
7. A suit to foreclose any lien, mortgage or security interest in the Hotel or any material personal property at the Hotel, or any security interest in Franchisee is filed and is not vacated within 90 days.

B. *Non-Financial Defaults.*

1. Franchisee or any Guarantor or any other Person that Controls or has an Ownership Interest in Franchisee is or becomes a Restricted Person;
2. Franchisee or any of its Affiliates or any Guarantor takes any action that constitutes a violation of Applicable Law that adversely affects the Hotel or the System;
3. Franchisee or any of its Affiliates or any Guarantor becomes a Competitor or an Affiliate of a Competitor or a Transfer occurs that does not comply with the terms of Section 17;
4. Franchisee or any of its Affiliates that hold a Controlling Ownership Interest in Franchisee or any Guarantor dissolves or liquidates;
5. Franchisee loses its right to operate or possess the Hotel, or loses ownership of the Hotel; or, if the Hotel is subject to a lease referenced in Item 17 of Exhibit A, Franchisee or the Owner referenced in Item 17 of Exhibit A is in default under such lease, or such lease is terminated for any reason;
6. the Hotel ceases to operate as a System Hotel;
7. Franchisee engages in a pattern of underreporting amounts payable to Franchisor under this Agreement involving three or more months within any 24-month period;
8. a threat to public health or safety occurs from the condition of the Hotel or its operation, that in the opinion of Franchisor, could result in: (i) substantial liability; or (ii) an adverse effect on the Hotel, other System Hotels, the System or the Proprietary Marks and Franchisee fails to close the Hotel and remedy the condition on notice from Franchisor;
9. the Hotel fails to achieve the thresholds of performance established by the Quality Assurance Program and such failure has not been cured within the applicable cure period; or
10. any Confidential Information is disclosed in breach of Section 12.

**19.2 Default with Opportunity to Cure.** Franchisee will be in default and Franchisor may terminate this Agreement for the events listed below, if after 30 days' notice of default (or such greater number of days given by Franchisor in its sole discretion or as required by Applicable Law), Franchisee fails to cure the default as specified in the notice:

- A. Franchisee fails to timely start and complete construction or conversion of the Hotel or fails to timely open the Hotel in accordance with this Agreement and the Standards; or
- B. Franchisee fails to timely complete any renovation or repair of the Hotel in accordance with this Agreement and the Standards; or
- C. Franchisee and its Affiliates fail to pay any amounts due under the Marriott Agreements; or

D. any Marriott Agreement is in default or terminated based on a default of Franchisee or its Affiliates (or any Owner referenced in Item 17 of Exhibit A); or

E. Franchisee or any Interestholder in Franchisee, or any officer, director or employee of Franchisee, is convicted of a Serious Crime or is engaged in conduct that may adversely affect the Hotel, the System, any Franchisor Lodging Facility or Franchisor, and such Person is not terminated from its relationship with Franchisee; or

F. Franchisee fails to comply with the Standards or there occurs any other breach of the Marriott Agreements, including any representations and warranties by Franchisee.

**19.3 Suspension of Reservation System.** If Franchisee is in default under this Agreement and the default is not cured within the cure period (if any), Franchisor may, in addition to any other remedies, suspend the Hotel from the Reservation System while such default remains uncured. Once the default is cured, Franchisor will promptly reconnect the Hotel to the Reservation System. Franchisee waives all claims against Franchisor and its Affiliates arising from any suspension from the Reservation System arising as a result of Franchisee's default under this Agreement.

#### **19.4 Damages.**

A. *Harm to Franchisor.* Franchisee agrees that if it fails to operate the Hotel as a System Hotel for the entire Term, Franchisor will incur damages, including loss of future Franchise Fees and Marketing Fund Contributions and loss of opportunities for Development Activities, and that replacement of the Hotel with a comparable hotel will take significant time and effort. Franchisee agrees that it is difficult to calculate such damages over the remainder of the Term and that the liquidated damages provided for in this Agreement are not a penalty and represent a reasonable estimate of fair compensation for the damages that Franchisor will incur. Franchisee acknowledges that if this Agreement is terminated under the circumstances described in clauses 1 through 4 of Section 19.4.B., Franchisor and the System will suffer greater damages due to the increased difficulty in replacing Franchisor Lodging Facilities and the loss of competitive advantage and customer confidence.

B. *Payment of Liquidated Damages.* If Franchisor terminates this Agreement due to Franchisee's default, Franchisee will promptly pay as liquidated damages to Franchisor an amount equal to (i) the average monthly Franchise Fees and Marketing Fund Contributions payable during the immediately preceding 24 months (without giving effect to any discounts or incentives) multiplied by (ii) the lesser of (x) 36 or (y) 1/2 the number of months remaining in the Term (the "LD Amount"), except:

1. If, in addition to the termination of this Agreement, at least one (but not more than eight) additional franchise, license or management agreement for Franchisor Lodging Facilities between Franchisor and Franchisee, or their respective Affiliates, is terminated within 12 months of the termination of this Agreement, Franchisee will pay 150% of the LD Amount;
2. If this Agreement is terminated as a result of a Transfer to a Competitor, Franchisee will pay 150% of the LD Amount;
3. If this Agreement is terminated as a result of a Transfer to a Competitor and at least one (but not more than eight) additional franchise, license or management agreement for Franchisor Lodging Facilities between Franchisor and Franchisee, or their respective Affiliates, is terminated within 12 months of the termination of this Agreement, Franchisee will pay 200% of the LD Amount; or
4. If, in addition to the termination of this Agreement, at least nine additional franchise, license or management agreements for Franchisor Lodging Facilities between Franchisor and Franchisee, or their respective Affiliates, are terminated within 12 months of the termination of this Agreement, Franchisee will pay 300% of the LD Amount.

If the Hotel had been operating as a System Hotel for less than 24 months prior to termination, the "LD Amount" means (i) the greater of (a) the average monthly Franchise Fees and Marketing Fund Contributions payable for the previous 24 months for all System Hotels on a per room basis multiplied by the number of Guestrooms at the Hotel or (b) the average monthly Franchise Fees and Marketing Fund Contributions payable for the Hotel during the period the Hotel was operating as a System Hotel multiplied by (ii) 36. If either Franchisee or Franchisor believes that such calculation does not fairly represent the Hotel's projected stabilized performance, it will notify the other, and clause (i) will be replaced by "the average monthly Franchise Fees and Marketing Fund Contributions that would have been payable based on the stabilized Hotel revenue projected by Franchisee in its application, without giving effect to any discounts or incentives."

C. *Other Remedies.* Payment of liquidated damages will not preclude Franchisor from pursuing any equitable or other remedies under Applicable Law (other than recovery of future Franchise Fees and Marketing Fund Contributions) and will not affect the obligations of Franchisee to comply with Section 20.

## **20. POST-TERMINATION**

### **20.1 Franchisee Obligations.**

A. *De-Identification.* On the expiration or other termination of this Agreement, Franchisee will immediately:

1. cease to operate the Hotel as a System Hotel and not represent or create the impression that it is a present or former franchisee or licensee of Franchisor or that the Hotel is or was previously part of the System, unless required under Section 20.1.A.8. or 9. below;
2. permanently cease to use, and remove from the Hotel and any other place of business, any Intellectual Property and any other identifying characteristics of the System, including any Electronic Systems, advertising or any articles that display any of the Proprietary Marks or any trade dress or distinctive features or designs associated with the System or Franchisor Lodging Facilities;
3. remove any signs containing any Proprietary Marks (if Franchisee is unable to remove the signs immediately, Franchisee will cover the signs and remove them within 48 hours);
4. remove from any internet sites all content under its control related to the System or Franchisor and take all actions necessary to disassociate itself from Franchisor on the internet. Franchisee will, at Franchisor's option, cancel or assign to Franchisor or its designee, any domain name under the control of Franchisee or its Affiliates that contains any Proprietary Mark, or any mark that Franchisor determines is confusingly similar, including misspellings and acronyms;
5. cancel any fictitious, trade or assumed name or equivalent registration that contains any Proprietary Mark or any variations, and provide satisfactory evidence to Franchisor of its compliance within 30 days after expiration or termination of this Agreement;
6. deliver to Franchisor the originals and all copies of any Intellectual Property and all other materials relating to the operation of the Hotel under the System. Franchisee will not retain a copy of any Intellectual Property or other System materials, except for any documents that Franchisee reasonably needs for compliance with Applicable Law. If Franchisor explicitly permits Franchisee to use any Intellectual Property after the termination or expiration date, such use by Franchisee will be in accordance with this Agreement;
7. cease using any of the Confidential Information or the System and disclosing it to anyone not authorized by Franchisor to receive it;
8. make such necessary alterations to the Hotel so that the public will not confuse it with a System Hotel. Until such alterations are completed, Franchisee will place a conspicuous sign at the registration desk, stating that the Hotel is no longer a System Hotel; and
9. advise all customers in accordance with the Standards that the Hotel is no longer a System Hotel.

B. *Other Obligations and Termination Costs.* On expiration or termination of this Agreement, Franchisee will (a) comply with the obligations in the Sections referenced under Section 27.8; and (b) promptly pay: (i) all amounts owing to Franchisor; (ii) all of Franchisor's costs or fees charged for removing the Hotel from the System; and (iii) a reasonable estimate of costs and fees that will be due but have not yet been invoiced (if the estimated payment exceeds actual amounts due, Franchisor will refund the difference to Franchisee). Franchisor will have the right to recover reasonable legal fees and court costs incurred in collecting such amounts. If this Agreement is terminated under Section 21.2, Franchisee will cooperate with Franchisor in pursuing its claim under the business interruption insurance required under this Agreement.

**20.2 Franchisor's Rights on Expiration or Termination.** Before or on the expiration or termination of this Agreement, Franchisor may give notice that the Hotel is leaving the System and take any other action related to customers, Travel Management Companies, suppliers and other Persons affected by such expiration or termination.

## **21. CONDEMNATION AND CASUALTY**

### **21.1 Condemnation.**

A. *Condemnation Notification.* Franchisee will promptly notify Franchisor if it receives notice of any proposed taking of any portion of the Hotel by eminent domain, condemnation, compulsory acquisition or similar proceeding by any governmental authority.

B. *Condemnation Restoration.* If the condemnation award is sufficient to restore the Hotel to meet the Standards, Franchisee will cause the Hotel to be promptly restored and reopened within a reasonable time.

C. *Condemnation Termination.* If the taking in Section 21.1.A. would materially affect the continued operation of the Hotel as a System Hotel, Franchisor or Franchisee may terminate this Agreement, in which case, Franchisor and Franchisee will execute a termination agreement and release on Franchisor's then-current form, and Franchisee will comply with the post-termination obligations in Section 20.

D. *No Liquidated Damages on Condemnation Termination.* A termination under this Section 21.1 will not be a default under this Agreement and Franchisee will not be required to pay liquidated damages. However, Franchisor will be entitled to receive a fair and reasonable portion of any condemnation award to compensate Franchisor for its lost revenue, but not more than the amount of liquidated damages that would have been due under Section 19.4.B.

## **21.2 Casualty.**

A. *Casualty Notification.* Franchisee will promptly notify Franchisor if the Hotel is damaged by any casualty.

B. *Casualty Restoration.* If the Hotel is damaged by any casualty and the cost to restore the Hotel to the same condition as existed previously is less than 60% of the Hotel's replacement cost at the time of the casualty, Franchisee will cause the Hotel to be promptly renovated and reopened within a reasonable time under Section 4.

C. *Casualty Termination.* If the Hotel is damaged by any casualty and the cost to restore the Hotel to the same condition as existed previously is 60% or more of the Hotel's replacement cost at the time of the casualty, Franchisee will have 180 days after the date of the casualty to elect whether it will restore the Hotel to its previous condition or terminate this Agreement. If Franchisee elects to restore the Hotel, the Hotel will be promptly renovated and reopened within a reasonable time under Section 4. If Franchisee elects to terminate this Agreement, Franchisor and Franchisee will execute a termination agreement and release on Franchisor's then-current form and Franchisee will comply with the post-termination obligations in Section 20. Such termination will not affect Franchisor's right to business interruption insurance proceeds.

D. *No Liquidated Damages on Casualty Termination.* A termination under this Section 21.2 will not be a default under this Agreement and Franchisee will not be required to pay liquidated damages unless, before the date on which the Term otherwise would have ended, Franchisee or any of its Affiliates operates an Other Lodging Product at the Approved Location.

## **22. COMPLIANCE WITH APPLICABLE LAW; LEGAL ACTIONS**

**22.1 Compliance with Applicable Law.** Franchisee will comply with all Applicable Law, and will obtain all permits, certificates and licenses necessary to operate the Hotel and comply with the Marriott Agreements.

**22.2 Notice of Legal Actions.** Within seven days of receipt, Franchisee will notify Franchisor and provide copies of: (i) any Claim involving the Hotel, Franchisee or Franchisor; (ii) any judgment, order, or other decree related to the Hotel or Franchisee; or (iii) any inspection reports and warnings about a material failure to meet health or life safety requirements or any other material violation of Applicable Law related to the Hotel or Franchisee. This Section 22.2 will not change any notice requirement that Franchisee may have under any insurance policies.

## **23. RELATIONSHIP OF PARTIES**

This Agreement does not create a fiduciary relationship between Franchisor and Franchisee. Franchisee is an independent contractor, and neither party is an agent, legal representative, joint venturer, partner or employee of the other for any purpose and Franchisee will make no representation to the contrary. Nothing in this Agreement authorizes Franchisee to make any agreement or representation on Franchisor's behalf or to incur any obligation in Franchisor's name.

## **24. GOVERNING LAW; INTERIM RELIEF; COSTS OF ENFORCEMENT; WAIVERS**

### **24.1 Governing Law and Jurisdiction.**

A. *Governing Law.* This Agreement takes effect on its acceptance and execution by Franchisor in Maryland and will be construed under and governed by Maryland law, which law will prevail if there is any conflict of law. Nothing in this Section 24.1 will make the Maryland Franchise Registration and Disclosure Law apply to this Agreement or the relationship between Franchisor and Franchisee, if such law would not otherwise apply.

B. *Jurisdiction.* Franchisee expressly and irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Maryland for the purpose of any Dispute. So far as permitted under Maryland law, this consent to personal jurisdiction will be self-operative.

**24.2 Equitable Relief.** Franchisor is entitled to injunctive or other equitable relief, including restraining orders and preliminary injunctions, in any court of competent jurisdiction for any threatened or actual material breach of the Marriott Agreements or non-compliance with the Standards. Franchisor is entitled to such relief without the necessity of proving the inadequacy of money damages as a remedy, without the necessity of posting a bond and without waiving any other rights or remedies.

**24.3 Costs of Enforcement.** If either party initiates any legal or equitable action to protect its rights under this Agreement or other Marriott Agreements, the prevailing party will be entitled to recover its costs, including reasonable legal fees.

**24.4 WAIVER OF PUNITIVE DAMAGES.** EACH OF FRANCHISEE AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO CLAIM OR RECEIVE PUNITIVE DAMAGES IN ANY DISPUTE RELATED TO THE HOTEL, THE MARRIOTT AGREEMENTS, THE RELATIONSHIP OF THE PARTIES, OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE. NOTHING IN THIS SECTION 24.4 LIMITS FRANCHISEE'S OBLIGATIONS UNDER SECTION 14.

**24.5 WAIVER OF JURY TRIAL.** EACH OF FRANCHISEE AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY DISPUTE RELATED TO THE HOTEL, THE MARRIOTT AGREEMENTS, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE.

## **25. NOTICES**

A. *Written Notices.* Subject to Section 25.B., all notices, requests, statements and other communications under this Agreement will be: (i) in writing; (ii) delivered by hand with receipt, or by courier service with tracking capability; and (iii) addressed, (a) in the case of Franchisor, to the address stated in Item 15 of Exhibit A; and (b) in the case of Franchisee, to the address stated in Item 16 of Exhibit A, or in either case at any other address designated in writing by the party entitled to receive the notice. Any notice will be deemed received (i) when delivery is received or first refused, if delivered by hand or (ii) one day after posting of such notice, if sent via overnight courier.

B. *Electronic Delivery.* Franchisor may provide Franchisee with electronic delivery of routine information, invoices, the Standards and other System requirements and programs. Franchisor and Franchisee will cooperate with each other to adapt to new technologies that may be available for the transmission of such information.

## **26. REPRESENTATIONS AND WARRANTIES**

### **26.1 Existence; Authorization; Ownership; Other Representations.**

A. *Existence.* Each of Franchisor and Franchisee represents and warrants that it: (i) is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation; and (ii) has and will continue to have the ability to perform its obligations under this Agreement.

B. *Authorization.* Each of Franchisor and Franchisee represents and warrants that the execution and delivery of this Agreement and the performance of its obligations under this Agreement: (i) have been duly authorized; (ii) do not and will not violate, contravene or result in a default or breach of (a) any Applicable Law, (b) its governing documents or (c) any agreement, commitment or restriction binding on the relevant party; and (iii) do not require any consent that has not been obtained by the relevant party.

C. *Prior Representations.* Franchisee represents and warrants that all of the information in the application and provided for this Agreement was true as of the time made and is true as of the Effective Date, regardless of whether such representations and warranties were provided by Franchisee or another Person.

D. *Restricted Person.* Franchisee represents and warrants that Franchisee is not, and that none of its Affiliates (including their directors and officers), Interestholders or the funding sources for any of them, is a Restricted Person.

E. *Ownership of Franchisee.* Franchisee represents and warrants that its Interestholders are completely and accurately listed in Attachment Two to Exhibit A. Upon any Transfer under Section 17 or otherwise permitted by Franchisor, Franchisee will provide a list of the names and addresses of the Interestholders and documents necessary to confirm such information and update Attachment Two to Exhibit A.

F. *Ownership of the Hotel.* Unless stated in Item 17 of Exhibit A, Franchisee represents and warrants that either: (i) it is the sole owner of the Hotel and holds good and marketable fee title to the Approved Location; or (ii) the Approved Location is subject to a valid purchase contract, and on closing of such contract, Franchisee will be the sole owner of the Hotel and will hold good and marketable fee title to the Approved Location. If the Approved Location is subject to a purchase contract, Franchisee will deliver a copy of the recorded deed in Franchisee's name to Franchisor no later than the Construction Start Deadline.

## **26.2 Additional Franchisee Acknowledgments and Representations.**

A. *NO RELIANCE.* IN ENTERING THIS AGREEMENT, FRANCHISEE REPRESENTS AND WARRANTS THAT IT DID NOT RELY ON, AND NEITHER FRANCHISOR NOR ANY OF ITS AFFILIATES HAS MADE, ANY PROMISES, REPRESENTATIONS, WARRANTIES OR AGREEMENTS RELATING TO THE FRANCHISE, THE HOTEL, OR THE APPROVED LOCATION OR THE SYSTEM, UNLESS CONTAINED IN THIS AGREEMENT.

B. *BUSINESS RISK.* FRANCHISEE AGREES THAT THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT INVOLVES SUBSTANTIAL BUSINESS RISK, IS A VENTURE WITH WHICH FRANCHISEE HAS RELEVANT EXPERIENCE AND ITS SUCCESS IS LARGELY DEPENDENT ON FRANCHISEE'S ABILITY AS AN INDEPENDENT BUSINESS. FRANCHISOR DISCLAIMS THE MAKING OF, AND FRANCHISEE AGREES IT HAS NOT RECEIVED, ANY INFORMATION, WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO THE POTENTIAL REVENUES, PROFITS OR SUCCESS OF SUCH BUSINESS VENTURE. FRANCHISOR WILL NOT INCUR ANY LIABILITY FOR ANY ERROR, OMISSION OR FAILURE CONCERNING ANY ADVICE, TRAINING OR OTHER ASSISTANCE FOR THE HOTEL PROVIDED TO FRANCHISEE, INCLUDING FINANCING, DESIGN, CONSTRUCTION, RENOVATION OR OPERATIONAL ADVICE.

C. *DISCLOSURE AND NEGOTIATION.* FRANCHISEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD THE DISCLOSURE DOCUMENT AND THE MARRIOTT AGREEMENTS. FRANCHISEE HAS HAD SUFFICIENT TIME AND OPPORTUNITY TO CONSULT WITH ITS ADVISORS ABOUT THE POTENTIAL BENEFITS AND RISKS OF ENTERING INTO THIS AGREEMENT. FRANCHISEE HAS HAD AN OPPORTUNITY TO NEGOTIATE THIS AGREEMENT.

D. *HOLDING PERIODS.* FRANCHISEE ACKNOWLEDGES THAT IT RECEIVED A COPY OF THIS AGREEMENT, ITS EXHIBITS AND ATTACHMENTS, IF ANY, AND RELATED AGREEMENTS, IF ANY, AT LEAST SEVEN DAYS BEFORE THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED. FRANCHISEE FURTHER ACKNOWLEDGES THAT IT HAS RECEIVED THE DISCLOSURE DOCUMENT AT LEAST 14 DAYS BEFORE THE DATE ON WHICH IT EXECUTED THIS AGREEMENT OR MADE ANY PAYMENT TO FRANCHISOR IN CONNECTION WITH THIS AGREEMENT.

E. *DISCLOSURE EXEMPTION.* NOTWITHSTANDING FRANCHISEE'S ACKNOWLEDGMENT IN SECTION 26.2.D, FRANCHISEE REPRESENTS AND ACKNOWLEDGES THAT THIS FRANCHISE SALE IS FOR MORE THAN \$1,084,900, EXCLUDING THE COST OF UNIMPROVED LAND AND ANY FINANCING RECEIVED FROM FRANCHISOR OR ITS AFFILIATES, AND THUS IS EXEMPTED FROM THE FEDERAL TRADE COMMISSION'S FRANCHISE RULE DISCLOSURE REQUIREMENTS PURSUANT TO 16 CFR 436.8(a)(5)(i).

## **27. MISCELLANEOUS**

**27.1 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which constitute one and the same instrument. Delivery of an executed signature page by electronic transmission is as effective as delivery of an original signed counterpart.

### **27.2 Construction and Interpretation.**

A. *Partial Invalidity.* If any term of this Agreement, or its application to any Person or circumstance, is invalid or unenforceable at any time or to any extent, then: (i) the remainder of this Agreement, or the application of such term to Persons or circumstances except those as to which it is held invalid or unenforceable, will not be affected and each term of this Agreement will be valid and enforced to the fullest extent permitted by Applicable Law; and (ii) Franchisor and Franchisee will negotiate in good faith to modify this Agreement to implement their original intent as closely as possible in a mutually acceptable manner.

B. *Non-Exclusive Rights and Remedies.* No right or remedy of Franchisor or Franchisee under this Agreement is intended to be exclusive of any other right or remedy under this Agreement at law or in equity.

C. *No Third-Party Beneficiary.* Nothing in this Agreement is intended to create any third-party beneficiary or give any rights or remedies to any Person except Franchisor or Franchisee and their respective permitted successors and assigns.

D. *Actions from Time to Time.* When this Agreement permits Franchisor to take any action, exercise discretion or modify the System, Franchisor may do so from time to time.

E. *Interpretation of Agreement.* Franchisor and Franchisee intend that this Agreement excludes all implied terms to the maximum extent permitted by Applicable Law. Headings of Sections are for convenience and are not to be used to interpret the Sections to which they refer. All Exhibits to this Agreement form an integral part of this Agreement and are incorporated by reference, including all Items of Exhibit A even if such Items are not specifically referred to in this Agreement. Words indicating the singular include the plural and vice versa as the context may require. References to days, months and years are all calendar references. References that a Person “will” do something mean the Person has an obligation to do such thing. References that a Person “may” do something mean a Person has the right, but not the obligation, to do so. References that a Person “may not” or “will not” do something mean the Person is prohibited from doing so. Examples used in this Agreement and references to “includes” and “including” are illustrative and not exhaustive.

F. *Definitions.* All capitalized terms in this Agreement have the meaning stated in Exhibit B.

### **27.3 Reasonable Business Judgment.**

A. *Definition.* Reasonable Business Judgment means:

1. For decisions affecting the System, that the rationale for Franchisor’s decision has a business basis that is intended to: (i) benefit the System or the profitability of the System, including Franchisor, regardless of whether some hotels may be unfavorably affected; (ii) increase the value of the Proprietary Marks; (iii) enhance guest, franchisee or owner satisfaction; or (iv) minimize potential brand inconsistencies or customer confusion; and

2. For decisions unrelated to the System (for example, a requested approval for the Hotel), that the rationale for Franchisor’s decision has a business basis and Franchisor has not acted in bad faith.

B. *Use of Reasonable Business Judgment.* Franchisor will use Reasonable Business Judgment when discharging its obligations or exercising its rights under this Agreement, including for any consents and approvals and the administration of Franchisor’s relationship with Franchisee, except when Franchisor has reserved sole discretion.

C. *Burden of Proof.* Franchisee will have the burden of establishing that Franchisor failed to exercise Reasonable Business Judgment. The fact that Franchisor or any of its Affiliates benefited from any action or decision, or that another reasonable alternative was available, does not mean that Franchisor failed to exercise Reasonable Business Judgment. If this Agreement is subject to any implied covenant or duty of good faith and Franchisor exercises Reasonable Business Judgment, Franchisee agrees that Franchisor will not have violated such covenant or duty.

**27.4 Consents and Approvals.** Except as otherwise provided in this Agreement, any approval or consent required under this Agreement will not be effective unless it is in writing and signed by the duly authorized officer or agent of the party giving such approval or consent. Franchisor will not be liable for: (i) providing or withholding any approval or consent; (ii) providing any suggestion to Franchisee; (iii) any delay; or (iv) denial of any request.

**27.5 Waiver.** The failure or delay of either party to insist on strict performance of any of the terms of this Agreement, or to exercise any right or remedy, will not be a waiver for the future.

**27.6 Entire Agreement.** This Agreement and the Marriott Agreements are fully integrated and contain the entire agreement between the parties as it relates to this franchise, the Hotel and the Approved Location and, subject to Section 26.1.C, supersede and extinguish all prior statements, agreements, promises, assurances, warranties, representations and understandings, whether written or oral, by any Person. Nothing in this Agreement is intended to require Franchisee to waive reliance on any representations made in the Disclosure Document.

**27.7 Amendments.** This Agreement may only be amended in a written document that has been duly executed by the parties and may not be amended by conduct manifesting assent, and each party is put on notice that any individual purporting to amend this Agreement by conduct manifesting assent is not authorized to do so.

**27.8 Survival.** The terms of Sections 11, 12, 13.4, 14, 17.5, 18, 19.4, 20, 21.1.D., 21.2.D. and 24 survive expiration or termination of this Agreement.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, Franchisor and Franchisee have caused this Relicensing Franchise Agreement to be executed, under seal, as of the Effective Date.

FRANCHISOR:

MARRIOTT INTERNATIONAL, INC.

By: /s/ Michael H. Rosenman (SEAL)

Name: Michael H. Rosenman

Title: Vice President, Owner and Franchise Services

FRANCHISEE:

MOODY NATIONAL LANCASTER-AUSTIN MT,  
LLC, a Delaware limited liability company

By: /s/ Brett C. Moody (SEAL)

Name: Brett C. Moody

Title: President

**EXHIBIT A**  
**KEY TERMS**

- |      |   |   |
|------|---|---|
| 1.   | <b>Trade Name(s):</b>                             | Residence Inn by Marriott   |
| 2.   | <b>Approved Location:</b>                         | 1200 Barbara Jordan Blvd. Building 4, Austin, TX 78723  |
| 3.   | <b>Effective Date:</b>                            | October 15, 2015  |
| 4.   | <b>Term:</b>                                      | Begins on Effective Date and ends on January 14, 2034   |
| 5.   | <b>Franchisor:</b>                                | Marriott International, Inc., a Delaware corporation  |
| 6.   | <b>Franchisee:</b>                                | Moody National Lancaster-Austin MT, LLC, a Delaware limited liability company   |
| 7.   | <b>Number of Guestrooms:</b>                      | 112   |
| 8.   | <b>Entity that will Operate the Hotel:</b>        | Moody National Hospitality Company, LLC   |
| 9.   | <b>Restricted Territory (Residence Inn only):</b> | Not Applicable.   |
| 10.  | <b>Application Fee:</b>                           | \$150,000   |
| 11.  | <b>Franchise Fees:</b>                            | 6% of Gross Room Sales  |
| 12.A | <b>Marketing Fund Contribution:</b>               | 2.5% of Gross Room Sales  |
| 12.B | <b>Marketing Fund Contribution Restriction:</b>   | A majority vote by members of the Association is required to approve an increase in the Marketing Fund Contribution. A “majority vote” as required to approve an increase means a number of votes constituting a majority of all open and operating System hotels. Members of the Association in good standing will be provided at least 30 days’ prior notice of, and an opportunity to vote on, any proposed increase. Franchisor will provide to Franchisee at least 60 days’ notice before any such approved increase is effective.   |
| 13.  | <b>Construction Start Deadline:</b>               | Not Applicable.   |
| 14.  | <b>Opening Deadline:</b>                          | Not Applicable.   |
| 15.  | <b>Franchisor Notice Address:</b>                 | Marriott International, Inc.<br>10400 Fernwood Road<br>Bethesda, MD 20817<br>Attn: Law Department 52/923.27   |
| 16.  | <b>Franchisee Notice Address:</b>                 | MOODY NATIONAL LANCASTER-AUSTIN MT, LLC<br>6363 Woodway Drive, Suite 110<br>Houston, TX 77057<br>Attn: David Gould<br>Email: DGould@MoodyNational.com   |
| 17.  | <b>Lease Provisions:</b>                          | Franchisee represents and warrants that (i) Owner is the sole owner of the Hotel, (ii) the Hotel is leased to Franchisee under a lease between Franchisee and Owner and (iii) Franchisee has all rights and authority relating to the Hotel for the performance of Franchisee’s obligations under this Agreement. If the lease provides for Owner to perform any of Franchisee’s obligations under this Agreement, Franchisee will cause Owner to perform such obligations as required under this Agreement. The existence of the lease and its terms that require Owner to perform Franchisee’s obligations are not an assignment of such obligations to Owner and do not relieve Franchisee of any obligation under this Agreement. The lease will not limit or restrict Franchisor’s rights or remedies under this Agreement in any way. |

“Owner” means Moody National Lancaster-Austin Holding, LLC, a Delaware limited liability company.

18. **System Hotel-specific terms:**

The following additional terms apply:

Marketing Fund Activities may include the development, modification, maintenance, support, administration and operation of the Reservation System.

Franchisee will not be required to pay fees for the Reservation System to the extent such fees are paid on behalf of Franchisee using the Marketing Fund. Franchisor’s rights under Section 6.2.B. of this Agreement include its right to establish methods of funding the Reservation System other than by the Marketing Fund.

Section 10.3 of the Franchise Agreement is replaced in its entirety with the following:

**“10.3 Franchisee Association.** Subject to compliance with certain membership requirements, Franchisee, Franchisor and other System Hotel franchisees and licensees are eligible to participate in an association organized to consider and make recommendations on matters related to the operation of System Hotels (the “Association”). Franchisee will pay any Association dues and assessments, which will be consistently applied to all System Hotel franchisees. The Association will vote on bylaws and election of officers. Franchisor will regard recommendations of the Association as expressing the consensus of members of the Association.”

19. **PIP Walk-through Date:**

Not Applicable.

20. **Additional Terms:**

Not Applicable.

**ATTACHMENT ONE  
TO EXHIBIT A**

**OWNERSHIP INTEREST IN FRANCHISEE**

<b>Name of Owner</b>	<b>Address</b>	<b>% Interest</b>
<b>OWNERSHIP OF MOODY NATIONAL LANCASTER-AUSTIN MT, LLC</b>		
MN Lancaster-Austin MT, Inc.	6363 Woodway Drive, Suite 110 Houston, TX 77057	100% Sole Member
<b>OWNERSHIP OF MN LANCASTER-AUSTIN MT, INC.</b>		
Moody National Operating Partnership II, LP	6363 Woodway Drive, Suite 110 Houston, TX 77057	100% Sole Shareholder
<b>OWNERSHIP OF MOODY NATIONAL OPERATING PARTNERSHIP II, LP</b>		
Moody National REIT II, Inc.	6363 Woodway Drive, Suite 110 Houston, TX 77057	99.502488% General Partner
Moody OP Holdings II, LLC	6363 Woodway Drive, Suite 110 Houston, TX 77057	0.497512% Limited Partner
Moody National LPOP II, LLC	6363 Woodway Drive, Suite 110 Houston, TX 77057	Special Unit Holder
<b>OWNERSHIP OF MOODY NATIONAL REIT II, INC.*</b>		
Shareholders	—	100%
<b>OWNERSHIP OF MOODY OP HOLDINGS II, LLC</b>		
Moody National REIT II, Inc.	6363 Woodway Drive, Suite 110 Houston, TX 77057	100% Sole Member
<b>OWNERSHIP OF MOODY NATIONAL LPOP II, LLC</b>		
Brett C. Moody	6363 Woodway Drive, Suite 110 Houston, TX 77057	100% Sole Member

\*Moody National REIT II, Inc. is a publicly-registered, non-traded REIT with over 900 shareholders

## **EXHIBIT B** **DEFINITIONS**

The following terms used in this Agreement have the meanings given below:

“Accessibility Requirements” means the Americans with Disabilities Act and other applicable state laws, codes, and regulations governing public accommodations for persons with disabilities.

“Additional Marketing Programs” means advertising, marketing, promotional, public relations, and sales programs and activities that are not funded by the Marketing Fund, each of which may vary in duration, apply on a local, regional, national, or Category basis, or include other Franchisor Lodging Facilities. Examples include email marketing, internet search engine marketing, transaction-based paid internet searches, sales lead referrals and bookings, cooperative advertising programs, Travel Management Companies programs, incentive awards, gift cards, guest satisfaction programs, complaint resolution programs and Loyalty Programs.

“Affiliate” means, for any Person, a Person that is directly or indirectly Controlling, Controlled by, or under common Control with such Person.

“Agreement” means this Franchise Agreement, including any exhibits and attachments, as may be amended.

“Applicable Law” means applicable national, federal, regional, state or local laws, codes, rules, ordinances, regulations, or other enactments, orders or judgments of any governmental, quasi-governmental or judicial authority, or administrative agency having jurisdiction over the Hotel, Franchisee, Guarantor, Franchisor in its capacity as licensor under this Agreement or any of the Marriott Agreements, or the matters that are the subject of this Agreement, including any of the above that prohibit unfair, fraudulent or corrupt business practices and related activities, including any such actions or inactions that would constitute a violation of money laundering or terrorist financing laws and regulations.

“Approved Location” means the site, including all land and easements used for the Hotel, described in Item 2 of Exhibit A.

“Brand” means a hotel brand, trade name, trademark, system, or chain of hotels.

“Case Goods” means furniture and fixtures used in the Hotel such as cabinets, shelves, chests, armoires, chairs, beds, headboards, desks, tables, mirrors, lighting fixtures and similar items.

“Category” means a group of System Hotels designated by Franchisor or its Affiliates based on criteria such as geographic (for example, local, regional, national or international) or other attributes (for example, resorts, urban, or suburban). A Category may have specific Standards or be a descriptive classification.

“Claim” means any demand, inquiry, investigation, action, claim or charge asserted, including in any judicial, arbitration, administrative, debtor or creditor proceeding, bankruptcy, insolvency, or similar proceeding.

“Competitor” means any Person that has a direct or indirect Ownership Interest in a Brand or is an Affiliate of such a Person, or any Person that is a Master Franchisee of a Brand, or any officer or director of such Person, but only if the Brand is comprised of at least: (i) 10 luxury hotels; (ii) 20 full-service hotels; or (iii) 50 limited-service hotels. For purposes of this definition: “luxury” hotels are hotels that had a system average daily rate in excess of \$180 for the most recent year; “full-service” hotels are hotels that offer three meals per day and have at least 3,000 square feet of meeting space; and “limited-service” hotels are hotels that are neither “luxury” hotels nor “full-service” hotels. No Person will be considered a Competitor if such Person has an interest in a Brand merely as: (i) a franchisee; (ii) a management company that operates hotels on behalf of multiple brands; or (iii) a passive investor that has no Control over the business decisions of the Brand, such as limited partners or non-Controlling stockholders.

“Confidential Information” means: (i) the Standards; (ii) documents or trade secrets approved for the System or used in the design, construction, renovation or operation of the Hotel; (iii) any Electronic Systems and related documentation; (iv) Guest Profile Data; or (v) any other knowledge, trade secrets, business information or know-how obtained or generated (a) through the use of the System by Franchisee or the operation of the Hotel that Franchisor deems confidential or (b) under any Marriott Agreements.

“Control” (in any form, including “Controlling” or “Controlled”) means, for any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person or the power to veto major policy decisions of such Person. No Person (or Persons acting together) will be considered to have Control of a publicly-traded company if such Persons collectively beneficially own less than 25% of the voting stock of such company.

“Control Affiliate” means an Affiliate of Franchisee that Controls Franchisee.

“Damages” means losses, costs (including legal or attorneys’ fees, litigation costs and settlement payments), liabilities (including employment liabilities, bodily injury, death, property damage and loss, personal injury and mental injury), penalties, interest, and damages of every kind and description.

“Data Protection Laws” means data protection and privacy laws applicable to the Hotel and the System.

“Design Criteria” means those standards for the design of Hotel Improvements and such other information for planning, constructing or renovating and furnishing a System Hotel.

“Design Process” is defined in Section 4.4.

“Development Activities” means the development, promotion, construction, ownership, lease, acquisition, management or operation of: (i) Franchisor Lodging Facilities (including other System Hotels); and (ii) other business operations, in each case by Franchisor or its Affiliates, or the authorization, licensing or franchising to other Persons to conduct similar activities.

“Disclosure Document” means that certain document provided by Franchisor to prospective franchisees of System Hotels as required by the trade regulation rule of the Federal Trade Commission entitled “Disclosure Requirements and Prohibitions Concerning Franchising,” as such document may be updated by Franchisor.

“Dispute” means any disagreement, controversy, or Claim relating to or arising out of any Marriott Agreement, the relationship created by any Marriott Agreement, or the validity or enforceability of any Marriott Agreement.

“Effective Date” means the date stated in Item 3 of Exhibit A.

“Electronic Systems” means all Software, Hardware and all electronic access to Franchisor’s systems and data (including telephone and internet access), licensed or made available to Franchisee, including the Reservation System, the Property Management System, the Yield Management System and any other system established under Sections 7 and 10.

“Electronic Systems Fees” means the fees charged by Franchisor for the Hotel’s use of the Electronic Systems, which fees include the development and incremental operating costs, ongoing maintenance, field support costs and a reasonable return on capital related to such system.

“Electronic Systems License Agreement” means the agreement that is executed by Franchisee as a condition to using the Electronic Systems, the current form of which is included in the Disclosure Document.

“F&B Support Fee” means the fees charged by Franchisor for the food and beverage program for System Hotels, which fees include the development, ongoing sustainment and field support costs and a reasonable return on capital related to such program.

“FF&E” means Case Goods, Soft Goods, signage and equipment (including telephone systems, printers, televisions, vending machines, and Hardware), but excludes any item included in Fixed Asset Supplies.

“Fixed Asset Supplies” means items such as linen, china, glassware, tableware, uniforms and similar items included within “Operating Equipment” under the Uniform System.

“Franchisee” means the Person identified in Item 6 of Exhibit A.

“Franchise Fees” is defined in Section 3.2.

“Franchisor” means the Person identified in Item 5 of Exhibit A, and its successors and assigns.

“Franchisor Lodging Facilities” means all hotels and other lodging facilities, chains, brands, or hotel systems owned, leased, under development, or operated or franchised or licensed, now or in the future, by Franchisor or any of its Affiliates, including: (i) AC Hotels by Marriott; African Pride Hotels; Autograph Collection Hotels; Bvlgari Hotels and Resorts; Courtyard by Marriott Hotels; Delta Hotels and Resorts; Edition Hotels; Fairfield by Marriott Hotels; Fairfield Inn by Marriott Hotels; Fairfield Inn & Suites by Marriott Hotels; Gaylord Hotels; JW Marriott Hotels & Resorts; JW Marriott Marquis Hotels; Marriott Conference Centers; Marriott Executive Apartments; Marriott Hotels, Resorts and Suites; Marriott Marquis Hotels; Moxy Hotels; Protea Hotels; Protea Hotels Fire & Ice!; Renaissance Hotels; Residence Inn by Marriott Hotels; Ritz-Carlton Hotels and Resorts; Ritz-Carlton Reserve; SpringHill Suites by Marriott Hotels; and TownePlace Suites by Marriott Hotels; (ii) whole ownership facilities and other lodging products or concepts, including Grand Residences by Marriott; JW Marriott Residences; Marriott Marquis Residences; The Residences at The Ritz-Carlton and The Ritz-Carlton Residences; (iii) Vacation Club Products, including Marriott Vacation Club, The Ritz-Carlton Club, and The Ritz-Carlton Destination Club; and (iv) any other lodging product or concept developed or used by Franchisor or any of its Affiliates in the future.

“Gross Revenues” means all revenues and receipts of every kind (from both cash and credit transactions, with no reduction for charge backs, credit card service charges, or uncollectible amounts) derived from operating the Hotel. Gross Revenues includes

revenues from: (i) Gross Room Sales; (ii) food and beverage sales; (iii) licenses, leases and concessions; (iv) equipment rental; (v) vending machines; (vi) telecommunications services; (vii) parking; (viii) health club or spa revenues; (ix) sales of merchandise; (x) service charges; (xi) condemnation proceeds for a temporary taking; (xii) any proceeds from business interruption or other loss of income insurance; and (xiii) any awards, judgments or settlements representing payment for loss of revenues. Gross Revenues excludes: gratuities received by Hotel employees; value added, room, excise, goods and services, sales or use taxes or any other taxes collected directly from customers or included as part of the sales price of any goods or services; proceeds from the sale of FF&E; and any refunds and credits of a similar nature, paid or returned to customers in the course of obtaining Gross Revenues.

“Gross Room Sales” means all revenues and receipts of every kind that accrue from the rental of Guestrooms (with no reduction for charge backs, credit card service charges, or uncollectible amounts). Gross Room Sales includes: (i) no-show revenue, early departure fees, late check-out fees and other revenues allocable to rooms revenue under the Uniform System; (ii) resort fees and mandatory surcharges for facilities (although inclusion of such fees or surcharges does not constitute approval by Franchisor of such fees and surcharges, which may be limited or prohibited); (iii) attrition or cancellation fees collected from unfulfilled reservations for Guestrooms; (iv) the amount of all lost sales due to the non-availability of Guestrooms in connection with a casualty event, whether or not Franchisee receives business interruption insurance proceeds; and (v) any awards, judgments or settlements representing payment for loss of room sales. Gross Room Sales excludes sales tax, value added tax, or similar taxes on such revenues and receipts.

“Guarantor” means the Person or Persons who guarantee the performance of Franchisee’s obligations under the Marriott Agreements.

“Guaranty” means a guaranty executed by Guarantor for the benefit of Franchisor, the current form of which is included in the Disclosure Document.

“Guest Profile Data” means personally identifiable information, profiles and preferences of guests, including any information from any Loyalty Program.

“Guestroom” means each rentable unit in the Hotel consisting of a room, suite or suite of rooms used for overnight guest accommodation, the entrance to which is controlled by the same key; however, adjacent rooms with connecting doors that can be locked and rented as separate units are considered separate Guestrooms.

“Hardware” means all computer hardware and other equipment (including all upgrades and replacements) required for the operation of any Electronic System.

“Hotel” means: (i) the Approved Location; (ii) Hotel Improvements; and (iii) all FF&E, Fixed Asset Supplies, and Inventories at the Hotel Improvements.

“Hotel Improvements” means the building or buildings containing Guestrooms, Public Facilities, administrative facilities, parking, pools, landscaping, and all other improvements constructed or to be constructed or renovated at the Approved Location.

“Initial Work” is defined in Section 4.2.

“Intellectual Property” means the following items, regardless of the form or medium (for example, paper, electronic, tangible or intangible): (i) all Software, including the data and information processed or stored by such Software; (ii) all Proprietary Marks; (iii) all Confidential Information; and (iv) all other information, materials, and subject matter that are copyrightable, patentable or can be protected under applicable intellectual property laws, and owned, developed, acquired, licensed, or used by Franchisor or its Affiliates for the System.

“Interestholder” means, for any Person, a Person that directly or indirectly holds an Ownership Interest in that Person.

“Inventories” means “Inventories” as defined in the Uniform System, including provisions in storerooms, refrigerators, pantries and kitchens; beverages; other merchandise intended for sale; fuel; mechanical supplies; stationery; and other expensed supplies and similar items.

“Inventory Management” means those inventory management services made available by Franchisor to Franchisee under revenue management or consulting agreements.

“LD Amount” is defined in Section 19.4.B.

“Loyalty Programs” means all loyalty, recognition, affinity, and other programs designed to promote stays at, or usage of, the Hotel, System Hotels and such other Franchisor Lodging Facilities designated by Franchisor or its Affiliates, or any similar, complementary, or successor programs. As of the Effective Date, such programs include “Marriott Rewards,” “Ritz-Carlton Rewards,” and various programs sponsored by airlines, credit card and other companies.

“Management Company” means a management company for the Hotel selected by Franchisee and consented to by Franchisor.

“Management Company Acknowledgment” means an acknowledgment signed by the Management Company, Franchisee and Franchisor, the current form of which is included in the Disclosure Document.

“Marketing Fund” means money collected by Franchisor for Marketing Fund Activities.

“Marketing Fund Activities” is defined in Section 6.2.A.

“Marketing Fund Contribution” is defined in Section 6.2.B.

“Marketing Materials” means all advertising, marketing, promotional, sales and public relations concepts, press releases, materials, concepts, plans, programs, brochures, or other information to be released to the public, whether in paper, digital or electronic, or in any other form of media.

“Marks” means: (i) any trademarks, trade names, trade dress, words, symbols, logos, slogans, designs, insignia, emblems, devices, service marks, and indicia of origin (including taglines, program names, and restaurant, spa or other outlet names); and (ii) any combinations of the above; in each case, whether registered or unregistered.

“Marriott Agreements” means, collectively, this Agreement, any other agreements executed with this Agreement related to the Hotel and any other agreement, whenever executed, related to the Hotel to which Franchisee, Guarantor or any of their respective Affiliates is a party and to which Franchisor or any of its Affiliates is also a party or beneficiary, as such agreements may be amended.

“Master Franchisee” means a Person that has the exclusive rights to develop, operate or sub-license a Brand.

“Opening Date” means the date identified as the Hotel opening date in the letter agreement issued by Franchisor described in Exhibit C.

“Other Lodging Product” means a hotel, Vacation Club Products, whole ownership facilities, condominium, apartment or other similar lodging product that is not a Franchisor Lodging Facility.

“Other Mark(s)” is defined in Section 11.3.

“Ownership Interest” means all forms of legal or beneficial ownership of entities or property, including the following: stock, partnership, limited liability company, joint tenancy, leasehold, proprietorship, trust, beneficiary, proxy, power-of-attorney, option, warrant, and any other interest that evidences ownership or Control, whether direct or indirect (unless otherwise specified).

“Passive Investor Interests” means non-Controlling Ownership Interests in Franchisee.

“Periodic Renovations” is defined in Section 4.3.A.

“Person” means an individual (and the heirs, executors, administrators or other legal representatives of an individual), a partnership, a joint venture, a firm, a company, a corporation, a governmental department or agency, a trustee, a trust, an unincorporated organization or any other legal entity.

“Plans” means construction documents, including a site plan and architectural, mechanical, electrical, civil engineering, plumbing, landscaping and interior design drawings and specifications.

“Property Management System” means all property management systems (including all Software, Hardware and electronic access) designated by Franchisor for use in the front office, back-of-the-office or other operations of System Hotels.

“Proprietary Marks” means any Marks, whether owned currently by Franchisor or any of its Affiliates or later developed or acquired, that are used or registered by Franchisor or one of its Affiliates, or by usage are associated with one or more System Hotels.

“Prospectus” means any registration statement, memorandum, offering document, or similar document for the sale or transfer of an Ownership Interest.

“Public Facilities” means the lobby areas, meeting rooms, convention or banquet facilities, restaurants, bars, lounges, corridors and other similar facilities at the Hotel.

“Quality Assurance Program” means the program that Franchisor uses to monitor guest satisfaction and the operations, facilities and services at System Hotels.

“Reasonable Business Judgment” is defined in Section 27.3.A.

“Reservation System” means any reservation system designated by Franchisor for System Hotels (including Software, Hardware and related electronic access).

“Restricted Person” means a Person identified by any government or legal authority as a Person with whom Franchisor or its Affiliates are prohibited from transacting business, including a Person: (i) described in Section 1 of U.S. Executive Order 13224; (ii) directly or indirectly owned or controlled by the government of any country that is subject to an embargo by the United States; and (iii) acting on behalf of a government of any country that is subject to such an embargo.

“Sales Agent” means a representative of Franchisor or its Affiliates who acts on behalf of Franchisee for: (i) Inventory Management; (ii) booking reservations at the Hotel or other booking activities, including accessing the Reservation System; or (iii) sales activities, including arranging group sales.

“Serious Crime” means a crime punishable by either or both: (i) imprisonment of one year or more; or (ii) payment of a fine or penalty of \$10,000 (or the foreign currency equivalent) or more.

“Similar Marks” is defined in Section 11.2.6.

“Soft Goods” means wall and floor coverings, window treatments, carpeting, bedspreads, lamps, artwork, decorative items, pictures, wall decorations, upholstery, textile, fabric, vinyl and similar items used in the Hotel.

“Software” means all computer software (including all future upgrades and modifications) and related documentation provided by Franchisor or designated suppliers for the Electronic Systems.

“Standards” means Franchisor’s manuals, procedures, systems, guides, programs (including the Quality Assurance Program), requirements, directives, specifications, Design Criteria, and such other information and initiatives for operating System Hotels.

“System” means the Standards, Intellectual Property, the Electronic Systems, the Marketing Fund Activities, Additional Marketing Programs, Marketing Materials, training programs, and other elements that Franchisor or its Affiliates have designated for System Hotels.

“System Hotel” means a hotel operated by Franchisor, an Affiliate of Franchisor, or a franchisee or licensee of Franchisor or its Affiliates under the trade name(s) identified in Item 1 of Exhibit A in any of the 50 States of the United States of America, the District of Columbia and Canada, and excludes any other Franchisor Lodging Facility or other business operation.

“Taxes” means taxes, levies, imposts, duties, fees, charges or liabilities imposed by any governmental authority, including any interest, additions to tax or penalties applicable to any of the foregoing.

“Term” is defined in Section 2.1.

“Transfer” means any absolute or conditional sale, conveyance, transfer, assignment, exchange, lease or other disposition.

“Travel Costs” means all travel, food and lodging, living, and other out-of-pocket costs.

“Travel Management Companies” means travel agencies, online travel agencies, group intermediaries, wholesalers, concessionaires, and other similar travel companies.

“Uniform System” means the Uniform System of Accounts for the Lodging Industry, Eleventh Revised Edition, 2014, as published by the American Hotel & Lodging Educational Institute, or any later edition, revision or replacement that Franchisor designates.

“Vacation Club Products” means timeshare, fractional, interval, vacation club, destination club, vacation membership, private membership club, private residence club, and points club products, programs and services and includes other forms of products, programs and services where purchasers acquire an ownership interest, use or other rights to use determinable leisure units on a periodic basis and pay in advance for such ownership interest, use or other right.

“Yield Management System” means any yield management system (including all Software, Hardware and electronic access) designated by Franchisor for use by System Hotels.

**EXHIBIT C**  
**CHANGE OF OWNERSHIP**

In order for the Hotel to continue to operate as a System Hotel, the Agreement is modified by, and the Hotel is to be renovated under, the terms of this Exhibit C and Section 4.4.

1. Franchisee acknowledges that the following modifications are made to the Agreement:
  - A. “Opening Date” means January 14, 2014.
  - B. All references in Sections 3.2, 6.2.B. and 13.3.A. to “Opening Date” are deleted and replaced by references to “Effective Date.”
  - C. The following are added to Section 26.2:
    - “F. *NO ENDORSEMENT.* FRANCHISEE ACKNOWLEDGES THAT FRANCHISOR DID NOT APPROVE, RECOMMEND, ENDORSE OR PARTICIPATE IN ANY DECISIONS ABOUT THE TERMS OF ANY TRANSACTION UNDER WHICH FRANCHISEE ACQUIRED CONTROL OF THE HOTEL, INCLUDING THE PURCHASE PRICE, AND DID NOT COMMENT ON ANY FINANCIAL PROJECTIONS SUBMITTED TO FRANCHISEE.
    - G. *EXISTING AGREEMENTS.* FRANCHISEE AGREES TO BE BOUND BY ALL AGREEMENTS BETWEEN THE PRIOR FRANCHISEE OF THE HOTEL AND FRANCHISOR OR ITS AFFILIATES, SUCH AS LICENSE, SERVICE OR REVENUE MANAGEMENT AGREEMENTS AND ANY OTHER AGREEMENTS RELATING TO THE HOTEL.”
2. Franchisee represents that it has paid Franchisor’s outside legal counsel fees and costs incurred for the preparation and negotiation of the Marriott Agreements.
3. Property Improvement Plan.  
Not Applicable.

## GUARANTY

This Guaranty ("Guaranty") is executed as of October 15, 2015 ("Effective Date") by Moody National REIT II, Inc. and Brett C. Moody (jointly and severally, "Guarantor") for the benefit of Marriott International, Inc., a Delaware corporation ("Franchisor").

In consideration of and as an inducement to Franchisor to execute the Residence Inn by Marriott Relicensing Franchise Agreement dated October 15, 2015 (as such agreement may be amended, the "Agreement"), between Franchisor and Moody National Lancaster-Austin MT, LLC, a Delaware limited liability company ("Franchisee"), for the hotel located at 1200 Barbara Jordan Blvd. Building 4, Austin, TX 78723, Guarantor agrees as follows:

**1. Unconditional Guaranty.** Guarantor unconditionally guarantees that all of Franchisee's obligations under the Marriott Agreements will be punctually paid and performed. On default by Franchisee and notice from Franchisor, Guarantor will immediately make each payment and perform each obligation required by Franchisee under the Marriott Agreements. Franchisor may extend, modify or release any indebtedness or obligation of Franchisee, or settle, adjust or compromise any Claim against Franchisee without notice to Guarantor, and any such action will not affect the obligations of Guarantor under this Guaranty.

**2. Waiver of Notices.** Guarantor waives (i) notice of any amendment of any of the Marriott Agreements and (ii) notice of demand for payment or performance by Franchisee. Guarantor's guarantee applies to any extension or renewal of any of the Marriott Agreements. Guarantor unconditionally and irrevocably waives notice of acceptance of this Guaranty, presentment, demand, diligence, protest and dishonor or of any other notice to which Guarantor otherwise might be entitled under Applicable Law.

**3. Obligations of Guarantor.**

A. *No Limitations.* The obligations of Guarantor under this Guaranty will not be reduced, limited, terminated, discharged, impaired or otherwise affected by (i) Franchisee's failure to pay a fee or provide consideration to Guarantor for the issuance of this Guaranty; (ii) the occurrence or continuance of a default under any of the Marriott Agreements; (iii) any assignment of any of the Marriott Agreements; (iv) any amendment, waiver, consent or other action taken related to any Marriott Agreement, including any discounts or extensions of time for payment of any amounts due under any of Marriott Agreement or extensions of time for the performance of any obligation of Franchisee under any Marriott Agreement; (v) the voluntary or involuntary liquidation, sale or other disposition of all or any portion of Franchisee's assets, or the receivership, insolvency, bankruptcy, reorganization or similar proceedings affecting Franchisee or its assets or the release or discharge of Franchisee from any of its obligations under any Marriott Agreement; or (vi) any change of circumstances, whether or not foreseeable, and whether or not any such change could affect the risk of Guarantor.

B. *Changes to the Marriott Agreements.* Any modifications, amendments, waivers or consents to the Marriott Agreements may be agreed to or granted without the approval or consent of Guarantor.

**4. Payment and Performance.** This Guaranty constitutes a guaranty of payment and performance and not of collection. Guarantor waives any right to require Franchisor to proceed, by way of set-off or otherwise, against (i) Franchisee; (ii) any assets of Franchisee; (iii) any assets of Franchisee held by any Person as security; or (iv) any other guarantor.

**5. Preferences or Other Return Payments.** This Guaranty will continue to be effective or be reinstated, as the case may be, if at any time payment under any of the Marriott Agreements is rescinded or must otherwise be restored or returned by Franchisor due to the insolvency, bankruptcy or reorganization of Franchisee or Guarantor, all as though such payment had never been made.

**6. Notices.** All notices and other communications will be: (i) in writing; (ii) delivered by hand with receipt, or by courier service with tracking capability; and (iii) addressed as provided below or at any other address designated in writing by Guarantor. Any notice will be deemed received (i) when delivery is received or first refused, if delivered by hand or (ii) one day after posting of such notice, if sent via overnight courier.

**7. Joint and Several Liability.** If more than one Person has executed this Guaranty as a Guarantor, the liability of each Guarantor will be joint, several and primary.

**8. Death of Guarantor.** On the death of any individual Guarantor, the estate of such Guarantor will be bound by this Guaranty but only for defaults and obligations existing at the time of death. In such event, the obligations of any other Guarantors will continue in full force and effect.

**9. Existence; Authorization; Prior Representations.**

A. *Existence.* Each Guarantor that is not an individual represents and warrants that it: (i) is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation and (ii) has, and will continue to have, the ability to perform its obligations under this Guaranty.

B. *Authorization.* Each Guarantor represents and warrants that the execution and delivery of this Guaranty and the performance of its obligations under this Guaranty: (i) have been duly authorized; (ii) do not and will not violate, contravene or result in a default or breach of (a) any Applicable Law, (b) its governing documents or (c) any agreement, commitment or restriction binding on the relevant party; and (iii) do not require any consent that has not been properly obtained by the relevant party.

C. *Prior Representations.* Guarantor represents and warrants that all of the information in the application and provided in the Marriott Agreements, was true as of the time made and is true as of the Effective Date, regardless of whether such representations and warranties were provided by Franchisee or another Person.

D. *Restricted Persons.* Guarantor represents that neither Guarantor nor any of its Affiliates (including their directors and officers), the Interestholders or the funding sources for any of them, is a Restricted Person.

**10. Governing Law; Jurisdiction.** This Guaranty will be construed under and governed by Maryland law which law will prevail if there is any conflict of law. Guarantor expressly and irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Maryland for the purpose of any Dispute relating to this Guaranty. So far as is permitted under Maryland law, this consent to personal jurisdiction will be self-operative.

**11. Costs of Enforcement.** Guarantor agrees to pay all costs, including reasonable legal fees, incurred by Franchisor and its Affiliates to enforce or protect any rights or to collect any amounts due under this Guaranty or any other Marriott Agreement.

**12. WAIVER OF PUNITIVE DAMAGES.** EACH OF GUARANTOR AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO CLAIM OR RECEIVE PUNITIVE DAMAGES IN ANY DISPUTE RELATED TO THIS GUARANTY, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE.

**13. WAIVER OF JURY TRIAL.** EACH OF GUARANTOR AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY DISPUTE RELATED TO THIS GUARANTY, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH THE ABOVE.

**14. Counterparts.** This Guaranty may be executed in any number of counterparts, each of which will be deemed an original and all of which constitute one and the same instrument. Delivery of an executed signature page by electronic transmission is as effective as delivery of an original signed counterpart.

**15. Definitions.** All capitalized terms not defined in this Guaranty have the meaning stated in the Agreement.

**16. Waiver.** Franchisor's failure to exercise any right or to insist on compliance by Guarantor with any provision of this Guaranty will not constitute a waiver of Franchisor's right to demand later full compliance with any provision of this Guaranty.

**17. Amendments.** This Guaranty may only be amended in a written document that has been duly executed by the parties and may not be amended by conduct manifesting assent, and each party is put on notice that any individual purporting to amend this Guaranty by conduct manifesting assent is not authorized to do so.

**18. Survival.** The provisions of Sections 1, 7, 10, 11, 12 and 13 will survive the expiration or termination of the Agreement.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, Guarantor has executed this Guaranty, under seal, as of the Effective Date.

GUARANTOR:

MOODY NATIONAL REIT II, INC.

By: /s/ Brett C. Moody (SEAL)

Name: Brett C. Moody

Title: Chief Executive Officer

/s/ Brett C. Moody (SEAL)

Brett C. Moody, an Individual

ADDRESS FOR NOTICES TO GUARANTOR:

6363 Woodway Drive, Suite 110  
Houston, TX 77057

## MANAGEMENT COMPANY ACKNOWLEDGMENT

This Management Company Acknowledgment (the "Acknowledgment") is executed on October 15, 2015 ("Effective Date") by Marriott International, Inc., a Delaware corporation ("Franchisor"), Moody National Lancaster-Austin MT, LLC, a Delaware limited liability company ("Franchisee") and Moody National Hospitality Company, LLC, a Texas limited liability company ("Management Company").

### RECITAL

Management Company has entered into an agreement ("Management Agreement") with Franchisee to operate the hotel located at 1200 Barbara Jordan Blvd. Building 4, Austin, TX 78723 (the "Hotel"), under the Residence Inn by Marriott Relicensing Franchise Agreement dated October 15, 2015 (as such agreement may be amended, the "Agreement") between Franchisor and Franchisee.

NOW, THEREFORE, in consideration of the promises in this Acknowledgment and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

#### 1. Franchisor's Consent.

A. *Consent and Grant.* Franchisor consents to the operation of the Hotel by Management Company on behalf of Franchisee and grants to Management Company the right to use the System to operate the Hotel in compliance with the Standards, this Acknowledgment and the Agreement. Franchisor's consent is personal to Management Company, and this Acknowledgment is not assignable by Franchisee or Management Company. Such consent and grant will terminate without notice to Management Company on: (i) the expiration or termination of the Agreement; (ii) the execution of another management company acknowledgment with respect to the Hotel by Franchisor, Franchisee and another management company; or (iii) the execution of an amendment to the Agreement consenting to the operation of the Hotel by Franchisee.

B. *Change in Circumstances.* If there is a change in Control of Management Company or if Management Company becomes a Competitor (or an Affiliate of a Competitor) or a Restricted Person (or an Affiliate of a Restricted Person) or if Management Company becomes the principal operator for a Competitor or if there is a material adverse change to the financial condition or operational capacity of Management Company, Franchisee will promptly notify Franchisor of any such change. In such circumstance, Management Company will be subject to the consent process under the Agreement as if it were a new operator of the Hotel.

C. *Withdrawal of Consent.* If Management Company breaches any provision of the Agreement, Franchisor may withdraw its consent for Management Company to operate the Hotel.

2. **Management Company Representations.** Management Company represents and warrants to Franchisor that: (i) neither it nor any Person that controls Management Company has been convicted of a Serious Crime; (ii) neither Management Company nor any Affiliate of Management Company is a Competitor; (iii) the Management Agreement is valid, binding and enforceable, contains no terms that may cause a breach of the Agreement and is for a term of not less than five years; and (iv) neither Management Company nor any Affiliate of Management Company is a Restricted Person.

3. **Management Company and Franchisee Acknowledgments.** Management Company and Franchisee acknowledge that:

A. Management Company will have the exclusive authority and responsibility for the day-to-day management of the Hotel on behalf of Franchisee. The general manager of the Hotel will be an employee of Management Company and devote his or her full time and attention to the management and operation of the Hotel and will have successfully completed Franchisor's mandatory management training program required by the Standards. Management Company will promptly inform Franchisor whenever it hires a general manager. In addition to the general manager, the other department managers of the Hotel will be employees of the Management Company, while other staff at the Hotel may be employed by Franchisee;

B. Management Company will operate the Hotel in strict compliance with the Standards. Management Company will comply with the terms of the Agreement for the management and operation of the Hotel, including those related to Intellectual Property, as if Management Company had executed the Agreement as "Franchisee." Management Company, however, will have no rights under the Agreement except as stated in this Acknowledgment and such rights do not constitute a franchise or license to Management Company. If Franchisee delegates the insurance obligations under the Agreement to Management Company, Management Company will satisfy such obligations. Management Company will comply with Applicable Law;

C. Franchisor may enforce directly against Management Company all terms in the Agreement regarding Intellectual Property and the management and operation of the Hotel (including insurance, if such obligations have been delegated to Management Company). Franchisor will have the right to seek and obtain all remedies against the Management Company available at

law and in equity for Management Company's failure to comply with the terms of this Acknowledgment, in addition to any remedies Franchisor may have against Franchisee;

D. Management Company assigns, and will cause each of its employees or independent contractors who contributed to System modifications to assign, to Franchisor, in perpetuity throughout the world, all rights, title and interest (including the entire copyright and all renewals, reversions and extensions of such copyright) in and to such System modifications. Except to the extent prohibited by Applicable Law, Management Company waives, and will cause each of its employees or independent contractors who contributed to System modifications to waive, all "moral rights of authors" or any similar rights in such System modifications (for purposes of this Section 3, "modifications" includes any derivatives and additions);

E. Management Company will execute or cause to be executed and deliver to Franchisor, any documents, and take any actions required by Franchisor to protect the title in any System modifications;

F. Any default under the Agreement caused solely by Management Company will constitute a default under the Management Agreement, and Franchisee will have the right to terminate the Management Agreement;

G. Franchisee and Management Company will not modify the Management Agreement in any way that is inconsistent with the Agreement or this Acknowledgment;

H. Franchisee will not allow the Management Agreement to expire or terminate the Management Agreement without providing Franchisor at least 30 days' notice, unless Franchisee needs to remove Management Company on an expedited basis due to theft, fraud or other material defaults of Management Company or a default under the Agreement caused by Management Company; and

I. Management Company will perform the day-to-day operations of the Hotel. Franchisor may communicate directly with Management Company and the managers at the Hotel about day-to-day operations of the Hotel and Franchisor may rely on such statement of the managers and the Management Company. Franchisor will under no circumstances direct or control such Hotel operations.

**4. Existence.** Each party represents and warrants that it: (i) is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its formation; and (ii) has and will continue to have the ability to perform its obligations under this Acknowledgment.

**5. Authorization.** Each party represents and warrants that the execution and delivery of this Acknowledgment and the performance of its obligations under this Acknowledgment: (i) have been duly authorized, (ii) do not and will not violate, contravene or result in a default or breach of (a) any Applicable Law, (b) its governing documents or (c) any agreement, commitment or restriction binding on the relevant party; and (iii) do not require any consent that has not been properly obtained by the relevant party. Each of Management Company and Franchisee represents that it has the right to perform its obligations under this Acknowledgment as of the Effective Date and covenants that it will continue to have such right as long as this Acknowledgment remains in effect.

**6. Controlling Agreement.** If any provision of the Agreement or this Acknowledgment conflicts with the Management Agreement, the provision of the Agreement or this Acknowledgment will control.

**7. No Release.** Franchisee will remain responsible for the performance of all obligations under the Agreement. This Acknowledgment will not release Franchisee from any liability or obligation under the Agreement.

**8. Definitions.** All capitalized terms not defined in this Acknowledgment have the meaning stated in the Agreement.

**9. Counterparts.** This Acknowledgment may be executed in any number of counterparts, each of which will be deemed an original and all of which constitute one and the same instrument. Delivery of an executed signature page by electronic transmission is as effective as delivery of an original signed counterpart.

**10. Governing Law.** This Acknowledgment will be construed under and governed by the Maryland law, which law will prevail if there is any conflict of law. Management Company expressly and irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Maryland for the purpose of any Dispute related to this Acknowledgment. So far as permitted under Maryland law, this consent to personal jurisdiction will be self-operative.

**11. Management Company's Address.** Management Company's mailing address is provided on the signature page. Management Company agrees to provide notice to both Franchisee and Franchisor if there is any change in Management Company's mailing address.

**12. Partial Invalidity.** If any term of this Acknowledgment, or its application to any Person or circumstance, is invalid or unenforceable at any time or to any extent, then (i) the remainder of this Acknowledgment, or the application of such term to Persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected and each term of this

Acknowledgment will be valid and enforced to the fullest extent permitted by Applicable Law; and (ii) Franchisor, Franchisee and Management Company will negotiate in good faith to modify this Acknowledgment to implement their original intent as closely as possible in a mutually acceptable manner.

**13. No Third-Party Beneficiary.** Nothing in this Acknowledgment is intended to create any third-party beneficiary or give any rights or remedies to any Person other than Franchisor and its permitted successors and assigns.

**14. Equitable Relief.** Franchisor is entitled to injunctive or other equitable relief, including restraining orders and preliminary injunctions, in any court of competent jurisdiction for any threatened or actual material breach of this Acknowledgment or non-compliance with the Standards. Franchisor is entitled to such relief without the necessity of proving the inadequacy of money damages as a remedy, without the necessity of posting a bond and without waiving any other rights or remedies.

**15. WAIVER OF PUNITIVE DAMAGES.** EACH OF MANAGEMENT COMPANY, FRANCHISEE AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO CLAIM OR RECEIVE PUNITIVE DAMAGES IN ANY DISPUTE RELATED TO THE HOTEL, THIS ACKNOWLEDGMENT, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE.

**16. WAIVER OF JURY TRIAL.** EACH OF MANAGEMENT COMPANY, FRANCHISEE AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY DISPUTE RELATED TO THE HOTEL, THIS ACKNOWLEDGMENT, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE.

**17. Costs of Enforcement.** If either party initiates any legal or equitable action to protect its rights under this Acknowledgment or other Marriott Agreements, the prevailing party is entitled to recover its costs, including reasonable legal fees.

**18. Entire Agreement.** This Acknowledgment and the Marriott Agreements are fully integrated and contain the entire agreement between the parties as it relates to the Hotel and the Approved Location and supersede all prior understandings and writings.

**19. Amendments.** This Acknowledgment may only be amended in a written document that has been duly executed by the parties and may not be amended by conduct manifesting assent, and each party is put on notice that any individual purporting to amend this Acknowledgment by conduct manifesting assent is not authorized to do so.

**20. Survival.** The terms of Sections 3, 14, 15, 16 and 17 survive expiration or termination of this Acknowledgment and, to the extent applicable to Management Company, Section 27.8 of the Agreement.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties have executed this Acknowledgment, under seal, as of the Effective Date.

FRANCHISOR:

MARRIOTT INTERNATIONAL, INC.

By: /s/ Michael H. Rosenman (SEAL)  
Name: Michael H. Rosenman  
Title: Vice President, Owner and Financial Services

FRANCHISEE:

MOODY NATIONAL LANCASTER-AUSTIN MT,  
LLC, a Delaware limited liability company

By: /s/ Brett C. Moody (SEAL)  
Name: Brett C. Moody  
Title: President

MANAGEMENT COMPANY:

MOODY NATIONAL HOSPITALITY COMPANY,  
LLC, a Texas limited liability company

By: /s/ Brett C. Moody (SEAL)  
Name: Brett C. Moody  
Title: President

ADDRESS FOR MANAGEMENT COMPANY:

6363 Woodway Drive, Suite 110  
Houston, TX 77057

## ELECTRONIC SYSTEMS LICENSE AGREEMENT

This Electronic Systems License Agreement (this "License Agreement") is executed on October 15, 2015 (the "Effective Date") between Marriott International, Inc. ("Franchisor") and Moody National Lancaster-Austin MT, LLC ("Franchisee").

### RECITALS

A. As of the Effective Date, Franchisor and Franchisee have entered into a Residence Inn by Marriott Relicensing Franchise Agreement (the "Franchise Agreement") to operate the Hotel located at 1200 Barbara Jordan Blvd. Building 4, Austin, TX 78723 under the System.

B. Franchisee is required to use the Electronic Systems that are made available under this License Agreement for the operation of the Hotel under the Franchise Agreement.

NOW, THEREFORE, in consideration of the promises in this License Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Franchisor and Franchisee agree as follows:

**1. Limited Grant.** Franchisor grants to Franchisee a limited, non-exclusive license to use the Electronic Systems. Franchisee acknowledges that the Electronic Systems may be modified, enhanced, replaced or may become obsolete, and that new Electronic Systems may be created to meet the needs of the System and continual changes in technology.

**2. Term.** The term of this License Agreement begins on the Effective Date and ends on expiration or termination of the Franchise Agreement. For each Electronic System, the license begins on the date it is installed and ends on this License Agreement's termination or when such Electronic System is no longer used as part of the System for operating the Hotel.

**3. Ownership of the Electronic Systems.** The Electronic Systems that are proprietary to Franchisor or third-party vendors, as applicable, will remain their sole property, and Franchisee will not contest such ownership.

**4. Support Services.** Franchisor will use commercially reasonable efforts to maintain and support the Electronic Systems (the "Support Services") during the term of this License Agreement. The Support Services may be provided by Franchisor or third-party vendors.

**5. Fees and Costs.** Franchisee will pay the fees and costs for the Electronic Systems as provided in the Franchise Agreement.

**6. Use of the Electronic Systems.** Franchisee will use the Electronic Systems exclusively for operating the Hotel under the Franchise Agreement.

**7. Confidentiality Obligations.** Franchisee will treat the Electronic Systems as Confidential Information under the Franchise Agreement. Franchisee will ensure that only authorized Persons have access to the Electronic Systems and that the Electronic Systems are only used for their intended purpose. Franchisee will not, without the consent of Franchisor or any applicable third-party vendor, copy, reverse engineer, modify or provide unauthorized access to the Electronic Systems or any of its components. Franchisee will not attempt to disregard or circumvent any measures used by Franchisor to safeguard the Electronic Systems and the Intellectual Property.

**8. Suspension.** Franchisor reserves the right to suspend Franchisee's access to any Electronic System in order to protect the Intellectual Property or the intellectual property of third-party vendors.

**9. Third-Party Vendors.** Franchisee will comply with the terms of any license for any of the Electronic Systems provided by a third-party vendor. Any third-party vendor will have the right to enforce such terms directly against Franchisee. Franchisor will have no liability for Franchisee's use of any Electronic System provided by a third-party vendor. Franchisee may be required to execute agreements with third-party vendors in order to obtain access to certain Electronic Systems.

**10. Preferred Vendors.** Franchisor may designate a third-party vendor of the Electronic Systems as a preferred vendor and require Franchisee to use the Electronic Systems provided by the preferred vendor.

**11. NO ENDORSEMENT OR WARRANTY.** FRANCHISOR DOES NOT ENDORSE OR MAKE ANY REPRESENTATION OR WARRANTY ABOUT ANY ELECTRONIC SYSTEM PROVIDED BY THIRD-PARTY VENDORS, INCLUDING PREFERRED VENDORS. FRANCHISOR PROVIDES THE ELECTRONIC SYSTEMS AND THE SUPPORT SERVICES ON AN AS-IS BASIS. FRANCHISOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND CUSTOM OR USAGE IN THE TRADE, RELATED TO FRANCHISEE'S USE OF THE ELECTRONIC SYSTEMS AND THE SUPPORT SERVICES.

**12. Limitation on Liability.** Franchisor is not liable for any loss or damage arising out of the use or failure of any Electronic Systems or Support Services, including corruption or loss of data, and Franchisee waives any right to, or claim of, any direct, exemplary, incidental, indirect, special, consequential or other similar damages (including loss of profits) in connection with the use, inability to use, breach or failure of any Electronic Systems or Support Services, even if Franchisor has been advised of the possibility of such damage, breach or failure. To the extent permissible, Franchisor will use reasonable efforts to make available for Franchisee any warranties or other similar protections provided by Franchisor's vendors with respect to the Electronic Systems.

**13. Indemnification.** Franchisee will indemnify, defend and hold harmless Franchisor and its Affiliates (and each of their respective predecessors, successors, assigns, current and former directors, officers, shareholders, subsidiaries, employees and agents), against all Claims and Damages, including allegations of negligence by such Persons, to the fullest extent permitted by Applicable Law, arising from or related to Franchisee's use of the Electronic Systems or any failure by Franchisee to comply with this License Agreement. Franchisee's obligations in this Section are incorporated into Franchisee's indemnification obligations in the Franchise Agreement.

**14. Software License Rights Upon Termination.** The Software that Franchisee will purchase through Franchisor is generally not assignable to Franchisee upon termination of this License Agreement ("Non-Assignable Software"). When this License Agreement terminates, Franchisee will not have any right to use the Non-Assignable Software. At Franchisee's request, Franchisor will use reasonable efforts to facilitate the assignment of any Software that is assignable ("Assignable Software"). On termination of this License Agreement, Franchisee will delete both Assignable Software and Non-Assignable Software obtained through Franchisor. Franchisee may reinstall Assignable Software using copies obtained by Franchisee directly from the applicable vendor.

**15. Governing Law.** This License Agreement takes effect upon its acceptance and execution by Franchisor in Maryland and will be construed under and governed by Maryland law, which law will prevail if there is any conflict of law.

**16. WAIVER OF PUNITIVE DAMAGES.** EACH OF FRANCHISEE AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO CLAIM OR RECEIVE PUNITIVE DAMAGES IN ANY DISPUTE RELATED TO THE HOTEL, THE MARRIOTT AGREEMENTS, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE. NOTHING IN THIS SECTION 16 LIMITS FRANCHISEE'S OBLIGATIONS UNDER SECTION 13.

**17. WAIVER OF JURY TRIAL.** EACH OF FRANCHISEE AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY DISPUTE RELATED TO THE HOTEL, THE MARRIOTT AGREEMENTS, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE.

**18. Notices.** All notices and other communications under this License Agreement will be in writing and will be delivered as provided in the Franchise Agreement.

**19. Counterparts.** This License Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which constitute one and the same instrument. Delivery of an executed signature page by electronic transmission is as effective as delivery of an original signed counterpart.

**20. Construction and Interpretation.**

A. *Partial Invalidity.* If any term of this License Agreement, or its application to any Person or circumstance, is invalid or unenforceable at any time or to any extent, then: (i) the remainder of this License Agreement, or the application of such term to Persons or circumstances except those as to which it is held invalid or unenforceable, will not be affected and each term of this License Agreement will be valid and enforced to the fullest extent permitted by Applicable Law; and (ii) Franchisor and Franchisee will negotiate in good faith to modify this License Agreement to implement their original intent as closely as possible in a mutually acceptable manner.

B. *Non-Exclusive Rights and Remedies.* No right or remedy of Franchisor or Franchisee under this License Agreement is intended to be exclusive of any other right or remedy under this License Agreement at law or in equity.

C. *No Third-Party Beneficiary.* Nothing in this License Agreement is intended to create any third-party beneficiary or give any rights or remedies to any Person other than Franchisor or Franchisee and their respective permitted successors and assigns.

D. *Actions from Time to Time.* When this License Agreement permits Franchisor to take any action, exercise discretion or modify the System, Franchisor may do so from time to time.

E. *Interpretation of Agreement.* Franchisor and Franchisee intend that this Agreement excludes all implied terms to the maximum extent permitted by Applicable Law. Headings of Sections are for convenience and are not to be used to interpret the Sections to which they refer. Words indicating the singular include the plural and vice versa as the context may require.

References that a Person “will” do something mean the Person has an obligation to do such thing. References that a Person “may” do something mean a Person has the right, but not the obligation, to do so. References that a Person “may not” and “will not” do something mean a Person is prohibited from doing so.

F. *Definitions.* All capitalized terms not defined in this License Agreement have the meaning stated in the Franchise Agreement.

**21. Entire Agreement.** This License Agreement and the Marriott Agreements are fully integrated and contain the entire agreement between the parties as it relates to the Hotel and the Approved Location and supersede all prior understandings and writings.

**22. Amendments.** This License Agreement may only be amended in a written document that has been duly executed by the parties and may not be amended by conduct manifesting assent, and each party is put on notice that any individual purporting to amend this License Agreement by conduct manifesting assent is not authorized to do so.

**23. Survival.** The provisions of Sections 3, 7, 11, 12, 13, 14, 15, 16, 17 and 20 will survive expiration or termination of this License Agreement.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, Franchisor and Franchisee have caused this License Agreement to be executed, under seal, as of the Effective Date.

FRANCHISOR:

MARRIOTT INTERNATIONAL, INC.

By: /s/ Michael H. Rosenman (SEAL)

Name: Michael H. Rosenman

Title: Vice President, Owner and Franchise Services

FRANCHISEE:

MOODY NATIONAL LANCASTER-AUSTIN MT,  
LLC, a Delaware limited liability company

By: /s/ Brett C. Moody (SEAL)

Name: Brett C. Moody

Title: President

## OWNER AGREEMENT

This Owner Agreement ("Agreement") is executed on October 15, 2015 (the "Effective Date"), by Marriott International, Inc., a Delaware corporation ("Franchisor"), Moody National Lancaster-Austin MT, LLC, a Delaware limited liability company ("Franchisee"), and Moody National Lancaster-Austin Holding, LLC, a Delaware limited liability company ("Owner").

### RECITALS

A. Franchisor and Franchisee are parties to the Residence Inn by Marriott Relicensing Franchise Agreement dated October 15, 2015 (the "Franchise Agreement") relating to the Hotel, a copy of which is attached as Exhibit C.

B. Franchisee and Owner have entered into a master lease (the "Lease"). Franchisee will lease the Hotel from Owner and will operate the Hotel as a System Hotel.

**NOW, THEREFORE**, in consideration of the promises in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### 1. ACKNOWLEDGMENTS AND COMPLIANCE

#### 1.1 Acknowledgments. Owner acknowledges that:

A. Franchisor has granted to Franchisee a limited, non-exclusive license to use the Proprietary Marks and the System to operate the Hotel as a System Hotel under the terms of the Franchise Agreement for the Term;

B. Franchisee is obligated to operate the Hotel as a System Hotel for the Term; and

C. Owner will benefit from the operation of the Hotel as a System Hotel.

#### 1.2 Compliance; Confidential Information.

A. *Compliance.* If Owner has undertaken such obligations in the Lease, Owner will develop, construct and maintain the Hotel in strict compliance with the Marriott Agreements and the Standards as if Owner had executed the Franchise Agreement as "Franchisee." Owner will procure the insurance required under the Franchise Agreement if it is not obtained by Franchisee. Owner will comply with Applicable Law. Owner, however, will not be responsible for the operation of the Hotel or payment obligations under the Franchise Agreement.

B. *Confidential Information.* Owner will maintain the confidentiality of any Confidential Information in compliance with Section 12 of the Franchise Agreement. Owner will obtain no other rights to use the Intellectual Property or to operate the Hotel as a System Hotel.

C. *Not a Franchise or License.* This Agreement does not constitute a separate franchise or license to Owner.

### 2. TERM.

The term of this Agreement will begin on the Effective Date and will expire at the end of the Term of the Franchise Agreement unless this Agreement is terminated earlier. If the Franchise Agreement is renewed or extended, this Agreement will automatically be extended to expire at the end of the renewal Term or extended Term of the Franchise Agreement.

### 3. PROVISIONS OF THE LEASE.

The following terms will be considered incorporated into the Lease. If the Lease has inconsistent terms, the terms below will control:

A. *Possession and Control.* Franchisee will have exclusive possession of the Hotel and exclusive control of the day-to-day operations of the Hotel for a term that is no shorter than the Term.

B. *Compliance with Franchise Agreement.* The Hotel will be operated in compliance with the Franchise Agreement, and the Franchise Agreement will control in case of conflict with the Lease.

### 4. OWNER'S OBLIGATION TO CURE DEFAULTS UNDER FRANCHISE AGREEMENT.

Franchisor will copy Owner on any notice of default issued to Franchisee under the Franchise Agreement. Owner must cure such default on behalf of Franchisee during the cure period stated in the default notice.

## 5. RIGHTS AND OBLIGATIONS ON TERMINATION OF FRANCHISE AGREEMENT

**5.1 New Franchise Agreement or Management Agreement.** On Franchisor's request, and if Franchisor terminates the Franchise Agreement due to a default that is not caused by Owner, Owner will elect to either:

A. enter into (or cause a substitute franchisee to enter into) a new franchise agreement with Franchisor, in which case Owner (or such substitute franchisee) will execute such agreement, together with any related agreements required by Franchisor, to be effective on the date of the termination of the Franchise Agreement ("New Franchise Agreement"). The New Franchise Agreement will be in a form contained in the then-current Disclosure Document, except that (a) the Franchise Fees will be the same as in the Franchise Agreement; and (b) the term will be the remaining Term of the Franchise Agreement; or

B. enter into a management agreement with an Affiliate of Franchisor, in which case Owner will execute such agreement, together with any related agreements required by Franchisor, to be effective on the date of the termination of the Franchise Agreement ("Management Agreement"). The Management Agreement will be in Franchisor's standard form and the term will be equal to or longer than the remaining Term of the Franchise Agreement.

Owner will notify Franchisor of its election under this Section within 30 days of the date Owner receives the notice of termination of the Franchise Agreement and will enter into the applicable agreement within 30 days of its election. If the Franchise Agreement is terminated before a New Franchise Agreement or a Management Agreement is signed, Owner will execute a short-term agreement to operate the Hotel under the terms and conditions of the Franchise Agreement on an interim basis until the New Franchise Agreement or Management Agreement is executed.

**5.2 Qualifications for a New Franchise Agreement.** To obtain a New Franchise Agreement, the franchisee must be, as determined by Franchisor in its sole discretion: (i) financially capable and responsible; (ii) sufficiently qualified in managerial skills and operational capacity (unless a third party management company consented to by Franchisor will operate the Hotel); and (iii) able to perform the obligations of the New Franchise Agreement. Such franchisee will provide Franchisor all information reasonably requested to determine that it meets Franchisor's then-current qualifications for franchisees of System Hotels.

**5.3 Additional Obligations.** If Franchisor does not make a request under Section 5.1 to continue the relationship with Owner, after termination of this Agreement and the Franchise Agreement, Owner and Franchisee will be obligated, jointly and severally, to remove the Hotel from the System, pay all amounts due, including liquidated damages and comply with the post-termination obligations in Section 9 of this Agreement and Section 20 of the Franchise Agreement. Franchisor may enforce the Franchise Agreement directly against Owner as if Owner were the Franchisee under the Franchise Agreement.

## 6. RIGHTS AND OBLIGATIONS ON TERMINATION OF THE LEASE

If Owner terminates the Lease due to a default by Franchisee, Owner and Franchisor will proceed in accordance with Section 5. However, if there is a dispute between Owner and Franchisee about the termination of the Lease, and Franchisee retains possession of the Hotel, Franchisor may permit Franchisee to continue to operate the Hotel under the Franchise Agreement as long as it retains possession. Franchisor's rights under this Agreement will be reserved pending resolution of the dispute between Owner and Franchisee.

## 7. TRANSFERS

**7.1 Owner's Transfer Rights.** Owner agrees that its rights and duties in this Agreement are personal to Owner, and that Franchisor entered into this Agreement in reliance on the business skill, financial capacity and character of Owner and its Affiliates and their principals. Given that Owner may obtain a franchise under Section 5, the Hotel or any Ownership Interest in Owner, a Control Affiliate or the Hotel, may be Transferred only in accordance with Section 17 of the Franchise Agreement, as if Owner were "Franchisee." This Agreement may not be Transferred without Franchisor's prior consent.

**7.2 Competitor Right of First Refusal.** Owner acknowledges that Franchisor's rights under Section 17.5.A. of the Franchise Agreement are rights in real estate. Franchisor may record such interest in the appropriate real estate records of the jurisdiction where the Hotel is located, and Owner will cooperate in such filing. Owner agrees that damages are not an adequate remedy if Owner breaches its obligations under this Section, and Franchisor will be entitled to injunctive relief if available without proving the inadequacy of money damages as a remedy and without posting a bond. If this Agreement is terminated and Franchisor's rights under this Section are no longer in effect, on request, Franchisor will execute a termination of such interest.

### 7.3 Transfers by Franchisor.

A. *Transfer to Affiliates.* Franchisor may Transfer this Agreement to any of its Affiliates that assume Franchisor's obligations to Owner and is reasonably capable of performing Franchisor's obligations, without prior notice to, or consent of, Owner.

B. *Transfer to Other Persons.* Franchisor may Transfer this Agreement to any Person that assumes Franchisor's obligations to Owner, is reasonably capable of performing Franchisor's obligations, and acquires substantially all of Franchisor's rights for System Hotels, without prior notice to, or consent of, Owner. Owner agrees that any such Transfer will constitute a release of Franchisor and a novation of this Agreement.

C. *Franchisor's Successors and Assigns.* This Agreement will be binding on and inure to the benefit of Franchisor and its permitted successors and assigns.

## **8. DEFAULTS AND TERMINATION**

### **8.1 Immediate Termination.**

A. *Defaults Applicable to Owner under Franchise Agreement.* If Owner would be in default under Section 19.1 of the Franchise Agreement as if Owner were "Franchisee," then Owner will be in default and Franchisor may terminate this Agreement without providing Owner any opportunity to cure the default. This termination is effective on notice to Owner or on the expiration of any notice or cure period given by Franchisor in its sole discretion or required by Applicable Law.

B. *Defaults under Franchise Agreement Caused by Owner.* If Franchisor terminates the Franchise Agreement based on a default that is caused by an act or omission of Owner, Franchisor may, on notice to Owner and without further action, immediately terminate this Agreement and the Hotel's relationship with the System and require Owner to comply with Section 9.

### **8.2 Default with Opportunity to Cure.**

A. *Defaults Applicable to Owner under Franchise Agreement.* Owner will be in default and Franchisor may terminate this Agreement for the events listed in Section 19.2 of the Franchise Agreement to the extent such default is applicable to Owner, if after 30 days' notice of default (or such greater number of days given by Franchisor in its sole discretion or as required by Applicable Law), Owner fails to cure the default as specified in the notice.

B. *Defaults under this Agreement.* Owner will be in default and Franchisor may terminate this Agreement if Owner fails to cure any default under this Agreement after 30 days' notice of default (or such greater number of days given by Franchisor in its sole discretion or as required by Applicable Law).

## **9. POST-TERMINATION OBLIGATIONS OF OWNER**

If the Franchise Agreement and this Agreement are terminated and Franchisee fails to perform any post-termination obligation under the Franchise Agreement, Franchisor may enforce the Franchise Agreement directly against Owner as if Owner were "Franchisee," and Owner will perform, or cause to be performed, all post-termination obligations of Franchisee under Section 20.1.A of the Franchise Agreement.

## **10. CONDEMNATION AND CASUALTY**

A. *Condemnation.* Owner will promptly notify Franchisor if it receives notice of any proposed taking of any portion of the Hotel by eminent domain, condemnation, compulsory acquisition or similar proceeding by any governmental authority, and will cause the Hotel to be restored and reopened if and as required under Section 21.1 of the Franchise Agreement. Franchisor will be entitled to receive a fair and reasonable portion of any condemnation award as provided under Section 21.1 of the Franchise Agreement.

B. *Casualty.* Owner will promptly notify Franchisor if the Hotel is damaged by any casualty, and will cause the Hotel to be renovated and reopened the Hotel if and as required under Section 21.2 of the Franchise Agreement.

## **11. FINANCING OF THE HOTEL**

Owner and each Interestholder in Owner may grant a lien or other security interest in the Hotel or the revenues of the Hotel, or pledge Ownership Interests in Owner or a Control Affiliate as collateral for the financing of the Hotel. If any Person exercises its rights under such lien, security interest or pledge, Franchisor will have the rights under Section 8.1 of this Agreement and Section 19.1 of the Franchise Agreement. Owner will not pledge this Agreement as collateral or grant a security interest in this Agreement.

## **12. GOVERNING LAW; INTERIM RELIEF; COSTS OF ENFORCEMENT**

**12.1 Governing Law.** This Agreement takes effect on its acceptance and execution by Franchisor in Maryland and will be construed under and governed by Maryland law, which law will prevail if there is any conflict of law. Owner expressly and irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Maryland for the purpose of any Dispute related to this Agreement. So far as permitted under Maryland law, this consent to personal jurisdiction will be self-operative.

**12.2 Equitable Relief.** Franchisor is entitled to injunctive or other equitable relief, including restraining orders and preliminary injunctions, in any court of competent jurisdiction for any threatened or actual material breach of the Marriott Agreements or non-compliance with the Standards. Franchisor is entitled to such relief without the necessity of proving the inadequacy of money damages as a remedy, without the necessity of posting a bond and without waiving any other rights or remedies.

**12.3 Costs of Enforcement.** If either party initiates any legal or equitable action to protect its rights under this Agreement, the prevailing party will be entitled to recover its costs, including reasonable legal fees.

**12.4 WAIVER OF PUNITIVE DAMAGES.** EACH OF OWNER, FRANCHISEE AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO CLAIM OR RECEIVE PUNITIVE DAMAGES IN ANY DISPUTE RELATED TO THIS AGREEMENT, THE MARRIOTT AGREEMENTS, THE HOTEL, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE.

**12.5 WAIVER OF JURY TRIAL.** EACH OF OWNER, FRANCHISEE AND FRANCHISOR ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY DISPUTE RELATED TO THIS AGREEMENT, THE MARRIOTT AGREEMENTS, THE HOTEL, THE RELATIONSHIP OF THE PARTIES OR ANY ACTIONS OR OMISSIONS IN CONNECTION WITH ANY OF THE ABOVE.

### **13. NOTICES**

Subject to Section 25.B of the Franchise Agreement, all notices, requests, statements and other communications under this Agreement will be (i) in writing; (ii) delivered by hand with receipt, or by courier service with tracking capability; and (iii) addressed as provided in Exhibit B or at any other address designated in writing by the party entitled to receive the notice. Any notice will be deemed received (i) when delivery is received or first refused, if delivered by hand or (ii) one day after posting of such notice, if sent via overnight courier.

### **14. REPRESENTATIONS AND WARRANTIES**

A. *Existence.* Each party represents and warrants that it (i) is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation; and (ii) has and will continue to have the ability to perform its obligations under this Agreement.

B. *Authorization.* Each of Franchisor, Franchisee and Owner represents and warrants that the execution and delivery of this Agreement and the performance of its obligations under this Agreement: (i) have been duly authorized; (ii) do not and will not violate, contravene or result in a default or breach of (a) any Applicable Law, (b) its governing documents or (c) any agreement, commitment or restriction binding on the relevant party; and (iii) do not require any consent that has not been obtained by the relevant party.

C. *Restricted Person.* Owner represents and warrants that Owner is not, and that none of its Affiliates (including their directors and officers), Interestholders or the funding sources for any of them, is a Restricted Person.

D. *Ownership of Owner.* Owner represents and warrants that its Interestholders are completely and accurately listed in Exhibit A. If there have been changes, Owner will provide a list of the names and addresses of the Interestholders and documents necessary to confirm such information and update Exhibit A.

E. *Ownership of the Hotel.* Owner represents and warrants that it is the sole owner of the Hotel and holds good and marketable fee title to the Approved Location.

### **15. MISCELLANEOUS**

**15.1 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which constitute one and the same instrument. Delivery of an executed signature page by electronic transmission is as effective as delivery of an original signed counterpart.

#### **15.2 Construction and Interpretation.**

A. *Partial Invalidity.* If any term of this Agreement, or its application to any Person or circumstance, is invalid or unenforceable at any time or to any extent, then (i) the remainder of this Agreement, or the application of such term to Persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected and each term of this Agreement will be valid and enforced to the fullest extent permitted by Applicable Law; and (ii) Franchisor, Franchisee and Owner will negotiate in good faith to modify this Agreement to implement their original intent as closely as possible in a mutually acceptable manner.

B. *Non-Exclusive Rights and Remedies.* No right or remedy of Franchisor, Franchisee or Owner under this Agreement is intended to be exclusive of any other right or remedy under this Agreement at law or in equity.

C. *No Third-Party Beneficiary.* Nothing in this Agreement is intended to create any third-party beneficiary or give any rights or remedies to any Person except Franchisor, Franchisee and Owner and their respective permitted successors and assigns.

D. *Interpretation of Agreement.* Franchisor and Franchisee intend that this Agreement excludes all implied terms to the maximum extent permitted by Applicable Law. Headings of Sections are for convenience and are not to be used to interpret the Sections to which they refer. All Exhibits to this Agreement are incorporated by reference. Words indicating the singular include the plural and vice versa as the context may require. References to days, months and years are all calendar references. References that a Person “will” do something mean the Person has an obligation to do so. References that a Person “may” do something mean a Person has the right, but not the obligation, to do so. References that a Person “may not” or “will not” do something mean the Person is prohibited from doing so.

E. *Definitions.* All capitalized terms not defined in this Agreement have the meaning stated in the Franchise Agreement.

### **15.3 Reasonable Business Judgment.**

A. *Use of Reasonable Business Judgment.* Franchisor will use Reasonable Business Judgment when discharging its obligations or exercising its rights under this Agreement, including for any consents and approvals and the administration of Franchisor’s relationship with Owner, except when Franchisor has reserved sole discretion.

B. *Burden of Proof.* Owner will have the burden of establishing that Franchisor failed to exercise Reasonable Business Judgment. The fact that Franchisor or any Affiliate of Franchisor benefited from any action or decision or that another reasonable alternative was available does not mean that Franchisor failed to exercise Reasonable Business Judgment. If this Agreement is subject to any implied covenant or duty of good faith and Franchisor exercises Reasonable Business Judgment, Owner agrees that Franchisor will not have violated such covenant or duty.

**15.4 Waiver.** The failure or delay of either party to insist on strict performance of any of the terms of this Agreement, or to exercise any right or remedy, will not be a waiver for the future.

**15.5 Entire Agreement.** This Agreement and the Marriott Agreements are fully integrated and contain the entire agreement between the parties as it relates to the Hotel and the Approved Location and supersede all prior understandings and writings.

**15.6 Amendments.** This Agreement may only be amended in a written document that has been duly executed by the parties and may not be amended by conduct manifesting assent, and each party is put on notice that any individual purporting to amend this Agreement by conduct manifesting assent is not authorized to do so.

**15.7 Survival.** The terms of Sections 1, 5, 9, 10 and 12 survive expiration or termination of this Agreement and, to the extent applicable to Owner, Section 27.8 of the Franchise Agreement.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Owner Agreement to be executed, under seal, as of the Effective Date.

FRANCHISOR:

MARRIOTT INTERNATIONAL, INC.

By: /s/ Michael H. Rosenman (SEAL)  
Name: Michael H. Rosenman  
Title: Vice President, Owner and Franchise Services

FRANCHISEE:

MOODY NATIONAL LANCASTER-AUSTIN MT,  
LLC, a Delaware limited liability company

By: /s/ Brett C. Moody (SEAL)  
Name: Brett C. Moody  
Title: President

OWNER:

MOODY NATIONAL LANCASTER-AUSTIN HOLDING,  
LLC,  
LLC, a Delaware limited liability company

By: /s/ Brett C. Moody (SEAL)  
Name: Brett C. Moody  
Title: President

**EXHIBIT A**  
**OWNERSHIP INTERESTS IN OWNER**

<b>Name of Owner</b>	<b>Address</b>	<b>% Interest</b>
<b>OWNERSHIP OF MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC</b>		
Moody National Operating Partnership II, LP	6363 Woodway Drive, Suite 110 Houston, TX 77057	100% Sole Member
<b>OWNERSHIP OF MOODY NATIONAL OPERATING PARTNERSHIP II, LP</b>		
Moody National REIT II, Inc.	6363 Woodway Drive, Suite 110 Houston, TX 77057	99.502488% General Partner
Moody OP Holdings II, LLC	6363 Woodway Drive, Suite 110 Houston, TX 77057	0.497512% Limited Partner
Moody National LPOP II, LLC	6363 Woodway Drive, Suite 110 Houston, TX 77057	Special Unit Holder
<b>OWNERSHIP OF MOODY NATIONAL REIT II, INC.*</b>		
Shareholders	—	100%
<b>OWNERSHIP OF MOODY OP HOLDINGS II, LLC</b>		
Moody National REIT II, Inc.	6363 Woodway Drive, Suite 110 Houston, TX 77057	100% Sole Member
<b>OWNERSHIP OF MOODY NATIONAL LPOP II, LLC</b>		
Brett C. Moody	6363 Woodway Drive, Suite 110 Houston, TX 77057	100% Sole Member

\*Moody National REIT II, Inc. is a publicly-registered, non-traded REIT with over 900 shareholders

**EXHIBIT B**  
**NOTICE ADDRESSES**

To Franchisor:

Marriott International, Inc.  
10400 Fernwood Road  
Bethesda, MD 20817  
Attn: Law Department 52/923.27

with a copy to:

Marriott International, Inc.  
10400 Fernwood Road  
Bethesda, MD 20817  
Attn: Global Lodging Services

To Owner:

Moody National Lancaster-Austin Holding, LLC  
6363 Woodway Drive, Suite 110  
Houston, TX 77057  
Attn: David Gould  
Email: DGould@MoodyNational.com

To Franchisee:

MOODY NATIONAL LANCASTER-AUSTIN MT, LLC  
6363 Woodway Drive, Suite 110  
Houston, TX 77057  
Attn: David Gould  
Email: DGould@MoodyNational.com

**EXHIBIT C**  
**FRANCHISE AGREEMENT**

**LOAN AGREEMENT**

Dated as of October 15, 2015

Between

**MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC,**

as Borrower

and

**KEYBANK NATIONAL ASSOCIATION,**

as Lender

Loan No. 10096884

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## **LOAN AGREEMENT**

**THIS LOAN AGREEMENT** is made as of October 15, 2015 (this “**Agreement**”), between **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an address at 11501 Outlook, Suite 300, Overland Park, Kansas 66211 (“**Lender**”) and **MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC**, a Delaware limited liability company, having its principal place of business at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**Borrower**”).

### **RECITALS:**

A. Borrower desires to obtain the Loan (as hereinafter defined) from Lender.

B. Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Accrual Period**” means the period commencing on and including the first (1st) day of each calendar month during the term of the Loan and ending on and including the final calendar date of such calendar month; however, the initial Accrual Period shall commence on and include the Closing Date and shall end on and include the final calendar date of the calendar month in which the Closing Date occurs.

“**Action**” has the meaning set forth in Section 10.3 hereof.

“**Additional Permitted Transfer**” has the meaning set forth in Section 5.2.10(f) hereof.

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or executive officer of such Person or of an Affiliate of such Person.

“**Affiliated Manager**” means any Manager in which Borrower, Master Tenant, Principal, or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

“**Agent**” means KeyBank National Association, or any successor Eligible Institution acting as Agent under the Cash Management Agreement.

“**Annual Budget**” means an operating budget, including all planned Capital Expenditures, for the Property prepared by or on behalf of Borrower in accordance with Section 5.1.11(g) hereof for the applicable Fiscal Year or other period.

“**Approved Annual Budget**” has the meaning set forth in Section 5.1.11(g) hereof.

“**Assignment of Management Agreement**” means that certain Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof, among Lender, Borrower and Manager, and consented and agreed to by Master Tenant, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Availability Threshold**” means the greater of \$30,000.00 or 1% of the initial principal balance of the Loan.

“**Award**” means any compensation paid by any Governmental Authority in connection with a Condemnation.

“**Bankruptcy Action**” means with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (c) such Person filing 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; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or (f) such Person admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” means Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be 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 or any other Federal or state bankruptcy or insolvency law.

“**Borrower**” has the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

**“Borrower’s Excess Cash Flow Subaccount”** shall have the meaning set forth in Section 7.5.1 hereof.

**“Business Day”** means a day upon which commercial banks are not authorized or required by law to close in the city designated from time to time as the place for receipt of payments.

**“Capital Expenditures”** shall mean, for any period, the amount expended for items capitalized under GAAP and the Uniform System of Accounts (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

**“Cash Management Account”** has the meaning set forth in Section 2.7.2 hereof.

**“Cash Management Agreement”** means that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Lender, Master Tenant and Agent, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Cash Sweep Event”** means the occurrence of: (a) an Event of Default; (b) any Bankruptcy Action of Borrower, Master Tenant, Principal or Manager; or (c) a DSCR Trigger Event.

**“Cash Sweep Event Cure”** means

(a) if the Cash Sweep Event is caused solely by the occurrence of a DSCR Trigger Event, the achievement of a Debt Service Coverage Ratio of 1.25 to 1.00 or greater for two (2) consecutive quarters based upon the trailing three (3) month period immediately preceding the date of determination,

(b) if the Cash Sweep Event is caused solely by an Event of Default, the acceptance by Lender of a cure of such Event of Default (which cure Lender is not obligated to accept and may reject or accept in its discretion), or

(c) if the Cash Sweep Event is caused solely by a Bankruptcy Action of Manager, if Borrower replaces the Manager with a Qualified Manager under a Replacement Management Agreement within sixty (60) days of such Bankruptcy Action;

provided, however, that, such Cash Sweep Event Cure set forth in this definition shall be subject to the following conditions, (i) no Event of Default shall have occurred and be continuing under this Agreement or any of the other Loan Documents, (ii) a Cash Sweep Event Cure may occur no more than a total of three (3) times in the aggregate during the term of the Loan, and (iii) Borrower shall have paid all of Lender’s reasonable expenses incurred in connection with such Cash Sweep Event Cure including, reasonable attorney’s fees and expenses. Notwithstanding any provision in this Agreement to the contrary, in no event shall Borrower have the right to cure any Cash Sweep Event caused by a Bankruptcy Action of Borrower, Master Tenant or Principal.

**“Cash Sweep Period”** means each period commencing on the occurrence of a Cash Sweep Event and continuing until the earlier of (a) the Payment Date next occurring following the related Cash Sweep Event Cure, or (b) payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents or defeasance of the Loan in accordance with the terms and provisions of the Loan Documents.

**“Casualty”** has the meaning set forth in Section 6.2 hereof.

**“Casualty Consultant”** has the meaning set forth in Section 6.4(b)(iii) hereof.

**“Casualty Retainage”** has the meaning set forth in Section 6.4(b)(iv) hereof.

**“Clearing Account”** has the meaning set forth in Section 2.7.1 hereof.

**“Clearing Account Agreement”** means that certain Deposit Account Control Agreement dated the date hereof among Borrower, Lender and Clearing Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to funds deposited in the Clearing Account.

**“Clearing Bank”** means the clearing bank which establishes, maintains and holds the Clearing Account, which shall be an Eligible Institution acceptable to Lender in its discretion.

**“Closing Date”** means the date of the funding of the Loan.

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

**“Collateral Assignment”** means that certain Collateral Assignment of Escrow Rights, dated as of the date hereof, by and among Borrower, Master Tenant and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Collected Taxes”** shall have the meaning set forth in the Cash Management Agreement.

**“Condemnation”** means a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of 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.

**“Condemnation Proceeds”** has the meaning set forth in Section 6.4(b) hereof.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “Controlled” and “Controlling” have correlative meanings.

**“Credit Card Company”** shall have the meaning set forth in the Cash Management Agreement.

**“Credit Card Direction Letter”** means an instruction letter to Tenants substantially in the form attached hereto as Schedule V.

**“Debt”** means the outstanding principal amount of the Loan set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums (including the Defeasance Payment Amount and any Yield Maintenance Premium (as defined in the Note)) due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

**“Debt Service”** means, with respect to any particular period of time, the scheduled principal and interest payments due under this Agreement and the Note.

**“Debt Service Coverage Ratio”** means a ratio for the applicable period in which:

(a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, without deduction for (i) actual management fees incurred in connection with the operation of the Property, (ii) actual franchise fees incurred in connection with the operation of the Property, or (iii) amounts paid to the Reserve Funds, less (A) management fees equal to the greater of (1) assumed management fees of 4% of Gross Income from Operations and (2) the actual management fees incurred, (B) franchise fees (inclusive of any royalty fees and contribution fees) equal to the greater of (1) assumed franchise fees of six percent (6%) of Room Revenues and (2) the actual franchise fees incurred, and (C) annual Replacement Reserve Fund contributions equal to four percent (4%) of Gross Income from Operations; and

(b) the denominator is the aggregate amount of Debt Service for such period assuming full payments of principal and interest with amortization based on a 30-year schedule notwithstanding any interest-only period under the Loan.

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

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

**“Defeasance Date”** has the meaning set forth in Section 2.5.1(a)(i) hereof.

**“Defeasance Deposit”** means an amount equal to the remaining principal amount of the Note, the Defeasance Payment Amount, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments, any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of Sections 2.4 and 2.5 hereof (including any fees and expenses of accountants, attorneys and the Rating Agencies incurred in connection therewith), and a customary defeasance processing fee in an amount determined by Lender in its discretion.

**“Defeasance Event”** has the meaning set forth in Section 2.5.1(a) hereof.

**“Defeasance Payment Amount”** means the amount which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

**“Disclosure Documents”** means, collectively and as applicable, any offering circular, prospectus, prospectus supplement, private placement memorandum or other offering document, in each case, in connection with a Securitization.

**“DSCR Trigger Event”** means, that as of the date of determination, the Debt Service Coverage Ratio based on the trailing twelve (12) month period immediately preceding the date of such determination is less than 1.20 to 1.00.

**“Eligible Account”** means a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$50,000,000.00 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

**“Eligible Institution”** means KeyBank National Association or 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 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 “AA-” by Fitch and S&P and “Aa3” by Moody’s).

**“Embargoed Person”** means any person, entity or government subject to trade restrictions under U.S. law, including The USA PATRIOT Act (including the anti terrorism provisions thereof), 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 including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Master Tenant, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law.

**“Environmental Indemnity”** means that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Environmental Law”** means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health from exposure to Hazardous Substances, relating to protection of the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health (from exposure to Hazardous Substances) or the environment. Environmental Law includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act (as it relates to Hazardous Substances); the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. Environmental Law also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the Property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any Governmental Authority or other Person, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with Hazardous Substances or other environmental conditions of the Property, in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property, in each such case, arising from exposure to, or the presence of, Hazardous Substances; or relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property, in each such case, arising from exposure to, or the presence of, Hazardous Substances.

**“Environmental Liens”** has the meaning set forth in Section 5.1.19 hereof.

**“Environmental Report”** has the meaning set forth in Section 4.1.37 hereof.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

**“Escrow Agreement”** shall have the meaning set forth in the Collateral Assignment.

**“Event of Default”** has the meaning set forth in Section 8.1(a) hereof.

**“Evidence of Insurance”** has the meaning set forth in Section 10.28 hereof.

**“Excess Cash Flow”** has the meaning set forth in the Cash Management Agreement.

**“Excess Cash Flow Reserve Account”** has the meaning set forth in Section 7.5 hereof.

**“Excess Cash Flow Reserve Fund”** has the meaning set forth in Section 7.5 hereof.

**“Extraordinary Expense”** has the meaning set forth in Section 5.1.11(h) hereof.

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

**“Fitch”** means Fitch, Inc.

**“Foreclosure Sale”** has the meaning set forth in Section 9(c) of the Note.

**“Franchise Agreement”** shall mean that certain Relicensing Franchise Agreement dated as of the date hereof between Master Tenant and Franchisor, as the same may be further amended, supplemented or otherwise modified from time to time in accordance with the terms and provisions of this Agreement, or, if the context requires, the Replacement Franchise Agreement executed in accordance with the terms and provisions of this Agreement.

**“Franchise Guaranty”** shall mean that certain Guaranty executed by Moody REIT II and Brett C. Moody in favor of Franchisor, dated as of the date hereof (and/or any replacement therefor entered into pursuant to the Franchise Agreement).

**“Franchisor”** shall mean Marriott International, Inc., or, if the context requires, a Qualified Franchisor that is the franchisor under a Replacement Franchise Agreement.

**“Free Rent”** shall have the meaning set forth in Section 7.7.1 hereof.

**“Free Rent Reserve Account”** shall have the meaning set forth in Section 7.7.1 hereof.

**“Free Rent Reserve Deposit”** shall have the meaning set forth in Section 7.7.1 hereof.

**“Free Rent Reserve Estoppel”** shall mean an estoppel certificate reasonably acceptable to Lender confirming (a) the applicable Lease is in full force and effect, (b) neither Master Tenant nor such Tenant is in default under such Tenant’s Lease, (c) such Tenant is open for business and in actual, physical possession of the premises demised under such Tenant’s Lease, (d) such Tenant is paying full contractual rent without any right of offset or free rent credit and (e) the expiration date of such Tenant’s Lease.

**“Free Rent Reserve Fund”** shall have the meaning set forth in Section 7.7.1 hereof.

**“GAAP”** means generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**“Governing State”** has the meaning set forth is Section 10.3 hereof.

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

**“Gross Income from Operations”** shall mean all sustainable income and proceeds (whether in cash or on credit and computed on an accrual basis) received by Borrower, Master Tenant or Manager for the use, occupancy or enjoyment of the Property, or any part thereof, or received by Borrower, Master Tenant or Manager for the sale of any goods, services or other items sold on or provided from the Property in the ordinary course of the Property operation, including without limitation: (i) all income and proceeds received from Leases and rental of rooms, commercial space and meeting, conference and/or banquet space within the Property (including net parking revenue); (ii) all income and proceeds received from food and beverage operations and from catering services conducted from the Property even though rendered outside of the Property; (iii) all income and proceeds from business or rental interruption or other loss of income insurance and use and occupancy insurance with respect to the operation of the Property (after deducting therefrom all costs and expenses incurred in the adjustment or collection thereof); (iv) all Awards for temporary use (after deducting therefrom all costs and expenses incurred in the adjustment or collection thereof and in Restoration of the Property); (v) all income and proceeds from judgments, settlements and other resolutions of disputes with respect to matters which would be includable in this definition of “Gross Income from Operations” if received in the ordinary course of the Property operation (after deducting therefrom all costs and expenses incurred in the adjustment or collection thereof); (vi) interest on credit accounts, rent concessions or credits, and other required pass-throughs and interest on Reserve Funds; and (vii) disbursements to Borrower and/or Master Tenant from the Free Rent Reserve, if any; but excluding, (a) gross receipts received by Tenants (i.e., other than Master Tenant) or received by licensees or concessionaires of the Property; (b) consideration received at the Property for hotel accommodations, goods and services to be provided at or for the benefit of other hotels, although arranged by, for or on behalf of Borrower, Master Tenant or Manager; (c) income and proceeds from the sale or other disposition of goods, capital assets and other items not in the ordinary course of the Property operation; (d) federal, state and municipal excise, sales, use or other taxes collected directly from patrons or guests of the Property as a part of or based on the sales price of any goods, services or other items, such as gross receipts, room, admission, cabaret or equivalent taxes; (e) Awards (except to the extent provided in clause (iv) above); (f) refunds of amounts not included in Operating Expenses at any time and uncollectible accounts; (g) gratuities collected by, and wages paid to, the Property employees; and fees and other amounts payable to Manager by

Master Tenant or Borrower, as the case may be, in respect of services provided by Manager to Master Tenant or Borrower pursuant to the Management Agreement; (8) rent payable to Borrower under the Master Lease; (h) the proceeds of any financing; (i) other income or proceeds resulting other than from the use or occupancy of the Property, or any part thereof, or other than from the sale of goods, services or other items sold on or provided from the Property in the ordinary course of business; and (j) any credits or refunds made to customers, guests or patrons in the form of allowances or adjustments to previously recorded revenues.

**“Guarantor”** means, individually and collectively, Moody REIT II and Moody Guarantor.

**“Guaranty”** means that certain Guaranty Agreement, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Hazardous Substances”** means any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that, by virtue of the presence thereof or exposure thereto, may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables, explosives, mold, mycotoxins, microbial matter and airborne pathogens (naturally occurring or otherwise), but excluding substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purpose of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.

**“Hotel Transactions”** means (i) occupancy arrangements for customary hotel transactions in the ordinary course of Borrower’s or Master Tenant’s business conducted 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 that are terminable on one month’s notice or less without cause and without penalty or premium, including co-marketing, promotional services and outsourced services.

**“Improvements”** has the meaning set forth in the granting clause of the Security Instrument.

**“Indebtedness”** of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

**“Indemnified Liabilities”** has the meaning set forth in Section 10.13(b) hereof.

**“Indemnified Parties”** means Lender and, its designee (whether or not it is the Lender), any Affiliate of Lender that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of Lender that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co underwriters, co placement agents or co initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act of 1933 as amended or Section 20 of the Security Exchange Act of 1934 as amended, any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by the Security Instrument is or will have been recorded, any Person who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including any successors by merger, consolidation or acquisition of all or a substantial portion of Lender’s assets and business), in each case, in their respective capacities as such.

**“Initial Interest Payment Per Diem”** has the meaning set forth in the Loan Terms Table of the Note.

**“Initial Management Fees”** shall have the meaning set forth in Section 9.4 hereof.

**“Institutional Controls”** means any legal or physical restrictions or limitations on the use of, or access to, the Property to eliminate or minimize potential exposures to any Hazardous Substance, to prevent activities that could interfere with the effectiveness of any Remediation, or to ensure maintenance of a level of risk to human health or the environment from Hazardous Materials, including physical modifications to the Property such as slurry walls, capping, hydraulic controls for ground water, or point of use water treatment, restrictive covenants, environmental protection easements, or property use limitations.

**“Insurance Premiums”** has the meaning set forth in Section 6.1(b) hereof.

**“Insurance Proceeds”** has the meaning set forth in Section 6.4(b) hereof.

**“Interest Rate”** means a rate of four and 58/100 percent (4.58%).

**“Key Principal”** shall mean Brett C. Moody.

**“Land”** has the meaning set forth in the granting clause of the Security Instrument.

**“Lease”** has the meaning set forth in the Security Instrument. Notwithstanding the foregoing, for purposes hereof, neither the Master Lease nor any Hotel Transaction shall constitute a Lease.

**“Legal Requirements”** means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, 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 or Master Tenant, at any time in force affecting Borrower, Master Tenant, the Property or any part thereof, including any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

**“Lender”** has the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

**“Lien”** means, any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer for security of, on or affecting Borrower, the Property, any portion thereof or any interest therein, 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”** means the loan in the Original Principal Amount made by Lender to Borrower pursuant to this Agreement.

**“Loan Documents”** means, collectively, this Agreement, the Note, the Security Instrument, the Environmental Indemnity, the Assignment of Management Agreement, the Guaranty, the Clearing Account Agreement, the Cash Management Agreement, the Master Lease Subordination Agreement, the Master Lease ALR, the Collateral Assignment and all other documents pursuant to which a Person incurs or assumes an obligation to or for the benefit of Lender that are executed or delivered in connection with the Loan.

**“Loan to Value Ratio”** shall mean, as of the date of its calculation, the ratio of (i) the sum of the outstanding principal amount of the Loan as of the date of such calculation to (ii) the fair market value of the Property, as determined, in Lender’s sole discretion, by any commercially reasonable method permitted to a REMIC Trust.

**“Management Agreement”** means the management agreement entered into by and between Master Tenant and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, or, if the context requires, a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

**“Manager”** means Moody National Hospitality Management, LLC, a Texas limited liability company, or, if the context requires, a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

**“Master Lease”** means that certain Hotel Lease Agreement dated as of the date hereof by and between Borrower and Master Tenant, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance herewith with the consent of Lender.

**“Master Lease ALR”** shall mean that certain Master Lease Assignment of Leases and Rents and Security Agreement, dated the date hereof, executed and delivered by Master Tenant in favor of Borrower, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Master Lease Documents”** shall mean the Master Lease, the Master Lease ALR, the Collateral Assignment and the Master Lease Subordination Agreement.

**“Master Lease Subordination Agreement”** shall mean the Master Lease Subordination and Attornment Agreement executed by Master Tenant for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Master Tenant”** shall mean Moody National Lancaster-Austin MT, LLC, a Delaware limited liability company.

“**Master Tenant’s Excess Cash Flow Subaccount**” shall have the meaning set forth in Section 7.5.1 hereof.

“**Material Action**” means, with respect to any Person, to file any insolvency or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against such Person, to file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to make any assignment for the benefit of creditors of such Person, to admit in writing in any legal proceeding such Person’s inability to pay its debts generally as they become due, or to affirmatively take action in furtherance of any of the foregoing.

“**Maturity Date**” means November 1, 2025, or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” has the meaning set forth in Section 7 of the Note.

“**Memorandum of Subordination Agreement**” shall mean that certain Memorandum of Subordination Agreement, dated on or about the date hereof, by and between Master Tenant and Lender.

“**MNOP II**” shall mean Moody National Operating Partnership II, L.P., a Delaware limited partnership.

“**Monthly Debt Service Payment Amount**” means (i) on each Payment Date up to and including November 1, 2018, an amount equal to interest only at the Interest Rate on the outstanding principal balance of the Loan for the related Accrual Period, and (ii) on each Payment Date occurring on and after December 1, 2018, a constant monthly payment of \$84,772.80.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Moody Guarantor**” shall mean Brett C. Moody, a natural person.

“**Moody REIT II**” means Moody National REIT II, Inc., a Maryland corporation.

“**Net Cash Flow**” means, with respect to the Property for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“**Net Operating Income**” means the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

“**Net Proceeds**” has the meaning set forth in Section 6.4(b) hereof.

“**Net Proceeds Deficiency**” has the meaning set forth in Section 6.4(b)(vi) hereof.

“**Note**” means that certain Promissory Note, dated the date hereof, in the principal amount of \$16,575,000.00, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**OFAC**” has the meaning set forth in Section 10.25 hereof.

“**Officer’s Certificate**” means a certificate delivered to Lender by Borrower, Master Tenant or Guarantor, as applicable, which is signed by an authorized officer of Borrower, Master Tenant or Guarantor, or of the general partner of (1) the sole member of Borrower, or (2) the sole member of Master Tenant, as applicable.

“**Operating Expenses**” shall mean the sum of all costs and expenses of operating, maintaining, directing, managing and supervising the Property (excluding (i) depreciation and amortization, (ii) any Debt Service, (iii) any Capital Expenditures, or (iv) the costs of any other things specified to be done or provided at Borrower’s, Master Tenant’s or Manager’s sole cost and expense), incurred by Borrower, Master Tenant or Manager pursuant to the Management Agreement, or as otherwise specifically provided therein, which are properly attributable to such period under Borrower’s or Master Tenant’s system of accounting, including, without limitation: (a) the cost of all food and beverages sold or consumed and of all necessary chinaware, glassware, linens, flatware, uniforms, utensils and other items of a similar nature, including such items bearing the name or identifying characteristics of the hotel as Borrower, Master Tenant and/or Manager shall reasonably consider appropriate (collectively, the “**Operating Equipment**”) and paper supplies, cleaning materials and similar consumable items (collectively, the “**Operating Supplies**”) placed in use (other than reserve stocks thereof in storerooms). Operating Equipment and Operating Supplies shall be considered to have been placed in use when they are transferred from the storerooms of the Property to the appropriate operating departments; (b) salaries and wages of personnel of the Property, including costs of payroll taxes and employee benefits (which benefits may include, without limitation, a pension plan, medical insurance, life insurance, travel accident insurance and an executive bonus program) and the costs of moving (1) employees of the Property whose primary duties consist of the management of the Property or of a recognized department or division thereof; or (2) personnel (A) who customarily and regularly direct the work of five (5) or more other employees of the Property, (B) who have authority with reference to the hiring, firing and advancement of other employees of the Property, (C) who customarily and regularly exercise

discretionary powers, (D) who devote at least ninety five percent (95%) of their work time to activities which are directly and closely related to the performance of the work described in clauses (A) through (C) of clause (2) of this sentence, and (E) who are not compensated on an hourly basis (the “**Executive Hotel Personnel**”), their families and their belongings to the area in which the Property is located at the commencement of their employment at the Property and all other expenses not otherwise specifically referred to in this definition which are referred to as “**Administrative and General Expenses**” in the Uniform System of Accounts. If the Executive Hotel Personnel are on the payroll of Guarantor or any Affiliate of Guarantor, the cost of their salaries, payroll taxes and employee benefits (which benefits, in the case of employees who are not United States citizens or in the case of employees of hotels located outside the continental United States may include, without limitation, in addition to the foregoing benefits, reasonable home leave transportation expenses approved by Lender) shall be billed by said Affiliate to and be reimbursed by Borrower, Master Tenant and/or Manager monthly, and such reimbursement shall be an Operating Expense. Except as otherwise expressly provided under the Management Agreement with respect to employees regularly employed at the Property, the salaries or wages of other employees or executives of Manager, Guarantor or any of their respective Affiliates shall in no event be Operating Expenses, but they shall be entitled to free room and board and the free use of all facilities at such times as they visit the Property exclusively in connection with the management of the Property. Notwithstanding the foregoing, if it becomes necessary for an employee of Guarantor or an employee or executive of any Affiliate of Guarantor to temporarily perform services at the Property of a nature normally performed by personnel of the Property, his or her salary (including payroll taxes and employee benefits) as well as his or her traveling expenses will be Operating Expenses and he or she will be entitled to free room, board and use of the facilities as aforesaid, while performing such services; (c) the cost of all other goods and services obtained by Borrower, Master Tenant or Manager in connection with its operation of the Property, including, without limitation, heat and utilities, office supplies and all services performed by third parties, including leasing expenses in connection with telephone and data processing equipment, and all existing and any future installations necessary for the operation of the Improvements for hotel purposes (including, without limitation, heating, lighting, sanitary equipment, air conditioning, laundry, refrigerating, built-in kitchen equipment, telephone equipment, communications systems, computer equipment and elevators), Operating Equipment and existing and any future furniture, furnishings, wall coverings, fixtures and hotel equipment necessary for the operation of the Property for hotel purposes which shall include all equipment required for the operation of kitchens, bars, laundries (if any), and dry cleaning facilities (if any), office equipment, cleaning and engineering equipment and vehicles; (d) the cost of repairs to and maintenance of the Property other than of a capital nature; (e) Insurance Premiums for general liability insurance, workers’ compensation insurance or insurance required by similar employee benefits acts and such business or rental interruption or other insurance as may be provided for protection against claims, liabilities and losses arising from the operation of the Property (as distinguished from any property damage insurance on the Property or its contents) and losses incurred on any self-insured risks of the foregoing types, provided that (1) Lender has specifically approved in advance such self-insurance or (2) insurance is unavailable to cover such risks. Premiums on policies will be pro rated over the period of insurance and premiums under blanket policies will be allocated among properties covered; (f) all Taxes and Other Charges (other than federal, state or local income taxes and franchise taxes or the equivalent) payable by or assessed against Borrower, Master Tenant or Manager with respect to the operation of the Property; (g) legal fees and fees of any firm of independent certified public accounts designated from time to time by Borrower and/or Master Tenant (the “**Independent CPA**”) for services directly related to the operation of the Property; (h) [omitted]; (i) all expenses for advertising the Property and all expenses of sales promotion and public relations activities; (j) all out-of-pocket expenses and disbursements determined by the Independent CPA to have been reasonably, properly and specifically incurred by Borrower, Master Tenant, Manager, Guarantor or any of their respective Affiliates pursuant to, in the course of and directly related to, the management and operation of the Property under the Management Agreement. Without limiting the generality of the foregoing, such charges may include all reasonable travel, telephone, telegram, radiogram, cablegram, air express and other incidental expenses, but, excluding costs relating to the offices maintained by Borrower, Master Tenant, Manager, Guarantor, or any of their respective Affiliates other than the offices maintained at the Property for the management of the Property and excluding transportation costs of Borrower, Master Tenant or Manager related to meetings between Borrower and/or Master Tenant and Manager with respect to administration of the Management Agreement, as applicable, or of the Property involving travel away from such party’s principal offices; (k) the cost of any reservations system, any accounting services or other group benefits, programs or services from time to time made available to properties in the Borrower’s and/or Master Tenant’s system; (l) the cost associated with any commercial Leases; (m) any management fees, basic and incentive fees or other fees and reimbursables paid or payable to Manager under the Management Agreement; (n) any franchise fees or other fees and reimbursables paid or payable to Franchisor under the Franchise Agreement; and (o) all costs and expenses of owning, maintaining, conducting, directing, managing and supervising the operation of the Property to the extent such costs and expenses are not included above.

“**Original Principal Amount**” means \$16,575,000.00.

“**Other Charges**” means 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 Obligations**” has the meaning as set forth in the Security Instrument.

“**Outstanding Principal Balance**” or “**OPB**” means the portion of the Original Principal Amount that remains outstanding from time to time.

**“Owner Agreement”** shall mean that certain Owner Agreement, dated on or about the date hereof, by and among Franchisor, Master Tenant, and Borrower.

**“Payment Date”** means the first (1st) day of each calendar month during the term of the Loan.

**“Permitted Defeasance Date”** means the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust which holds the portion of the Note last to be securitized.

**“Permitted Encumbrances”** means, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority or for other Charges not yet delinquent or that are being contested in accordance with the Loan Documents, (d) mechanics’, materialmen’s, and other similar Liens on the Property that are not yet delinquent or that are being contested, or are otherwise discharged or bonded, in accordance with the Loan Documents; (e) Leases entered into in accordance with the Loan Documents, and (f) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances individually or in the aggregate do not materially adversely affect the value or use or operation of the Property or the security intended to be provided by the Security Instrument or with the current ability of the Property to generate Net Cash Flow sufficient to service the Loan or Borrower’s ability to pay its obligations under the Loan Documents when they become due.

**“Permitted Indebtedness”** has the meaning set forth in clause (xxiii) of the definition of Special Purpose Entity.

**“Permitted Investments”** means any one or more of the following obligations or securities acquired at a purchase price of not greater than par, including those issued by Servicer, the trustee under any Securitization or any of their respective Affiliates, payable on demand or having a maturity date not later than the Business Day immediately prior to the first Payment Date following the date of acquiring such investment and meeting one of the appropriate standards set forth below:

(i) obligations of, or obligations fully guaranteed as to payment of principal and interest by, the United States or any agency or instrumentality thereof provided such obligations are backed by the full faith and credit of the United States of America including obligations of: the U.S. Treasury (all direct or fully guaranteed obligations), the Farmers Home Administration (certificates of beneficial ownership), the General Services Administration (participation certificates), the U.S. Maritime Administration (guaranteed Title XI financing), the Small Business Administration (guaranteed participation certificates and guaranteed pool certificates), the U.S. Department of Housing and Urban Development (local authority bonds) and the Washington Metropolitan Area Transit Authority (guaranteed transit bonds); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(ii) Federal Housing Administration debentures;

(iii) obligations of the following United States government sponsored agencies: Federal Home Loan Mortgage Corp. (debt obligations), the Farm Credit System (consolidated systemwide bonds and notes), the Federal Home Loan Banks (consolidated debt obligations), the Federal National Mortgage Association (debt obligations), the Financing Corp. (debt obligations), and the Resolution Funding Corp. (debt obligations); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(iv) federal funds, unsecured certificates of deposit, time deposits, bankers’ acceptances and repurchase agreements with maturities of not more than 365 days of any bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(v) fully Federal Deposit Insurance Corporation-insured demand and time deposits in, or certificates of deposit of, or bankers’ acceptances issued by, any bank or trust company, savings and loan association or savings bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to

each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(vi) debt obligations with maturities of not more than 365 days and at all times rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) in its highest long-term unsecured rating category; provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(vii) commercial paper (including both non interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) with maturities of not more than 365 days and that at all times is rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) in its highest short-term unsecured debt rating; provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(viii) units of taxable money market funds, which funds are regulated investment companies, seek to maintain a constant net asset value per share and invest solely in obligations backed by the full faith and credit of the United States, which funds have the highest rating available from each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) for money market funds; and

(ix) any other security, obligation or investment which has been approved as a Permitted Investment in writing by (a) Lender and (b) each Rating Agency, as evidenced by a written confirmation that the designation of such security, obligation or investment as a Permitted Investment will not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities by such Rating Agency;

provided, however, that no obligation or security shall be a Permitted Investment if (A) such obligation or security evidences a right to receive only interest payments or (B) the right to receive principal and interest payments on such obligation or security are derived from an underlying investment that provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment.

**“Permitted Par Prepayment Date”** means July 2, 2025.

**“Permitted Transfer”** means any of the following: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto and (b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto.

**“Person”** means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**“Personal Property”** has the meaning set forth in the granting clause of the Security Instrument.

**“Policies”** has the meaning specified in Section 6.1(b) hereof.

**“Policy”** has the meaning specified in Section 6.1(b) hereof.

**“Principal”** means the Special Purpose Entity that is the general partner of Borrower or Master Tenant, if Borrower or Master Tenant is a limited partnership, or (b) the Special Purpose Entity that is the managing member of Borrower or Master Tenant, if Borrower or Master Tenant is a limited liability company, provided, however, that to the extent that Borrower or Master Tenant satisfies the requirements set forth in clause (x) of the definition of Special Purpose Entity, neither Borrower nor Master Tenant shall be deemed to have a “Principal” and this definition of “Principal” shall have no meaning when used in the Loan Documents. As of the Closing Date, (a) Borrower is a Delaware single-member limited liability company that satisfies the requirements set forth in clause (x) of the definition of Special Purpose Entity and has no Principal and (b) Master Tenant is a Delaware single-member limited liability company that satisfies the requirements set forth in clause (x) of the definition of Special Purpose Entity and has no Principal.

**“Property”** means the parcel of real property, the Improvements thereon and all personal property owned by Borrower and encumbered by the Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Security Instrument and referred to therein as the **“Property.”**

**“Provided Information”** means any and all financial and other information provided at any time prepared by, or on behalf of, Borrower, Principal, Master Tenant, Guarantor and/or Manager.

**“Qualified Franchisor”** shall mean (i) Franchisor or (ii) a reputable and experienced franchisor which, in the reasonable judgment of Lender, possesses experience in flagging hotel properties similar in location, size, class, use, operation and value as the Property; provided, that, if required by Lender, Borrower shall have obtained a Rating Agency Confirmation from the applicable Rating Agencies that franchising of the Property by such Person will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof. Lender or Servicer shall make any required request for written confirmation directly to the Rating Agencies.

**“Qualified Manager”** means either (a) Manager; or (b) in the reasonable judgment of Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower or Master Tenant) possessing experience in managing properties similar in size, scope, use and value as the Property, provided, that, if required by Lender, Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that management of the Property by such entity will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof.

**“Rating Agencies”** means each of S&P, Moody’s, Fitch, and Morningstar Credit Ratings, LLC, or any other nationally recognized statistical rating agency which has been approved by Lender and designated by Lender to assign a rating to the Securities.

**“Related Entities”** has the meaning set forth in Section 5.2.10(e) hereof.

**“Release”** shall mean any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

**“Remediation”** includes any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances.

**“REMIC Requirements”** shall mean any applicable legal requirements relating to any REMIC Trust (including, without limitation, those relating to the continued treatment of the Loan (or the applicable portion thereof or interest therein) as a “qualified mortgage” held by such REMIC Trust, the continued qualification of such REMIC Trust as such under the Code, the non-imposition of any tax on such REMIC Trust under the Code (including, without limitation, taxes on “prohibited transactions” and “contributions”) and any other constraints, rules or other regulations or requirements relating to the servicing, modification or other similar matters with respect to the Loan (or any portion thereof and/or interest therein) that may now or hereafter exist under applicable legal requirements (including, without limitation under the Code)).

**“REMIC Trust”** means a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Note or a portion thereof.

**“Rents”** shall have the meaning set forth in the Security Instrument.

**“Replacement Franchise Agreement”** shall mean, collectively, (i)(a) a franchise, trademark and license agreement with a Qualified Franchisor substantially in the same form and substance as the Franchise Agreement, or (b) a franchise, trademark and license agreement with a Qualified Franchisor, which franchise, trademark and license agreement shall be reasonably acceptable to Lender in form and substance; provided that, with respect to this clause (b) Lender, at its option, may require that Borrower shall have obtained, prior written confirmation from the applicable Rating Agencies that such franchise, trademark and license agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof, and (ii) a comfort letter or tri-party agreement reasonably acceptable to Lender, executed and delivered to Lender by Borrower (or, as applicable, Master Tenant) and such Qualified Franchisor. Lender or Servicer shall make any required request for written confirmation directly to the Rating Agencies.

**“Replacement Management Agreement”** means, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (ii), Lender, at its option, may require that Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or of such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager at Borrower’s expense.

**“Replacements Payment”** means an amount equal to the greater of one-twelfth (1/12) of four percent (4.0%) of (1) gross revenues from the Property for the preceding calendar year, and (2) projected forward twelve (12) month Replacements expenditures based on the Annual Budget. For the avoidance of doubt, Lender shall calculate the Replacements Payment on an annual basis at such time as Lender reviews and approves the Annual Budget.

**“Replacement Reserve Account”** has the meaning set forth in Section 7.3.1 hereof.

**“Replacement Reserve Fund”** has the meaning set forth in Section 7.3.1 hereof.

**“Replacement Reserve Monthly Deposit”** means for the initial Payment Date an amount equal to \$16,759, and then with respect to any calendar month, an amount equal to the greater of (1) the Replacements Payment and (2) the aggregate amount of Replacements expenditures, if any, required to be reserved under the Management Agreement and the Franchise Agreement (or, as applicable any Replacement Franchise Agreement).

**“Replacements”** means all furniture, fixtures, equipment and items of personal property located on or used in connection with the operation of the hotel at the Property.

**“Reporting Company”** shall mean a Person that is required to file, with respect to the equity interests of such company, periodic reports with the Securities and Exchange Commission under the Exchange Act.

**“Required Repair Account”** has the meaning set forth in Section 7.1.1 hereof.

**“Required Repair Fund”** has the meaning set forth in Section 7.1.1 hereof.

**“Required Repairs”** has the meaning set forth in Section 7.1.1 hereof.

**“Reserve Funds”** means, collectively, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, the Required Repair Fund, the Free Rent Reserve, the Specified Tenant Reserve Funds, the Excess Cash Flow Reserve Fund, and any other escrow fund established by the Loan Documents.

**“Restoration”** means the repair and restoration 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 Lender.

**“Restricted Party”** shall mean collectively, Borrower, Master Tenant, Principal, Guarantor, and any Affiliated Manager, Moody National Operating Partnership II, LP, a Delaware limited partnership, and Moody OP Holdings II, LLC, a Delaware limited liability company.

**“Revised Management Fees”** shall have the meaning set forth in Section 9.4 hereof.

**“Room Revenue”** shall mean that portion of Gross Income from Operations attributable to the rental of hotel rooms, upon which Franchisor calculates franchise fees.

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

**“Sale or Pledge”** means a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

**“Scheduled Defeasance Payments”** has the meaning set forth in Section 2.5.1(b) hereof.

**“Securities”** has the meaning set forth in Section 9.1 hereof.

**“Securitization”** has the meaning set forth in Section 9.1 hereof.

**“Security Agreement”** has the meaning set forth in Section 2.5.1(a)(v) hereof.

“**Security Instrument**” means, that certain first priority Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated the date hereof, executed and delivered by Borrower to Lender 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.

“**Servicer**” has the meaning set forth in Section 9.5 hereof.

“**Severed Loan Documents**” has the meaning set forth in Section 8.2(c) hereof.

“**Special Purpose Entity**” means a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof while the Loan is outstanding and undefeased, unless such Person no longer owns any interest in the Property, has complied with and shall at all times comply with the following requirements unless it has received either prior consent to do otherwise from Lender or a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof:

(i) is and shall be organized solely for the purpose of (A) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, financing, managing, operating and disposing of the Property, entering into and performing its obligations under the Loan Documents with Lender, 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; (B) in the case of Master Tenant, leasing, subleasing, operating, managing, maintaining, developing, and improving the Property, entering into and performing its obligations under the Master Lease Documents with Borrower, Hotel Transactions, the Franchise Agreement, and subleases, operating agreements, or management agreements with third-party operators or managers for the management and operation of the Property, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (C) in the case of a Principal, acting as a general partner of the limited partnership that is the Borrower or Master Tenant, as applicable, or as member of the limited liability company that is the Borrower or Master Tenant, as applicable, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, leasing, management or operation of the Property (including, in the case of Master Tenant, entering into the Master Lease Documents, Hotel Transactions and subleases, operating agreements or management agreements with third-party operators or managers for the management and operation of the Property), or (B) in the case of a Principal, acting as general partner of the limited partnership that is the Borrower or Master Tenant, as applicable, or acting as a member of the limited liability company that is the Borrower or Master Tenant, as applicable;

(iii) has not owned and shall not own any real property other than (A) in the case of Borrower, the Property; or (B) in the case of Master Tenant, the leasehold interest in the Master Lease;

(iv) does not have, shall not have and at no time had any assets other than (A) in the case of Borrower, the Property and personal property necessary or incidental to its ownership and operation of the Property; (B) in the case of Master Tenant, the leasehold interest under the Master Lease and personal property necessary or incidental to ownership of its leasehold interest in and operation of the Property; or (C) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that is the Borrower or Master Tenant, as applicable, and personal property necessary or incidental to its ownership of such interests;

(v) has not engaged in, sought, consented to or permitted and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests in Borrower;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company, (B) holds a direct interest as general partner in the limited partnership of not less than one percent (1.0%); and (C) intentionally omitted.

(viii) if such entity is a corporation, shall not cause or permit the board of directors of such entity to take any Material Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower, or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors, unless one hundred percent (100%) of the members of its board of directors shall have participated in such vote and shall have voted in favor of such action;

(ix) if such entity is a limited liability company (other than a limited liability company meeting all of the requirements applicable to a single-member limited liability company set forth in this definition of “Special Purpose Entity”), has and shall have at least one (1) member that is a Special Purpose Entity, that is either a corporation or a single-member limited liability company, that directly owns at least one percent (1.0%) of the equity of the limited liability company;

(x) if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) intentionally omitted, (C) shall not take any Material Action and shall not cause or permit the members or managers of such entity to take any Material Action, either with respect to itself or, if the company is a Principal, with respect to Borrower, in each case unless one hundred percent (100%) of the members of the company shall have participated consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company’s limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(xi) has not and shall not (and, if such entity is (a) a limited liability company, has and shall have a limited liability agreement or an operating agreement, as applicable, (b) a limited partnership, has a limited partnership agreement, or (c) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity shall not) (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets except as permitted by the Loan Documents; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Lender; or (4) without the affirmative vote of one hundred percent (100%) of its members, partners or shareholders, as applicable, of itself or the consent of a Principal that is a member or general partner in it take any Material Action;

(xii) to the extent revenues of the Property are available to it and are sufficient therefor (or Borrower’s lack of access thereto is due to the exercise of rights or remedies by Lender), (A) has at all times been and shall at all times remain solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and (B) has maintained and shall 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;

(xiii) holds itself out as a legal entity, separate and apart from any other person or entity, has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain (subject to clause (xvi) below) its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is a disregarded entity or otherwise is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) except as required by the Loan Documents, has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) except as required by the Loan Documents, has held and shall hold its assets in its own name;

(xviii) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or (except in the case of Borrower) of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of such Person;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required (or, if such entity is disregarded for tax purposes, permitted) by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity’s separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity’s liabilities do not constitute obligations of the consolidated entity;

(xx) to the extent that revenues of the Property are available to it and are sufficient therefor (or Borrower’s lack of access thereto is due to the exercise of rights or remedies by Lender), has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) shall have no Indebtedness (including loans (whether or not such loans are evidenced by a written agreement) between such Person and any Affiliates of such Person) other than (A) in the case of the Borrower, the Loan, (B) in the case of Master Tenant, its obligations under the Master Lease, and (C) in the case of Borrower and Master Tenant, unsecured trade payables and operational debt incurred in the ordinary course of business relating to the ownership of its interest in and operation of the Property and the routine administration of Master Tenant and Borrower, which liabilities are (i) paid when due and in any event not more than sixty (60) days past the later of the date incurred or invoiced (unless disputed in accordance with applicable law or unless revenues of the Property, net of all other amounts payable by Master Tenant under the Master Lease or the Loan Documents, are insufficient to pay such sums, or, to the extent they are sufficient and Lender is then sweeping Excess Cash Flow under the Loan Documents, Lender has not released such funds to Master Tenant), (ii) not evidenced by a note, (iii) normal and reasonable under the circumstances, and (iv) do not exceed 2% of the original principal balance of the Loan (unless such maximum amount is breached solely as a result of non-payment of the liability under the circumstances described in sub-clause (i) above), and (D) in the case of Borrower and Master Tenant, such other liabilities as are permitted pursuant to this Agreement (the Indebtedness described in the foregoing clauses (A) through (D) is referred to herein, collectively, as “**Permitted Indebtedness**”). Except pursuant to the Master Lease Documents or another Loan Document to which Master Tenant is a party, no Indebtedness other than the Debt may be secured (subordinate or *pari passu*) by the Property;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except as permitted pursuant to this Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate; provided that no Master Lease Document shall be deemed to violate this provision;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing, including paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity’s agent;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property or, in the case of Master Tenant, pursuant to the Master Lease Documents, and no such pledge remains outstanding except to Lender to secure the Loan and Borrower to secure Master Tenant’s obligations under the Master Lease Documents;

(xxix) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) other than the Master Lease Documents and the Management Agreement, capital contributions, and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm’s-length transaction with an unrelated third party;

(xxxiv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it if its cash flow is insufficient to pay the Debt;

(xxxv) if such entity is a corporation, has considered and shall consider, to the extent permitted under applicable law, the interests of its creditors in connection with all corporate actions;

(xxxvi) has not had and shall not have any of its obligations guaranteed by any Affiliate except pursuant to the Franchise Guaranty, the Owner Agreement, or as otherwise provided by the Loan Documents;

(xxxvii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower or Master Tenant;

(xxxviii) has complied and shall comply with all of the terms and provisions contained in its organizational documents relating to separateness;

(xxxix) intentionally omitted;

(xl) except pursuant to the Loan Documents, has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xli) is, has always been and, to the extent that revenues of the Property are available to it and sufficient therefor, shall continue to be, duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is required to be qualified to do business; and

(xlii) has no material contingent or actual obligations not related to the Property.

**“Specified Tenant Deposit Event”** shall mean that Lender has received funds pursuant to Section 16 of the Collateral Assignment.

**“Specified Tenant Reserve Account”** shall have the meaning set forth in Section 7.4.1 hereof.

**“Specified Tenant Reserve Funds”** shall have the meaning set forth in Section 7.4.1 hereof.

**“State”** means, the State or Commonwealth in which the Land or any part thereof is located.

**“Successor Borrower”** has the meaning set forth in Section 2.5.3 hereof.

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

**“Tax and Insurance Escrow Fund”** has the meaning set forth in Section 7.2 hereof.

**“Taxes”** means 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.

**“Tenant”** means the lessee of all or a portion of the Property under a Lease (other than Master Tenant).

**“Tenant Direction Letter”** means an instruction letter to Tenants substantially in the form attached hereto as Schedule IV.

**“Threshold Amount”** has the meaning set forth in Section 5.1.21 hereof.

**“Title Insurance Policy”** means the mortgagee title insurance policy issued with respect to the Property and insuring the lien of the Security Instrument.

**“Transfer”** has the meaning set forth in Section 5.2.10(b) hereof.

**“Transferee”** has the meaning set forth in Section 5.2.10(e) hereof.

**“Transferee’s Principals”** means collectively, (A) Transferee’s managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee.

**“TRIPRA”** shall have the meaning set forth in Section 6.1(a)(ix) hereof.

**“UCC”** or **“Uniform Commercial Code”** means the Uniform Commercial Code as in effect in the State in which the Property is located.

**“Uniform System of Accounts”** shall mean the most recent edition of the Uniform System of Accounts for Hotels, as adopted by the American Hotel and Motel Association.

“**U.S. Obligations**” means non redeemable, non prepayable, non callable securities evidencing an obligation to timely pay principal or interest in a full and timely manner that constitute “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended, and are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Rating Agencies, other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

Section 1.2 Principles of Construction. The following rules of construction shall be applicable for all purposes of this Agreement and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

- (a) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (b) the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”;
- (c) an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by Lender;
- (d) no inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document;
- (e) the cover page (if any) of, all recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated herein;
- (f) all references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified;
- (g) all uses of the words “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to” unless the context shall indicate otherwise;
- (h) unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and
- (i) 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 II GENERAL TERMS**

### Section 2.1 Loan Commitment; Disbursement to Borrower.

2.1.1. Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2. Single Disbursement to Borrower. Borrower may request and receive only one (1) borrowing hereunder in respect of the Loan and any amount borrowed and repaid or defeased hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3. The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured or supported, as the case may be, by the Security Instrument and the other Loan Documents.

2.1.4. Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) acquire the Property or repay and discharge any existing loans relating to the Property, (b) pay all past due basic carrying costs, if any, with respect to the Property, (c) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, (d) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (e) fund any working capital requirements of the Property and (f) distribute the balance, if any, to Borrower.

### Section 2.2 Interest Rate.

2.2.1. Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue at the Interest Rate or as otherwise set forth in this Agreement or in the Note from (and including) the Closing Date to but excluding the Maturity Date.

2.2.2. Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the relevant Accrual Period by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance of the Loan. Borrower acknowledges that the calculation method for interest described herein results in a higher effective interest rate than the numeric Interest Rate and Borrower hereby agrees to this calculation method.

2.2.3. Default Rate. Upon the occurrence of an Event of Default (including the failure of Borrower to make full payment on the Maturity Date), Lender shall be entitled to receive and Borrower shall pay interest on the Outstanding Principal Balance at the Default Rate. Interest shall accrue and be payable at the Default Rate from the occurrence of an Event of Default until all Events of Default have been waived in writing by Lender in its discretion. Such accrued interest shall be added to the Outstanding Principal Balance, and interest shall accrue thereon on a daily basis at the Default Rate until fully paid. Such accrued interest shall be secured by the Security Instrument and other Loan Documents. Borrower agrees that Lender's right to collect interest at the Default Rate is given for the purpose of compensating Lender at reasonable amounts for Lender's added costs and expenses that occur as a result of Borrower's default and that are difficult to predict in amount, such as increased general overhead, concentration of management resources on problem loans, and increased cost of funds. Lender and Borrower agree that Lender's collection of interest at the Default Rate is not a fine or penalty, but is intended to be and shall be deemed to be reasonable compensation to Lender for increased costs and expenses that Lender will incur if there occurs an Event of Default hereunder. Collection of interest at the Default Rate shall not be construed as an agreement or privilege to extend the Maturity Date or to limit or impair any rights and remedies of Lender under any Loan Documents. If judgment is entered on the Note, interest shall continue to accrue post-judgment at the greater of (a) the Default Rate or (b) the applicable statutory judgment rate.

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

Section 2.3 Loan Payment. Payments of principal, interest, and Late Charges (as defined in the Note) shall be made as provided in the Note.

Section 2.4 Prepayments. Except as otherwise provided in Section 9 of the Note, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date.

Section 2.5 Defeasance.

2.5.1. Voluntary Defeasance. (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Permitted Defeasance Date and prior to the Permitted Par Prepayment Date to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "**Defeasance Event**"):

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "**Defeasance Date**") on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the next Payment Date, provided, however, if the Defeasance Deposit shall include (or if the U.S. Obligations purchased with such Defeasance Deposit shall provide for payment of) all principal and interest computed from the Payment Date prior to the Defeasance Date through the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Security Instrument and the other Loan Documents;

(iv) Borrower shall pay to Lender the required Defeasance Deposit for the Defeasance Event and complies with and satisfies the requirements of Section 2.5.1(b) below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the "**Security Agreement**");

(vi) Borrower shall deliver one or more opinions from counsel reasonably satisfactory to Lender that are standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the U.S.

Obligations purchased with the Defeasance Deposit and that the Security Agreement is enforceable against Borrower in accordance with its terms, and (b) the defeasance or any other transaction that occurs pursuant to the provisions of this Section 2.5.1(a) will not cause the failure of any REMIC Trust or any other entity that holds the Note to maintain its tax status;

(vii) If required by pursuant to the applicable pooling and servicing agreement, Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding.

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5.1(a) (except for such, if any, as have been specifically waived in writing in connection with the Defeasance Event) have been satisfied;

(ix) Borrower shall deliver a certificate of a certified public accountant reasonably acceptable to Lender (which may be an employee of Borrower or its Affiliates) certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Security Instrument as provided in Section 2.6 hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the assumption of the Note by the Successor Borrower, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees and expenses.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit, or cause it to be used, to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to or more than the scheduled payments due on such Payment Dates under this Agreement and the Note (including scheduled payments of principal, interest, and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is repaid in full on the Maturity Date (the "**Scheduled Defeasance Payments**"). Notwithstanding the foregoing, at Lender's option, Lender, acting on Borrower's behalf as Borrower's agent and attorney-in-fact, shall use the Defeasance Deposit to purchase, or cause to be purchased, the above-referenced U.S. Obligations that Borrower is required to purchase pursuant to this Section 2.5.1(b). By depositing the Defeasance Deposit with Lender, Borrower shall thereby appoint Lender or Lender's servicer or other agent as Borrower's agent and attorney-in-fact, with full power of substitution, for the purpose of purchasing the U.S. Obligations with the Defeasance Deposit and delivering the U.S. Obligations to Lender. Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy Borrower's other obligations under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

(c) If any notice of defeasance is given pursuant to Section 2.5.1(a)(i), Borrower shall be required to defease the Loan on the Defeasance Date (unless such notice is revoked by Borrower prior to the Defeasance Date in which event Borrower shall immediately reimburse Lender for any and all reasonable costs and expenses incurred by Lender in connection with Borrower's giving of such notice and revocation).

2.5.2. Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book entry transfers and pledges through the book entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3. Successor Borrower. In connection with any Defeasance Event, Borrower shall establish or designate a successor entity (the "Successor Borrower") acceptable to Lender in its reasonable discretion, which shall be a special purpose entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents, and each of Guarantor and Master Tenant shall be released from its obligations under the other Loan Documents, except with respect to matters occurring prior to such release. Borrower shall pay \$1,000 to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Section 2.5.3, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 Release of Property. Except as set forth in this Section 2.6 or upon repayment of the Loan in full on or after the Maturity Date, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Security Instrument on all or any portion of the Property and any other Loan Document pursuant to which a Lien thereon exists.

2.6.1. Release of Property. (a) If Borrower has the right to and has elected to prepay in full or defease the Loan in accordance with this Agreement and the Note, upon satisfaction of the requirements of Section 2.4 and Section 9 of the Note (in the case of a prepayment, if then permitted under this Agreement and the Note) or Section 2.5 (in the case of a full defeasance, if then permitted under this Agreement and the Note), as applicable, and this Section 2.6, all of the Property shall be released from the Liens of the Loan Documents.

(b) In connection with the release of the Security Instrument in connection with a Defeasance Event, Borrower shall submit to Lender, not less than thirty (30) days (or such shorter time period as Lender may agree to in its sole discretion) prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement. Borrower shall reimburse Lender and Servicer for any costs and expenses Lender and Servicer incur arising from such release (including reasonable attorneys' fees and expenses) and Borrower shall pay, in connection with such release, (i) all recording charges, filing fees, taxes or other expenses payable in connection therewith, and (ii) the lesser of the current fee then generally being assessed by such Servicer to effect such release and the maximum amount permitted under applicable law to be assessed as a fee therefor. Upon the release of the Property in accordance with this Section 2.6.1 following a defeasance, Borrower shall have no further right to prepay the Note.

## Section 2.7 Clearing Account/Cash Management.

2.7.1. Clearing Account. (a) Upon the occurrence of a Cash Sweep Event, Borrower shall establish and maintain an Eligible Account (the "**Clearing Account**") with Clearing Bank for the benefit of Lender, which Clearing Account shall be under the sole dominion and control of Lender. The Clearing Account shall be entitled in the name of Master Tenant for the benefit of Lender. Master Tenant shall grant to Borrower, as security for Master Tenant's obligations under the Master Lease, a first-priority security interest in the Clearing Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Borrower and of Lender, as Borrower's assignee, a perfected first priority security interest in the Clearing Account, including, without limitation, authorizing the filing UCC-1 Financing Statements and continuations thereof. Borrower hereby grants to Lender a first-priority security interest in all of Borrower's right, title and interest in and to the Clearing Account and all deposits at any time contained therein and the proceeds thereof and shall take all actions deemed necessary or desirable by Lender to maintain in favor of Lender a perfected first priority security interest in the Clearing Account, including authorizing the filing of UCC-1 Financing Statements and continuations thereof. All costs and expenses for establishing and maintaining the Clearing Account shall be paid by Borrower or Master Tenant. All monies now or hereafter deposited into the Clearing Account shall be deemed additional security for Master Tenant's obligations under the Master Lease, and, to the extent of Borrower's interest therein, additional security for the Debt. All funds in the Clearing Account, less the reasonable fees of the Clearing Bank and any minimum balance required to be maintained therein, shall be wire transferred each Business Day (i) during the existence of a Cash Sweep Period, to the Cash Management Account and (ii) if a Cash Sweep Period does not then exist, to Master Tenant's operating account specified pursuant to the Clearing Agreement. Upon the occurrence of a Cash Sweep Event, the Clearing Account Agreement and Clearing Account shall remain in effect until the Loan has been repaid or defeased in full.

(b) On or before the Closing Date, Borrower shall, or shall cause Master Tenant to (or cause Manager to), execute and deliver to Lender (i) Credit Card Direction Letters to each of the Credit Card Companies to deliver all receipts payable with respect to the Property directly to the Clearing Account, and (ii) with respect to commercial Leases in existence on the date hereof, execute and deliver Tenant Direction Letters to all Tenants under such commercial Leases to deliver all Rents payable under their respective Leases directly to the Clearing Account, and deposit all Rents payable under the Master Lease directly to the Clearing Account. In connection with each commercial Lease executed after the date hereof, Borrower shall simultaneously deliver to Lender an executed Tenant Direction Letter. Lender shall hold the Credit Card Direction Letters and the Tenant Direction Letters in escrow and shall not complete and deliver them to Credit Card Companies or Tenants unless (i) a Cash Sweep Event occurs and (ii) Borrower shall have failed promptly thereafter to provide satisfactory written evidence to Lender that Borrower has delivered, or has caused Master Tenant and/or Manager to deliver, completed Credit Card Direction Letters to Credit Card Companies and Tenant Direction Letters to Tenants. Without the prior written consent of Lender, neither Borrower, Master Tenant nor Manager shall (i) terminate, amend, revoke or modify any Credit Card Direction Letter or any Tenant Direction Letter in any manner or (ii) direct or cause any Credit Card Company, Tenant or Master Tenant to pay any amount in any manner other than as provided in the Credit Card Direction Letter or Tenant Direction Letter, as applicable. After the occurrence of a Cash Sweep Event, Borrower shall, and shall cause Master Tenant to or to cause Manager to, deposit all amounts received by Borrower, Master Tenant or Manager constituting Rents (other than operating cash, not in excess of \$5,000, retained for the purpose of the day-to-day operations of the Property) into the Clearing Account within two (2) Business Days after receipt thereof. Until so deposited, all Rents received by Borrower or Manager shall be held in trust for the benefit of Lender and shall not be commingled with any other funds or property of Borrower or Manager.

- (c) Master Tenant shall obtain from Clearing Bank its agreement to transfer on each Business Day all amounts on deposit in the Clearing Account (i) during the existence of a Cash Sweep Period, to the Cash Management Account and (ii) if a Cash Sweep Period does not then exist, to Master Tenant's operating account specified pursuant to the Clearing Account Agreement.
- (d) If Lender has accelerated the Loan as a result of an Event of Default or any Bankruptcy Action of Borrower, Master Tenant, Principal or Manager, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Clearing Account to the payment of the Debt in any order in its sole discretion. If Lender has not accelerated the Loan notwithstanding the existence of an Event of Default or any Bankruptcy Action of Borrower, Master Tenant, Principal or Manager, Lender shall have the continuing exclusive control of, and right to withdraw and apply, the funds in the Clearing Account that would constitute rent under the Master Lease to payment of any and all debts, liabilities and obligations of Borrower to Lender pursuant to or in connection with this Agreement and the other Loan Documents, in such order, proportion and priority as Lender may determine in its sole discretion. Notwithstanding anything to the contrary contained in this Section 2.7.1(d), Lender shall make any Collected Taxes available for payment to the relevant tax authorities to the extent such Collected Taxes are required to be so remitted.
- (e) The Clearing Account shall not be commingled with other monies held by Borrower, Master Tenant, Manager or Clearing Bank and shall be an Eligible Account.
- (f) Neither Borrower nor Master Tenant shall further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or authorize any UCC-1 Financing Statements, except those naming Lender as the secured party and Borrower as Lender's assignor, to be filed with respect thereto.
- (g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the Clearing Account or the Clearing Account Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Clearing Account was established.
- (h) Upon (i) Clearing Bank ceasing to be an Eligible Institution, (ii) the Clearing Account ceasing to be an Eligible Account, (iii) any resignation by Clearing Bank or termination of the Clearing Account Agreement by Clearing Bank or Lender or (iv) the occurrence and continuance of an Event of Default, Borrower and/or Master Tenant, as applicable, shall, within fifteen (15) days of Lender's written request, (A) terminate the existing Clearing Account Agreement, (B) appoint a new Clearing Bank (which such Clearing Bank shall (I) be an Eligible Institution, (II) other than during the continuance of an Event of Default, be selected by Borrower and approved by Lender and (III) during the continuance of an Event of Default, be selected by Lender), (C) cause such Clearing Bank to open a new Clearing Account (which such account shall be an Eligible Account) and enter into a new Clearing Account Agreement with Lender on substantially the same terms and conditions as the previous Clearing Account Agreement and (D) provide new Tenant Direction Notices and Credit Card Direction Letters and the other notices required pursuant to the terms hereof relating to such new Clearing Account Agreement and Clearing Account. Each of Borrower and Master Tenant constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake any action required of Borrower and/or Master Tenant under this Section 2.7.1 in the name of Borrower and/or Master Tenant (as applicable) in the event Borrower and/or Master Tenant fails to do the same. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.
- 2.7.2. Cash Management Account.** (a) Upon the occurrence of a Cash Sweep Event, Borrower shall cause Master Tenant to establish and maintain a segregated Eligible Account (the "**Cash Management Account**") to be held by Agent in trust and for the benefit of Borrower and Lender and to which, during a Cash Sweep Period, all amounts that otherwise would have been wired to Master Tenant pursuant to the Clearing Account Agreement shall be transferred instead, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled in the name of Master Tenant for the benefit of Lender. Master Tenant shall grant to Borrower a first-priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions deemed necessary or desirable by Lender to maintain in favor of Borrower and of Lender, as Borrower's assignee, a perfected first priority security interest in the Cash Management Account, including, without limitation, authorizing the filing of UCC-1 Financing Statements and continuations thereof. Borrower hereby grants to Lender a first priority security interest in all of Borrower's right, title and interest in and to the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and shall take all actions deemed necessary or desirable by Lender to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, authorizing the filing of UCC-1 Financing Statements and continuations thereof. Borrower will not, and will not permit Master Tenant to, in any way alter or modify the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account, and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower or Master Tenant.
- (b) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(c) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default or any Bankruptcy Action of Borrower or Manager and the acceleration of the Loan by Lender may be applied by Lender in such order and priority as Lender shall determine. If Lender has not accelerated the Loan notwithstanding the existence of an Event of Default or any Bankruptcy Action of Borrower, Master Tenant, Principal or Manager, Lender shall have the continuing exclusive control of, and right to withdraw and apply, funds in the Cash Management Account that would constitute rent under the Master Lease and all of Borrower's Excess Cash Flow (excluding, for the avoidance of doubt, Master Tenant's Excess Cash Flow) to payment of any and all debts, liabilities and obligations of Borrower to Lender pursuant to or in connection with this Agreement and the other Loan Documents, in such order, proportion and priority as Lender may determine in its sole discretion. Notwithstanding anything to the contrary contained in this Section 2.7.2(c), Lender shall make any Collected Taxes available for payment to the relevant tax authorities to the extent such Collected Taxes are required to be so remitted.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Lender shall provide notice thereof to Borrower.

2.7.3. Payments Received under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to this Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

### **ARTICLE III CONDITIONS PRECEDENT**

Section 3.1 Conditions Precedent to Closing. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of all of the conditions precedent to closing set forth in the application or term sheet for the Loan delivered by Borrower to Lender and the commitment or commitment rider, if any, to the application or term sheet for the Loan issued by Lender.

### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

Section 4.1 Borrower Representations. Borrower represents and warrants as of the date hereof that:

4.1.1. Organization. Borrower and Master Tenant have been duly organized and are validly existing and in good standing in their respective jurisdictions of organization with requisite power and authority to own or lease the Property as the case may be and to transact the businesses in which it is now engaged. Each of Borrower and Master Tenant is duly qualified to do business and is in good standing in the State in which the Property is located, and each of Borrower and Master Tenant possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own the interest in the Property and to transact the businesses in which it is now engaged, and the sole business each of Borrower and Master Tenant is as set forth with respect to it in the definition of "Special Purpose Entity." The ownership interests in Borrower and Master Tenant are as set forth on the organizational chart attached hereto as Schedule III.

4.1.2. Proceedings. Each of Borrower, Master Tenant and Guarantor has each taken all necessary action to authorize the execution, delivery and performance, as applicable, of this Agreement and/or the other Loan Documents to which it is a party. This Agreement and such other Loan Documents to which Borrower is a party have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency, fraudulent transfer, reorganization or other similar laws affecting the enforcement of creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3. No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents to which Borrower and/or Master Tenant is a party by Borrower and/or Master Tenant, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents and the Master Lease Documents) upon any of the property or assets of Borrower and/or Master Tenant pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower and/or Master Tenant is a party or by which any of the Property, Borrower's or Master Tenant's assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Master Tenant or any of Borrower's or Master Tenant's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or Master Tenant of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4. Litigation. There are no actions, suits or proceedings at law or in equity, arbitrations, or governmental investigations by or before any Governmental Authority or other agency now pending, filed, or, to Borrower's knowledge, threatened against or affecting Borrower, Guarantor, Master Tenant, Principal or the Property, which actions, suits or proceedings, or governmental investigations, if determined against Borrower, Guarantor, Master Tenant, Principal or the Property, could reasonably be expected to materially adversely affect (a) title to the Property; (b) the validity or enforceability of the Security Instrument; (c) Borrower's ability to perform under the Loan; (d) Guarantor's ability to perform under the Guaranty; (e) Master Tenant's ability to perform under the Master Lease and/or the Loan Documents to which Master Tenant is a party, (f) the use, operation or value of the Property; (g) the principal benefit of the security intended to be provided by the Loan Documents; (h) the current ability of the Property to generate Net Cash Flow sufficient to service the Loan; or (i) the current principal use of the Property.

4.1.5. Agreements. Neither Borrower nor Master Tenant is a party to any agreement or instrument or subject to any restriction (to Borrower's knowledge, with respect to any Permitted Encumbrance reflected in the Title Insurance Policy) which could reasonably be expected to materially and adversely affect Borrower, Master Tenant, or the Property, or Borrower's or Master Tenant's business, properties or assets, operations or condition, financial or otherwise. Neither Borrower nor Master Tenant is in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower, Master Tenant or the Property is bound. Neither Borrower nor Master Tenant has any material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or Master Tenant is a party or by which Borrower, Master Tenant or the Property is otherwise bound, other than (a) Permitted Indebtedness and (b) obligations under the Loan Documents, the Master Lease Documents, the Franchise Agreement, and the Management Agreement.

4.1.6. Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and owns the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are expressly permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower's ability to repay the Loan. The Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on that portion of the Property constituting an interest in real property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) to the extent that a security interest therein may be created under the Uniform Commercial Code and perfected by the filing of a financing statement under the Uniform Commercial Code, as enacted in the State of Delaware, perfected security interests in all personalty (including, to the extent that they constitute an interest in personal property subject to the Uniform Commercial Code the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7. Solvency. Borrower has (a) not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. Giving effect to the Loan and the transactions contemplated by the Master Lease Documents, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan and the transactions contemplated by the Master Lease Documents, exceed Borrower's total liabilities, including subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan and the transactions contemplated by the Master Lease Documents, be greater than Borrower's probable liabilities, including the probably 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. Neither Borrower nor Master Tenant intends to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower or Master Tenant, respectively, and the amounts to be payable on or in respect of obligations of Borrower or Master Tenant, respectively, and the anticipated need to refinance the Loan in order to repay it on the Maturity Date). No petition in bankruptcy has been filed against Borrower, Master Tenant or any constituent Person of Borrower or Master Tenant in the last seven (7) years, and neither Borrower, Master Tenant nor any constituent Person in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower, Master Tenant 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 or Master Tenant's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or Master Tenant, and the transactions contemplated by the Master Lease Documents or such constituent Persons.

4.1.8. 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. With the exception of risk factors applicable generally to the ownership and operation of hotels such as the Property located in the same geographic region as the Property, there is no material fact presently known to Borrower which has not been disclosed to Lender, which materially adversely affects, nor as far as Borrower can foresee, could reasonably be expected to materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9. No Plan Assets. Neither Borrower nor Master Tenant sponsors, is obligated to contribute to, and is itself an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower or Master Tenant constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) neither Borrower nor Master Tenant is a “governmental plan” within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower or Master Tenant are not subject to any state or other statute, regulation or other restriction regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement, including the exercise by Lender of any of its rights under the Loan Documents.

4.1.10. Compliance. Except as disclosed in the zoning report delivered to Lender in connection with the origination of the Loan, the Borrower, Master Tenant and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including building and zoning ordinances and codes. Neither Borrower nor Master Tenant is in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower, Master Tenant or, to Borrower’s knowledge, any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents or the transactions contemplated by the Master Lease Documents. On the Closing Date, the Improvements at the Property were in material compliance with applicable law.

4.1.11. Financial Information. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Borrower, Master Tenant and the Property, as applicable, as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP and the Uniform System of Accounts throughout the periods covered, except as disclosed therein; provided, however, that if any financial data is delivered to Lender by any Person other than Borrower, Guarantor, Master Tenant or any Affiliate of Borrower, Guarantor or Master Tenant, or if such financial data has been prepared by or at the direction of any Person other than Borrower, Guarantor, Master Tenant or any Affiliate of Borrower, Master Tenant or Guarantor, then the foregoing representations with respect to such financial data shall be to the best of Borrower’s knowledge, after due inquiry. Except for Permitted Encumbrances, neither Borrower nor Master Tenant has 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 or Master Tenant and reasonably likely to have a material adverse effect on the Property or the current operation thereof, except as referred to or reflected in said financial statements. Since the date of such financial statements delivered with respect to Borrower and Master Tenant, there has been no material adverse change in the financial condition, operations or business of Borrower or Master Tenant from that set forth in said financial statements.

4.1.12. Condemnation. No Condemnation or other similar proceeding has been commenced or, to Borrower’s best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

4.1.13. 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 or the other Loan Documents.

4.1.14. Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right of way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

4.1.15. Not a Foreign Person. Neither Borrower nor Master Tenant is a “foreign person” within the meaning of §1445(f)(3) of the Code.

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

4.1.17. Assessments. There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.18. Enforceability. The Loan Documents are enforceable by Lender (or any subsequent holder thereof) in accordance with their respective terms, subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations. To the best of Borrower's knowledge, the Loan Documents are not subject to any right of rescission, set off, counterclaim or defense by Borrower, Master Tenant or Guarantor, 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 in accordance with applicable law, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and neither Borrower, Master Tenant nor Guarantor has asserted any right of rescission, set off, counterclaim or defense with respect thereto.

4.1.19. No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which, upon the funding of the Loan and the application of the proceeds thereof in accordance with this Agreement, will be outstanding, other than from the Master Tenant to Borrower and from Borrower to Lender.

4.1.20. Insurance. Subject to Section 10.28 hereof, Borrower has obtained and has delivered to Lender evidence reasonably satisfactory to Lender that Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement are in place. No claims with respect to the Property have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy, and neither Borrower nor, to Borrower's knowledge, any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

4.1.21. Use of Property. The Property is used exclusively for hotel purposes and other appurtenant and related uses, including, without limitation, uses permitted under commercial leases permitted under the Loan Documents.

4.1.22. Certificate of Occupancy; Licenses. All certifications, permits, franchises, licenses, consents, authorizations, and approvals, including without limitation, certificates of completion, occupancy permits, and any applicable liquor license, required for the legal use, occupancy and operation of the Property by Borrower and Master Tenant 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.

4.1.23. Flood Zone. None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards, or, if so located, the flood insurance required pursuant to Section 6.1(a) is in full force and effect with respect to the Property.

4.1.24. Physical Condition. Subject to any physical condition report delivered to Lender in connection with its underwriting of the Loan, to Borrower's knowledge, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and neither Borrower nor Master Tenant has 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 of any termination or threatened termination of any policy of insurance or bond.

4.1.25. Boundaries. To Borrower's knowledge, except, if applicable, as otherwise disclosed in the survey of the Property delivered to Lender in connection with the closing of the Loan, 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 upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy.

4.1.26. Leases. The Property is not subject to any leases other than the Master Lease and the Leases described in the rent roll attached hereto as Schedule I and made a part hereof, which rent roll is true, complete and accurate in all respects as of the Closing Date. Borrower is the owner of landlord's interest in, and is lessor under, the Master Lease, and Master Tenant is the owner of landlord's interest in, and is lessor under, the Leases. Borrower is the holder of an assignee's interest of the Rents from Leases pursuant to the Master Lease ALR. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Master Lease, the Leases and Hotel Transactions. The Master Lease is in full force and effect and there is no Event of Default (as defined in the Master Lease) thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute such an Event of Default. The Leases are in full force and effect and there are no defaults thereunder by either party and to Borrower's knowledge, there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent or any amounts payable by Master Tenant to Borrower under the Master Lease has been paid more than one (1) month in advance of its due date. All security deposits are held by Borrower or Master Tenant (as applicable) in accordance with applicable law. Except as disclosed in the tenant estoppels delivered to Lender in connection with the closing of the Loan or as disclosed in the rent roll, all work to be performed by Borrower under the Master Lease and Master Tenant

under each Lease has been performed as required and has been accepted by Master or the relevant Tenant (as applicable), and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to Master Tenant or by Master Tenant to any Tenant has already been received by Master Tenant or such Tenant (as applicable). Except pursuant to the Master Lease ALR, there has been no prior sale, transfer or assignment, hypothecation or pledge of the Master Lease, any Lease, the rents payable under the Master Lease, or of the Rents received under the Leases which is outstanding. No Tenant listed on Schedule I has assigned its Lease or sublet all or any portion of the premises demised thereby, no such Tenant holds its leased premises under assignment or sublease (other than with respect to the Master Lease), nor does anyone except such Tenant and its employees occupy such leased premises (other than Master Tenant pursuant to the Master Lease). Neither Master Tenant nor any Tenant under any Lease has a right or option pursuant to the Master Lease or such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No Tenant under any Lease has any right or option for additional space in the Improvements.

4.1.27. Survey. To Borrower's knowledge, the Survey for the Property delivered to Lender in connection with this Agreement does not fail to reflect any material matter affecting the Property or the title thereto.

4.1.28. Inventory. Borrower or Master Tenant is the owner of all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Security Instrument) located on or at the Property and constituting collateral for the Loan, and shall not lease any Equipment, Fixtures or Personal Property other than as permitted hereunder. All of the Equipment, Fixtures and Personal Property are sufficient to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

4.1.29. Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Property to Borrower have been, or concurrently with the recording of the Security Instrument are being, paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been, or concurrently with the recording of the Security Instrument will be, paid.

4.1.30. Special Purpose Entity/Separateness. (a) Borrower hereby represents and warrants and until the Debt has been paid or defeased in full, covenants that (i) Borrower is, shall be and shall continue to be a Special Purpose Entity, (ii) so long as the Master Lease is in effect, Master Tenant is, shall be and shall continue to be a Special Purpose Entity, and (iii) (if applicable) Principal is, shall be and shall continue to be a Special Purpose Entity. Lender acknowledges that the single purpose entity provisions contained in the limited liability company agreements of each of Borrower and Master Tenant as of the Closing Date satisfy the requirements of a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive until the Loan is defeased or until no amount remains payable to Lender under this Agreement or any other Loan Document (other than with respect to surviving indemnity obligations as to which no claim is then pending).

4.1.31. Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

4.1.32. Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.33. No Change in Facts or Circumstances; Disclosure. All information submitted by and on behalf of Borrower or Master Tenant to Lender and in all financial statements, rent rolls (including the rent roll attached hereto as Schedule I), reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are true, complete and correct in all material respects, provided, however, that if such information was provided to Borrower or Master Tenant by non-affiliated third parties, Borrower represents that such information is, to the best of its knowledge after due inquiry, true, complete and correct in all material respects. To Borrower's knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or could reasonably be expected to materially and adversely affect the use, operation or value of the Property or the business operations or the financial condition of Borrower or Master Tenant. Borrower has disclosed to Lender all material facts known to it and has not failed to disclose any material fact known to it that could cause any Provided Information or representation or warranty made herein to be materially misleading.

4.1.34. Investment Company Act. Neither Borrower nor Master Tenant is (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.35. Embargoed Person. To the best of Borrower's knowledge, as of the date hereof and 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, Master Tenant and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Master Tenant or Guarantor, as applicable, with the result that the investment in Borrower, Master Tenant or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Master Tenant or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, Master Tenant or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Notwithstanding the foregoing, to the extent that an Embargoed Person acquires a non-controlling interest in Borrower or Master Tenant, either (1) without the knowledge of Borrower, Master Tenant, Key Principal or Guarantor, through a transaction brokered by a FINRA licensed broker dealer not affiliated with Guarantor, provided such broker dealer has executed a dealer agreement or selling agreement with Guarantor or an affiliate of Guarantor in which it covenants to, among other things, comply with The USA PATRIOT Act (or any successor legislation), or (2) without the knowledge of Borrower, Master Tenant, Key Principal or Guarantor, after the initial sale or offering of such interests in Borrower, the resulting breach of the foregoing representations shall be deemed to be unintentional and not willful or grossly negligent for purposes of Section 9.3 hereof.

4.1.36. Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower's state of organization is as set forth in the introductory paragraph of this Agreement.

4.1.37. Environmental Representations and Warranties. Except as otherwise disclosed by that certain Phase I environmental report (or Phase II environmental report, if required) delivered to Lender by Borrower in connection with the origination of the Loan (such report is referred to as the "**Environmental Report**"), (a) to Borrower's knowledge, there are no Hazardous Substances or underground storage tanks in, on, or under the Property and no Hazardous Substances have been handled, manufactured, generated, stored, processed, or disposed of on or released or discharged from the Property, except those that are (i) in compliance with Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required under Environmental Law), and (ii) commercially reasonable amounts necessary to operate and maintain the Property for the purposes set forth in this Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under (if required to be so permitted under) and used in compliance with Environmental Law; (b) to Borrower's knowledge, there are no past, present or threatened Releases of Hazardous Substances in, on, under or from the Property which has not been fully remediated in accordance with Environmental Law; (c) to Borrower's knowledge, there is no threat of any Release of Hazardous Substances migrating to the Property; (d) to Borrower's knowledge, there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property which has not been fully remediated in accordance with Environmental Law; (e) Borrower does not know of, and has not received, any written notice or other written communication from any Person (including a Governmental Authority) relating to Hazardous Substances or Remediation thereof with respect to the Property, of possible liability of any Person with respect to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; (f) Borrower has truthfully and fully disclosed to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property that is known to Borrower and has provided to Lender all information that is contained in Borrower's and/or Master Tenant's files and records, including any reports relating to Hazardous Substances in, on, under or from the Property or to the environmental condition of the Property; and (g) there are no Institutional Controls on or affecting the Property.

4.1.38. Cash Management Account. Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code) in, once established, Borrower's interest in each of the Clearing Account and the Cash Management Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, neither Borrower nor Master Tenant has sold, pledged, transferred or otherwise conveyed any interest in the Clearing Account or Cash Management Account (and shall not take any of the foregoing actions);

(b) Once established, each of the Clearing Account and Cash Management Account shall constitute a "deposit account" or "securities account" within the meaning of the Uniform Commercial Code);

(c) Pursuant and subject to the terms hereof and the other applicable Loan Documents or Master Lease Documents, the Clearing Bank and Agent have agreed to comply with all instructions originated by Lender, without further consent by Borrower or Master Tenant, directing disposition of the Clearing Account and Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities;

(d) The Clearing Account and Cash Management Account shall not be in the name of any Person other than Master Tenant, as pledgor, or Lender, as pledgee. Neither Borrower nor Master Tenant has consented to the Clearing Bank and Agent complying with instructions with respect to the Clearing Account and Cash Management Account from any Person other than Lender, except that, unless a Cash Sweep Period is in effect, the Clearing Bank is instructed to remit funds to Master Tenant's operating account as set forth in Section 2.7.1; and

(e) The Property is not subject to any cash management system (other than pursuant to the Loan Documents), and any and all existing tenant instruction letters issued in connection with any previous financing have been duly terminated prior to the date hereof.

4.1.39. Franchise Agreement. The Franchise Agreement is in full force and effect and there is no default thereunder by Master Tenant or, to Borrower's knowledge, Franchisor, and no event has occurred that, with the passage of time and/or giving of notice, would constitute a default thereunder (to Borrower's knowledge, as to the obligations of Franchisor).

4.1.40. Hotel Personal Property. The Property includes all personal property necessary to operate the Property as a hotel in a manner consistent with operations at the Property on the date hereof.

4.1.41. Labor Matters. There are no collective bargaining agreements or similar agreement to which Borrower is a party or which affect or relate to the Property.

4.1.42. Leases. There are no Leases with respect to residential space or guest rooms at the Property with terms of more than thirty (30) days.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as the Loan has not been defeased in full and any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower (other than surviving indemnity obligations as to which no claim is then pending). All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## **ARTICLE V BORROWER COVENANTS**

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents, other than surviving indemnity obligations as to which no claim is then pending, or the earlier release of the Lien of the Security Instrument encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

5.1.1. Existence; Compliance with Legal Requirements. Each of Borrower and Master Tenant shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect Borrower's and Master Tenant's existence, rights, licenses, permits, authorizations and franchises, respectively, to the extent necessary to the ownership and/or operation of the Property, as the case may be, and comply in all material respects with all Legal Requirements applicable to Borrower, Master Tenant and the Property, including all regulations, building and zoning codes and certificates of occupancy. There shall never be committed by Borrower or Master Tenant, and Borrower shall never knowingly and intentionally permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, or knowingly to permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, or shall cause Master Tenant to, at all times maintain, (x) preserve and protect all franchises and trade names used in the operation of the Property and preserve all the remainder of its property used or useful in the conduct of its business and (y) keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Loan Documents. Borrower shall, or shall cause Master Tenant to, keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. Borrower shall from time to time, upon Lender's request, provide Lender (or cause to be provided to Lender) with evidence reasonably satisfactory to Lender that the Property complies with all Legal Requirements or is exempt from compliance with Legal Requirements. Borrower shall give prompt notice to Lender of the receipt by Borrower, Master Tenant and/or Manager of any notice related to a violation of any Legal Requirements and of the commencement of any proceedings or investigations which relate to compliance with Legal Requirements. After prior written notice to Lender, Borrower or Master Tenant, at Borrower's or Master Tenant's own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or Master Tenant or the Property or any alleged violation of any Legal Requirement, 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 the provisions of any instrument to which Borrower or Master Tenant is subject and shall not constitute a default thereunder and such proceeding shall 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 impending danger of being sold, forfeited,

terminated, cancelled or lost; (iv) Borrower shall, and shall cause Master Tenant to, promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Master Tenant and/or the Property, as applicable; and (vi) Borrower shall furnish, or shall cause Master Tenant to furnish, such security as may be required in the proceeding, or (if no security is required in the proceeding) as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender (x) may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost, (y) shall make such security available to Borrower or Master Tenant, as the case may be, to satisfy any obligation that may be payable by it in connection with the matter so contested, and (z) provided that no Event of Default has occurred and is continuing, shall release any balance of such security to Borrower or Master Tenant, as the case may be.

5.1.2. Taxes and Other Charges. Borrower shall, or shall cause Master Tenant to, pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower shall deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent prior to the date on which the Taxes or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause Master Tenant to furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes if such Taxes have been paid by Lender pursuant to Section 7.2 hereof and Lender has received receipts from the relevant taxing authority). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause Master Tenant to pay for all utility services provided to the Property. After prior written notice to Lender, Borrower or Master Tenant, at Borrower's or Master Tenant's own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, 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 the provisions of any other instrument to which Borrower and/or Master Tenant is subject and shall not constitute a default thereunder and such proceeding shall 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 impending danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower or Master Tenant 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 such contested Taxes or Other Charges from the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or (if no security is required in the proceeding) as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender (x) may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or 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 Security Instrument being primed by any related Lien, (y) shall make such security available to Borrower or Master Tenant, as the case may be, to satisfy any obligation that may be payable by it in connection with the matter so contested, and (z) provided that no Event of Default has occurred and is continuing, shall release any balance of such security to Borrower or Master Tenant, as the case may be.

5.1.3. Litigation. Borrower shall, after becoming aware thereof, give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower, Master Tenant and/or Guarantor which could reasonably be expected to materially adversely affect Borrower's, Master Tenant's or Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4. Access to Property. Borrower shall, and shall cause Master Tenant to, permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

5.1.5. Notice of Default. Upon becoming aware thereof, Borrower shall promptly advise Lender of the occurrence of any Default or Event of Default.

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

5.1.7. Intentionally Omitted.

5.1.8. Award and Insurance Benefits. Borrower shall, and shall cause Master Tenant to, cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any reasonable expenses incurred in connection therewith (including reasonably attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) out of such Insurance Proceeds.

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

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

(b) execute and deliver (or cause to be executed and delivered) to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower and/or Master Tenant under the Loan Documents, as Lender may reasonably require including, without limitation, the execution and delivery of all such writings necessary to transfer any liquor licenses with respect to the Property into the name of Lender or its designee upon acceleration of the Loan or the commencement of any action by Lender to foreclose the Lien of the Security Instrument or for the appointment of a receiver for the Property; 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 and the other Loan Documents, as Lender shall reasonably require from time to time.

5.1.10. Principal Place of Business, State of Organization. Neither Borrower nor Master Tenant shall cause or permit any change to be made in Borrower's or Master Tenant's name, identity (including its trade name or names), place of organization or formation (as set forth in Section 4.1.36 hereof) or Borrower's or Master Tenant's corporate or partnership or other structure unless Borrower or Master Tenant, as applicable, shall have first notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement, and the other Loan Documents and, in the case of a change in Borrower's or Master Tenant's structure, without first obtaining the prior written consent of Lender, which consent may be given or denied in Lender's discretion. Upon Lender's request, Borrower shall (or shall cause Master Tenant to), at Borrower's sole cost and expense, execute and deliver additional security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of any such change of principal place of business or place of organization. Each of Borrower's and Master Tenant's principal place of business and chief executive office, and the place where Borrower or Master Tenant keeps its respective books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower and Master Tenant) and will continue to be (i) in the case of Borrower, the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change), and (ii) in the case of Master Tenant, as set forth in the Master Lease Documents. Borrower shall promptly notify Lender of any change in its or Master Tenant's organizational identification number. If Borrower or Master Tenant does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

5.1.11. Financial Reporting. (a) Borrower shall keep and maintain or shall cause to be kept and maintained on a Fiscal Year basis, in accordance with the requirements for a Special Purpose Entity set forth herein the Uniform System of Accounts and reconciled in accordance with GAAP (or such other accounting basis acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and Master Tenant and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuation of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's and Master Tenant's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower shall furnish (or shall cause Master Tenant to furnish) to Lender annually, within ninety (90) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's and Master Tenant's annual financial statements prepared by a certified public accountant acceptable to Lender (which may be an employee of Borrower or its Affiliates) in accordance with the Uniform System of Accounts and reconciled in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Property for such Fiscal Year and containing statements of profit and loss for Borrower, Master Tenant and the Property, an annual rent roll and a balance sheet for Borrower and Master Tenant, which statements shall be accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete in all material respects and fairly present the financial condition and results of the operations of Borrower, Master Tenant and the Property. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include amounts representing annual net operating income, Net Cash Flow, gross income, and operating expenses.

(c) Borrower shall furnish, or cause to be furnished, to Lender on or before forty five (45) days after the end of each calendar quarter the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete in all material respects and fairly present the financial condition and results of the operations of Borrower, Master Tenant and the Property (subject to normal year-end adjustments) as applicable: (i) an occupancy report (including an average daily rate) and a rent

roll for the subject quarter; (ii) quarterly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar quarter, noting net operating income, gross income, and operating expenses (not including any contributions to the Replacement Reserve Fund and the Required Repair Fund), and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses; (iii) provided in each case that Borrower has owned the Property for sufficiently long to permit such calculation to be made, a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding three (3), six (6), and twelve (12) month periods as of the last day of such quarter, and (iv) occupancy statistic for the Property. In addition, such certificate shall also be accompanied by an Officer's Certificate stating that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate. On or before thirty (30) days after the end of each calendar month, Borrower also will furnish, or cause to be furnished, to Lender (x) the most current Smith Travel Research Reports then available to Borrower reflecting market penetration and relevant hotel properties competing with the Property, and (y) if not contained in the quarterly financial statements referred to above, the monthly operating statement for the immediately preceding calendar month, for the purposes of determining the Replacement Reserve Monthly Deposit.

(d) Until the earlier of Securitization or twelve (12) months after the date of this Agreement, Borrower shall furnish, or cause to be furnished, to Lender on or before twenty (20) days after the end of each calendar month, all of the following items with respect to the previous calendar month, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete in all material respects and fairly present the financial condition and results of the operations of Borrower, Master Tenant and the Property (subject to normal year-end adjustments) as applicable: (A) a rent roll for the subject month; (B) monthly operating statement(s) of the Property; and (C) year-to-date operating statement(s) of the Property.

(e) Intentionally omitted.

(f) Intentionally omitted.

(g) The operating budget for the Property for the partial year period commencing on the date hereof, as delivered to Lender in connection with Lender's underwriting of the Loan, shall constitute the initial Annual Budget hereunder. For each Fiscal Year thereafter, Borrower shall (or shall cause Master Tenant to) submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval, not to be unreasonably withheld, conditioned or delayed unless an Event of Default then exists (each such Annual Budget, an "**Approved Annual Budget**"). If Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower and Master Tenant of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Borrower's and/or Master Tenant's written request therefor shall be delivered together with such materials reasonably requested by Lender in order to evaluate such request (it being acknowledged and agreed that no request for consent shall be effective unless and until such materials have been delivered to Lender) and shall conspicuously state, in large bold type, that "**PURSUANT TO SECTION 5.1.11(g) OF THE LOAN AGREEMENT, THIS IS A REQUEST FOR LENDER'S CONSENT. LENDER'S RESPONSE IS REQUESTED WITHIN FIFTEEN (15) DAYS. LENDER'S FAILURE TO RESPOND WITHIN SUCH TIME PERIOD WILL ENABLE BORROWER TO DELIVER A SECOND NOTICE REQUESTING LENDER'S CONSENT**". In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. In the event that Lender fails to approve or disapprove the foregoing written request within such fifteen (15) day period, then Borrower shall be entitled to deliver a second notice. Such notice shall conspicuously state, in large bold type, that "**PURSUANT TO SECTION 5.1.11(g) OF THE LOAN AGREEMENT, THIS IS A REQUEST FOR LENDER'S CONSENT. THE PROPOSED ANNUAL BUDGET SHALL BE DEEMED APPROVED IF LENDER DOES NOT RESPOND TO THE CONTRARY WITHIN FIFTEEN (15) DAYS' OF LENDER'S RECEIPT OF THIS WRITTEN NOTICE**". Unless an Event of Default shall then exist, in the event that Lender fails to approve or disapprove the second written request within such fifteen (15) day period, then Lender's consent shall be deemed to have been granted. Lender shall advise Borrower of any objections to such revised Annual Budget within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise and resubmit the same to Lender until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget (or such proposed Annual Budget is deemed approved pursuant to this Section 5.1.11(g)), the most recently Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges and for increases in occupancy.

(h) If Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an "**Extraordinary Expense**"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval, which approval shall not be unreasonably withheld, conditioned or delayed unless an Event of Default then exists.

(i) Borrower shall furnish, or cause to be furnished, to Lender, within ten (10) Business Days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower and/or Master Tenant as may be reasonably requested by Lender.

(j) Borrower shall furnish, or cause to be furnished, to Lender, within ten (10) Business Days after Lender's request (or as soon thereafter as may be reasonably possible), financial and sales information from any commercial Tenant designated by Lender (to the extent such financial and sales information is required to be provided under the applicable Lease and same is received by Borrower or Master Tenant after request therefor).

(k) Borrower shall cause Guarantor to furnish to Lender annually, within ninety (90) days following the end of each Fiscal Year of Guarantor: (i) with respect to Moody REIT II, financial statements audited by an independent certified public accountant satisfying the requirements applicable to the annual financial statements required to be filed by a Reporting Company or (ii) with respect to Moody Guarantor, a signed personal financial statement in a form satisfactory to Lender if such Guarantor is an individual.

(l) If requested by Lender, Borrower shall use commercially reasonable efforts to provide, or cause to be provided to, Lender, as soon after Lender's request as practicable, with any financial statements, or financial, statistical or operating information, as Lender shall determine to be required pursuant to Regulation AB under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or any amendment, modification or replacement thereto or other legal requirements in connection with any private placement memorandum, prospectus or other disclosure documents or any filing pursuant to the Exchange Act in connection with the Securitization or as shall otherwise be reasonably requested by Lender.

(m) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in electronic format (if, within the capabilities of Guarantor's or Borrower's data systems, as applicable, without change or modification thereto, prepared using Microsoft Word for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files)), and (ii) if requested by Lender, in paper form and/or on a diskette. Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12. Business and Operations. Borrower shall continue, and shall cause Master Tenant to continue, to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower shall, and shall cause Master Tenant to, qualify to do business and to remain in good standing under the laws of the jurisdiction of its formation as and to the extent the same are required for the ownership, maintenance, management and operation of the Property. Borrower or Master Tenant shall, at all times during the term of the Loan, continue to own all of Equipment, Fixtures and Personal Property which are necessary to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

5.1.13. Title to the Property. Borrower shall warrant and defend (a) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Security Instrument on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14. Costs of Enforcement. In the event (a) that the Security Instrument encumbering the Property is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering the Property prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Master Tenant or any of their respective constituent Persons or an assignment by Borrower, Master Tenant or any of their respective constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and expenses, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes.

5.1.15. Estoppel Statement. (a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the terms of payment and Maturity Date, (v) the date installments of interest or principal were last paid, (vi) that, except as provided in such statement, there are no Defaults or Events of Default under this Agreement or any of the other Loan Documents, (vii) that the Loan Documents are valid, legal and binding obligations and have not been modified, or if any of them has been modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases and the Master Lease are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if any of them has been modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases and the Master Lease, (xi) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases or the Master Tenant under the Master Lease are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower or Master Tenant (as applicable) under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or the Security Instrument.

(b) Borrower shall cause Master Tenant to use commercially reasonable efforts to obtain and deliver, or caused to be delivered, to Lender, upon request, tenant estoppel certificates from each commercial Tenant leasing space at the Property in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to request that Master Tenant obtain such certificates more frequently than two (2) times in any calendar year, unless an Event of Default then exists.

(c) Borrower shall, upon request by Lender, direct Master Tenant to use best efforts to cause Franchisor to replace and/or re-issue any comfort letter or tri-party agreement delivered in connection with the Loan.

(d) Borrower shall, promptly upon request of Lender deliver an estoppel certificate from the Master Tenant stating that (i) the Master Lease is in full force and effect and has not been modified, amended or assigned (or listing the modifications, amendments or assignments, if any), (ii) no Event of Default (as defined in the Master Lease) by Master Tenant exists under the Master Lease (or describing in reasonable detail any Event of Default that does exist), (iii) neither Master Tenant nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Master Lease and (iv) all sums due and payable under the Master Lease have been paid in full (or describing in reasonable detail any amounts then remaining due and unpaid).

5.1.16. Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 hereof.

5.1.17. Performance by Borrower. 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 (other than waivers by Borrower with respect to obligations of Lender), supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.18. Confirmation of Representations. If requested by Lender, Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of (or specifying any inaccuracy in) all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower, Principal, Master Tenant and Guarantor as of the date of the Securitization.

5.1.19. Environmental Covenants. (a) Borrower covenants and agrees that: (i) all uses and operations on or of the Property, whether by Borrower, Master Tenant or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (ii) there shall be no Releases of Hazardous Substances in, on, under or from the Property; (iii) there shall be no Hazardous Substances in, on, or under the Property, except those that are (A) in compliance with all Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required by Environmental Law), and (B) commercially reasonable amounts necessary to operate and maintain the Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under (if required to be so permitted) and used in compliance with Environmental Law; (iv) Borrower shall, and shall cause Master Tenant to, keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower, Master Tenant or any other Person (the "**Environmental Liens**"), provided that Borrower and/or Master Tenant may contest any Environmental Law in accordance with the provisions of Section 5.1.1 applicable to contests of Legal Requirements; (v) Borrower shall, and shall cause Master Tenant to, at its or Master Tenant's sole cost and expense, fully and expeditiously cooperate in all activities pursuant to subsection (b) below, including providing all relevant information and making knowledgeable persons available for interviews; (vi) Borrower shall, and shall cause Master Tenant to, at its or Master Tenant's sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender made if Lender has reason to believe that an environmental hazard exists on the Property (including sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (vii) Borrower shall, and shall cause Master Tenant to, at its or Master Tenant's sole cost and expense, comply with all reasonable written requests of Lender made if Lender has reason to believe that an environmental hazard exists on the Property (A) reasonably effectuate Remediation of any condition (including a Release of a Hazardous Substance) in, on, under or from the Property; (B) comply with any Environmental Law; (C) comply with any directive from any Governmental Authority; and (D) take any other reasonable action necessary or appropriate for protection of human health (from exposure to Hazardous Substances) or the environment; (viii) Borrower shall not do or allow Master Tenant or any Tenant or other user of the Property to do any act with respect to Hazardous Substances that (A) materially increases the dangers to human health (from exposure to Hazardous Substances) or the environment, (B) poses an unreasonable risk of harm from exposure to Hazardous Substances to any Person (whether on or off the Property), or (C) due to the presence of Hazardous Substances or any Release thereof, (1) impairs or could reasonably be expected to impair the value of the Property, (2) is contrary to any requirement of any insurer, with respect to Hazardous Substances, (3) constitutes a public or private nuisance, (4) constitutes waste, or (5) violates any covenant, condition, agreement or easement applicable to the Property; and (ix) Borrower shall immediately notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards (and reasonably likely to affect) the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written notice or other written communication of which Borrower

becomes aware from any source whatsoever (including a Governmental Authority) relating in any way to the release or potential release of Hazardous Substances on, under, or above the Property or Remediation thereof, likely to result in liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Section; (x) Borrower shall not install, use, generate, manufacture, store, treat, release or dispose of, nor permit the installation, use, generation, storage, treatment, release or disposal of, any Hazardous Substances (except commercially reasonable amounts necessary to operate and maintain the Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted (if required to be so permitted) under and used in compliance with Environmental Law) on, under or about the Property, and all uses and operations on or of the Property, whether by Borrower or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (xi) Borrower shall not make any change in the use or condition of the Property which (A) could reasonably be expected to lead to the presence on, under or about the Property of any Hazardous Substances which is not in accordance with any applicable Environmental Law, or (B) would require, under any applicable Environmental Law, notice be given to or approval be obtained from any governmental agency in the event of a transfer of ownership or control of the Property, in each case without the prior written consent of Lender; (xii) Borrower shall not allow any Institutional Control on or to affect the Property; and (xiii) Borrower shall take all acts necessary to preserve its status, if applicable, as an "innocent landowner," "contiguous property owner," or "prospective purchaser" as to the Property and as those terms are defined in CERCLA; provided, however, that this covenant does not limit or modify any of Borrower's other duties or obligations under this Agreement.

(b) If Lender has reason to believe that an environmental hazard exists on the Property that could reasonably be expected, in Lender's discretion, to endanger any Tenants or other occupants of the Property or their guests or the general public or may materially and adversely affect the value of the Property, upon reasonable notice from Lender, Borrower shall, at Borrower's expense, promptly cause an engineer or consultant satisfactory to Lender to conduct an environmental assessment or audit (the scope of which shall be determined in Lender's discretion) and take any samples of soil, groundwater or other water, air, or building materials or any other invasive testing requested by Lender and promptly deliver the results of any such assessment, audit, sampling or other testing; provided, however, if such results are not delivered to Lender within a reasonable period or if Lender has reason to believe that an environmental hazard exists on the Property that, in Lender's sole judgment, endangers any Tenant or other occupant of the Property or their guests or the general public or could reasonably be expected to materially and adversely affect the value of the Property, upon reasonable notice to Borrower, Lender and any other Person designated by Lender, including any receiver, any representative of a Governmental Authority, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including conducting any environmental assessment or audit (the scope of which shall be determined in Lender's discretion) and taking samples of soil, groundwater or other water, air, or building materials, and reasonably conducting other invasive testing. Borrower shall, and shall cause Master Tenant to, cooperate with and provide Lender and any such Person designated by Lender with access to the Property.

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) Borrower shall promptly perform, or cause to be performed, all necessary remedial work in response to the presence of any Hazardous Substances on the Property, any violation of any Environmental Laws, or any claims or requirements made by any governmental agency or authority. All such work shall be conducted by licensed and reputable contractors pursuant to written plans approved by the agency or authority in question (if applicable), under proper permits and licenses (if applicable) with such insurance coverage as is customarily maintained by prudent property owners in similar situations. If the cost of the work exceeds \$100,000, then Lender shall have the right of prior approval over the environmental contractor and plans, which shall not be unreasonably withheld or delayed. All costs and expenses of the remedial work shall be promptly paid by Borrower or Master Tenant, as applicable, in accordance with the provisions of the Master Lease. In the event Borrower fails to undertake (or cause to be undertaken) the remedial work, or fails to complete (or cause the completion of) the same within a reasonable time period after the same is undertaken, and if Lender is of the good faith opinion that Lender's security in the Property is jeopardized thereby, then Lender shall have the right to undertake or complete the remedial work itself. In such event all costs of Lender in doing so, including all fees and expenses of environmental consultants, engineers, attorneys, accountants and other professional advisors, shall become a part of the Loan and shall be due and payable from Borrower upon demand. Such amount shall be secured by the Loan Documents, and failure to pay the same shall be an Event of Default under the Loan Documents. In the event any Hazardous Substances are removed from the Property, by any of Borrower, Master Tenant or Lender, the number assigned by the United States Environmental Protection Agency to such Hazardous Substances shall be solely in the name of Borrower, and Borrower shall have any and all liability for such removed Hazardous Substances.

5.1.20. Leasing Matters. All commercial Leases with respect to the Property written after the date hereof shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Upon request, Borrower shall furnish Lender with executed copies of all commercial Leases. All renewals of commercial Leases and all proposed commercial Leases shall provide for rental rates comparable to existing local market rates. All proposed commercial Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Lender's rights under the Loan Documents. All commercial Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and that the lessee

agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower shall, or shall cause Master Tenant to, (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved except that no termination by Borrower or Master Tenant, as the case may be, or acceptance of surrender by a Tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of any commercial Lease in a manner inconsistent with the provisions of the Loan Documents; and (vi) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, (i) neither Borrower nor Master Tenant shall enter into a lease of all or substantially all of the Property without Lender's prior written consent, which may be granted or withheld in Lender's sole discretion, and (ii) all new Leases and all amendments, modifications, extensions, and renewals of existing Leases with Tenants that are Affiliates of Borrower and/or Master Tenant shall be subject to the prior written consent of Lender, which may be granted in Lender's sole discretion.

5.1.21. Alterations. Borrower shall obtain, and shall require Master Tenant to obtain, Lender's prior written consent to any alterations to any Improvements (it being understood that Replacements do not constitute "alterations" subject to this Section 5.1.21), which consent shall not be unreasonably withheld or delayed except with respect to alterations that could reasonably be expected to have a material adverse effect on Borrower's financial condition, the value of the Property or the Property's Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any alterations that (a) are required to comply with the Franchise Agreement, unless the aggregate cost of such alterations is reasonably anticipated to exceed five percent (5%) of the original principal amount of the Debt or (b) will not have a material adverse effect on Borrower's financial condition, the value of the Property or the Property's Net Operating Income and (i) are made in connection with (a) tenant improvement work performed pursuant to the terms of any Lease executed on or before the date hereof, (b) tenant improvement work performed pursuant to the terms and provisions of a Lease and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (c) are alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement; or (ii) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated not to exceed \$250,000.00 (the "Threshold Amount"). If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) shall at any time exceed the Threshold Amount, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that, at Lender's option, the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization or (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by a financial institution having a rating by S&P of not less than "A-1+" if the term of such bond or letter of credit is no longer than three (3) months or, if such term is in excess of three (3) months, issued by a financial institution having a rating that is acceptable to Lender and that, at Lender's option, the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or class thereof in connection with any Securitization. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Threshold Amount and Lender shall make such security available to pay, or to reimburse Borrower or Master Tenant for, the costs of such alteration, in accordance with the disbursement procedures applicable to disbursements from the Replacement Reserve Fund; and, upon presentation by Borrower or Master Tenant of satisfactory completion of such alteration, Lender shall release any remaining portion of such security to Borrower or Master Tenant, as either of them may direct, provided that no Event of Default has occurred and is continuing.

5.1.22. Operation of Property. (a) Borrower shall, and shall cause Master Tenant to, cause the Property to be operated in all material respects, in accordance with the Management Agreement (or Replacement Management Agreement) and the Franchise Agreement (or Replacement Franchise Agreement) as applicable. In the event that the Management Agreement or Franchise Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement or Franchise Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly cause Master Tenant to enter into a Replacement Management Agreement with Manager or another Qualified Manager, or a Replacement Franchise Agreement with Franchisor or another Qualified Franchisor, as applicable.

(b) Borrower shall, and shall cause Master Tenant to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement and the Franchise Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement or the Franchise Agreement of which it is aware; (iii) upon request by Lender,

promptly deliver to Lender a copy of each of the following received by Borrower or Master Tenant, as applicable, under the Management Agreement: (A) completed financial statement, business plan, capital expenditures plan or report required to be delivered to Borrower by Manager pursuant to the Management Agreement, (B) notice of default, or (C) estimate delivered to Borrower for its approval with respect to the contemplated expenditure of an amount in excess of \$25,000; and (iv) enforce, in a commercially reasonable manner, the performance and observance, of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement and Franchisor under the Franchise Agreement.

5.1.23. Embargoed Person. Borrower has performed and shall perform (or shall cause Master Tenant to perform) reasonable due diligence to insure that to the best of Borrower's knowledge 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, Master Tenant, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Master Tenant, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Master Tenant, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Master Tenant, Principal or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, Master Tenant, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure. Notwithstanding the foregoing, to the extent that an Embargoed Person acquires a non-controlling interest in Borrower or Master Tenant, either (1) without the knowledge of Borrower, Master Tenant, Key Principal or Guarantor, through a transaction brokered by a FINRA licensed broker dealer not affiliated with Guarantor, provided such broker dealer has executed a dealer agreement or selling agreement with Guarantor or an affiliate of Guarantor in which it covenants to, among other things, comply with The USA PATRIOT Act (or any successor legislation), or (2) provided Borrower performs reasonable due diligence, without the knowledge of Borrower, Master Tenant, Key Principal or Guarantor, after the initial sale or offering of such interests in Borrower, the resulting breach of the foregoing representations shall be deemed to be unintentional and not willful or grossly negligent for purposes of Section 9.3 hereof.

5.1.24. Default under Franchise Agreement. If Borrower or Master Tenant shall be in default under the Franchise Agreement, then, without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Franchise Agreement on the part of Borrower or Master Tenant to be performed or observed. Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If the Franchisor shall deliver to Lender a copy of any notice sent to Borrower, Master Tenant and/or Manager concerning a default under the Franchise Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon. Any sums expended by Lender pursuant to this Section 5.1.24 shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Lender, shall be deemed to constitute a portion of the Debt, shall be secured by the Lien of the Security Instrument and the other Loan Documents, and shall be immediately due and payable upon demand by Lender therefore.

5.1.25. Intentionally Omitted.

5.1.26. Master Lease Documents. Borrower shall (a) promptly perform and/or observe in all material respects all of the covenants, agreements and obligations required to be performed and observed by Borrower under the Master Lease Documents and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (b) promptly notify Lender of any material default under the Master Lease Documents; (c) upon written request from Lender, promptly deliver to lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by Borrower under the Master Lease; (d) promptly enforce, in a commercially reasonable manner, the performance and observance of all of the covenants and agreements required to be performed and/or observed by Master Tenant under the Master Lease Documents; and (e) cause Master Tenant to deposit or cause to be deposited all Rents into the Clearing Account in accordance with the provisions of the Loan Documents.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of all obligations of Borrower (other than surviving indemnity obligations as to which no claim is then pending) under the Loan Documents or the earlier release of the Lien of the Security Instrument and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it shall not do, directly or indirectly, any of the following:

5.2.1. Operation of Property. (a) Borrower shall not (and shall cause Master Tenant to not), without Lender's prior written consent (which consent shall not be unreasonably withheld unless an Event of Default then exists): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower or Master Tenant may, without Lender's consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) surrender, terminate, cancel, amend or modify the Franchise Agreement; (iii) reduce or consent to the reduction of the term of the Management Agreement or Franchise Agreement; (iv) increase or consent to the increase of the amount of any charges under the Management Agreement or Franchise Agreement, or (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement or Franchise Agreement in any material respect; provided, however, that Borrower and/or Master Tenant, as applicable, may modify, supplement or amend the Franchise Agreement so long as such modification,

supplement, or amendment (A) does not materially increase the obligations (or materially decrease the rights) of Borrower and/or Master Tenant thereunder, (B) add any additional restrictions on Borrower, Master Tenant or the Property, (C) materially increase the rights (or materially decrease the obligations) of Franchisor thereunder, or (D) include or modify any restriction on Lender's ability to sell the Loan (provided that customary releases of claims that might exist against the Franchisor required in connection with a waiver, consent, forbearance or other modification entered into for the benefit of Borrower or Master Tenant shall not be deemed to violate the foregoing limitations). Any such surrender of the Management Agreement and/or the Franchise Agreement or termination, cancellation, modification, change, supplement, alteration or amendment of the Management Agreement and/or the Franchise Agreement without the prior consent of Lender (to the extent such consent is required) shall be void and of no force and effect.

(b) Following the occurrence and during the continuance of an Event of Default, if so instructed by Lender, Borrower shall not cause or permit Master Tenant to exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement or Franchise Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's discretion.

(c) If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower shall not cause or permit the nonconforming use or Improvement to be discontinued or abandoned without the express written consent of Lender.

5.2.2. Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.3. Dissolution. Borrower shall not (and shall cause Master Tenant to not) (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership (with respect to Borrower only) and operation of the Property, or (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower or Master Tenant except to the extent permitted by the Loan Documents.

5.2.4. Change In Business. Neither Borrower nor Master Tenant shall enter into any line of business other than the ownership (with respect to Borrower only) and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Nothing contained in this Section 5.2.4 is intended to expand the rights of Borrower contained in Section 5.2.10(d) hereof.

5.2.5. Debt Cancellation. Neither Borrower nor Master Tenant shall cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Borrower or Master Tenant by any Person, except for adequate consideration and in the ordinary course of Borrower's or Master Tenant's business, and except that (if applicable) cancellation, forgiveness or releases in respect of Hotel Transactions may be effected in Borrower's reasonable business judgment.

5.2.6. Zoning. Borrower shall not, and shall cause Master Tenant to not, initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior written consent of Lender.

5.2.7. No Joint Assessment. Borrower shall not, and shall cause Master Tenant to not, suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property, and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.2.8. Intentionally Omitted.

5.2.9. ERISA. (a) Borrower shall not, and shall cause Master Tenant to not, engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender 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 ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its discretion, that (A) Borrower and Master Tenant are not and do not maintain an "employee benefit plan" as defined in Section 3(3) 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 Master Tenant are not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower and Master Tenant are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower and Master Tenant are held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(iii) Borrower and Master Tenant qualify as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.2.10. Transfers. (a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower, Master Tenant and its and Master Tenant’s stockholders, general partners, members, principals and (if Borrower is a trust) beneficial owners 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 Lender has 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, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit Master Tenant or any Restricted Party to do any of the following (collectively, a “Transfer”): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Section 5.1.20, (B) Hotel Transactions, and (C) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower or Master Tenant agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than 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; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation’s stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non managing membership interests or the creation or issuance of new non managing membership interests; or (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests.

(d) Notwithstanding anything to the contrary contained in the Loan Documents.

(i) Lender’s consent shall not be required in connection with one (1) or a series of Transfers of up to forty-nine percent (49%) in the aggregate of the direct or indirect ownership interests in any Restricted Party provided that (a) no Event of Default shall have occurred and remain uncured or would occur as a result of such Transfer, (b) such Transfer shall not (i) cause the transferee (together with its Affiliates) to acquire Control of any Restricted Party unless such transferee is Guarantor, (ii) result in any Restricted Party that is as of the Closing Date controlled by Guarantor no longer being controlled by Guarantor, or (iii) cause the transferee (together with its Affiliates) to increase its direct or indirect interest in any Restricted Party to an amount which exceeds forty-nine percent (49%) in the aggregate, unless such transferee owned more than forty-nine percent (49%) of the direct or indirect ownership interests in such Restricted Party on the Closing Date or as a result of a Transfer previously made in accordance with the terms and provisions of this Agreement, (c) the Property shall continue to be managed by Manager or a Qualified Manager, (d) after giving effect to such Transfer, Guarantor shall continue to own, directly or indirectly, at least fifty-one percent (51%) of all legal, beneficial and economic interests in each of Borrower and Master Tenant, (e) if, immediately following such Transfer, the transferee owns ten percent (10%) or more of the direct or indirect ownership interests in Borrower or Master Tenant then, to the extent such transferee did not own ten percent (10%) or more of the direct or indirect ownership interests in Borrower or Master Tenant on the Closing Date, Borrower shall deliver, or cause to be delivered, at Borrower’s sole cost and expense, such searches (including credit, negative news, OFAC, litigation, judgment, lien and bankruptcy searches) as Lender may reasonably require with respect to such transferee and its Controlling Persons, the results of which must be reasonably acceptable to Lender (unless such transferee and Controlling Persons were previously the subject of searches by Lender which were reasonably acceptable to Lender, in which case Borrower’s obligation to deliver or cause the delivery of such searches under this Section 5.2.10(d) shall be satisfied to the extent reasonably acceptable updates to such searches are delivered to Lender), and such transferee, its Borrowers and controlling Persons shall otherwise satisfy Lender’s then current applicable underwriting criteria and requirements, (f) Borrower shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer (or final drafts thereof with signed copies to follow upon the

effect date of such transfer) and the organizational documents of the transferee and its constituent parties reasonably required by Lender not less than ten (10) days prior to the date of such Transfer), and (g) the legal and financial structure of Borrower, Master Tenant and their respective stockholders, members or partners, as applicable, and the single purpose nature and bankruptcy remoteness of Borrower, Master Tenant and their respective stockholders, members or partners, as applicable, after such Transfer, shall satisfy Lender's then current applicable underwriting criteria and requirements. Notwithstanding anything in this Section 5.2.10(d) to the contrary, and without limiting any of the foregoing requirements of this Section 5.2.10(d), if after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect ownership interests in any Restricted Party are owned by any Person (together with its Affiliates) that owned less than forty-nine percent (49%) of the direct or indirect ownership interests in such Restricted Party as of the Closing Date or as a result of a Transfer previously made in accordance with the terms and provisions of this Agreement, then Borrower shall, prior to the effective date of any such Transfer, deliver (or cause to be delivered) to Lender a written confirmation from the applicable Rating Agencies that such change in ownership will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof; and

(ii) The sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering of all or any portion of the direct or indirect ownership interests in Moody REIT II (each a "Permitted REIT Transfer") shall be permitted at any and all times without (1) Lender's consent, (2) notice to Lender, or (3) the payment of any fee, premium, penalty or other payment to Lender other than payment of Lender's actual out-of-pocket expenses, if any, provided, however, that upon completion of such Permitted REIT Transfer (a) except with the Lender's prior written consent, Moody REIT II is a Reporting Company, (b) there is no change of Control of Borrower, Master Tenant, Principal or Moody REIT II, (c) no Person together with such Person's Affiliates, other than the Key Principal and his Affiliates, owns more than forty-nine percent (49%) of the direct or indirect ownership interests in Moody REIT II, (d) Moody REIT II continues to own, directly or indirectly, at least seventy-five percent (75%) of the ownership interests in MNOP II and MNOP II continues to own, directly or indirectly, one hundred percent (100%) of the ownership interests in Borrower and Master Tenant, and (e) if the Franchise Agreement will be terminated as a result of any such Permitted REIT Transfer, the Property shall be operated in accordance with a Replacement Franchise Agreement.

(e) No Transfer of the Property and assumption of the Loan shall occur during the period that is sixty (60) days prior to and sixty (60) days after a Securitization. Otherwise, Lender's consent to a one (1) time Transfer of the Property and assumption of the Loan shall not be unreasonably withheld provided that Lender receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied:

(i) Borrower shall pay Lender a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan at the time of such transfer;

(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);

(iii) The proposed transferee (the "Transferee") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Property, which expertise shall be reasonably determined by Lender;

(iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(v) Transferee, Transferee's Principals, and any other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("Related Entities"), either (I) shall not have (x) been party to any bankruptcy proceedings, voluntary or involuntary, (y) made an assignment for the benefit of creditors, or (z) taken advantage of any insolvency act, or any act for the benefit of debtors, in each case within seven (7) years prior to the date of the proposed Transfer or (y) shall be acceptable to Lender in its sole discretion;

(vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(viii) Neither Transferee, nor Transferee's Principals nor Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.1.30, 4.1.35, 5.1.23 and 5.2.9 of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements, covenants and legal opinions reasonably required by Lender;

(x) If required by Lender, Transferee shall be approved by the Rating Agencies selected by Lender, which approval, if required by Lender, shall take the form of a confirmation in writing from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty and Environmental Indemnity executed by Guarantor or executed a replacement guaranty and environmental indemnity satisfactory to Lender;

(xii) Borrower shall deliver, or cause to be delivered, at Borrower's or Transferee's sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the Title Insurance Policy issued on the date hereof and the Permitted Encumbrances;

(xiii) The Property shall be managed by Manager pursuant to the Management Agreement or by a Qualified Manager pursuant to a Replacement Management Agreement; and

(xiv) If the Franchise Agreement will be terminated as a result of such Transfer, the Property shall be operated in accordance with a Replacement Franchise Agreement.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Security Instrument and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

(f) Borrower, without the consent of Lender, may grant easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for water and sewer lines, telephone and telegraph lines, electric lines and other utilities or for other similar purposes, provided that no transfer, conveyance or encumbrance shall materially impair the utility and operation of the Property or materially adversely affect the value of the Property or the Net Operating Income of the Property. If Borrower shall receive any consideration in connection with any of said described transfers or conveyances, provided no Event of Default then exists, Borrower shall have the right to use any such proceeds in connection with any alterations performed in connection therewith, or required thereby. In connection with any transfer, conveyance or encumbrance permitted above, Lender shall, unless it reasonably determines that the foregoing conditions have not been satisfied, execute and deliver any instrument reasonably necessary or appropriate to evidence its consent to said action or to subordinate the Lien of the Security Instrument to such easements, restrictions, covenants, reservations and rights of way or other similar grants upon receipt by the Lender of: (A) a copy of the instrument of transfer; and (B) an Officer's Certificate stating with respect to any transfer described above, that such transfer does not materially impair the utility and operation of the Property or materially reduce the value of the Property or the Net Operating Income of the Property. Borrower shall pay all of Lender's reasonable expenses incurred in connection with the foregoing including, reasonable attorney's fees and expenses.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.11. Master Lease Documents. Without Lender's prior written consent, Borrower shall not (and shall cause Master Tenant to not) (i) surrender, assign any interest in, terminate or cancel the Master Lease Documents; (ii) reduce or consent to the reduction of the term of the Master Lease; (iii) if the then-scheduled termination date of the Master Lease falls before the scheduled Maturity Date, fail to exercise, or fail to cause Master Tenant to exercise, any option or right to renew or extend the term of the Master Lease; (iv) surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of the Master Lease Documents; (v) increase or consent to the increase of the amount of any charges to Borrower under the Master Lease Documents; or (vi) in each case, to any material extent, modify, change, supplement, alter or amend the Master Lease or waive or release any of Borrower's rights and remedies under the Master Lease Documents.

**ARTICLE VI**  
**INSURANCE; CASUALTY; CONDEMNATION**

Section 6.1      Insurance. (a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower, Master Tenant and the Property providing at least the following coverages:

(i)      comprehensive all risk “special form” insurance including loss caused by any type of windstorm, windstorm related perils, “named storms,” or hail on the Improvements and the Personal Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, (A) in an amount equal to one hundred percent (100%) of the “Full Replacement Cost,” which for purposes of this Agreement means actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of 5% of Net Cash Flow of the Property for all such insurance coverage; provided however with respect to windstorm and earthquake coverage, providing for a deductible satisfactory to Lender in its discretion; and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (y) if any material portion of the Improvements is currently or at any time in the future located in a federally designated “special flood hazard area,” flood hazard insurance in an amount equal to the maximum amount of such 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 excess flood coverage in an amount equal to the “probable maximum loss” for the Improvements, as determined by an engineer satisfactory to Lender, or such greater amount as Lender shall require, and (z) earthquake insurance in amounts and in form and substance satisfactory to Lender (but in any event, in an amount not less than 150% of the “probable maximum loss”) in the event the Property is located in an area with a high degree of seismic activity and the “probable maximum loss” for the Improvements, as determined by an engineer satisfactory to Lender, is 20% or greater (based on a 475-year return period, an exposure period of 50 years and a 10% probability of exceedance), 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)      business income or rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of (1) not less than twelve (12) months from the date of casualty or loss if the amount of the Loan is less than \$35,000,000, or (2) not less than eighteen (18) months from the date of casualty or loss if the amount of the Loan is \$35,000,000 or more; and (D) if the amount of the Loan is \$50,000,000 or more, 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 180 days 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. The amount of such business income or rental loss 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 revenues from the Property for the succeeding twelve (12) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii)      at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner’s contingent or protective liability insurance, otherwise known as Owner Contractor’s Protective Liability, covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy 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 and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv)      comprehensive boiler and machinery insurance, if steam boilers, other pressure-fixed vessels, large air conditioning systems, elevators or other large machinery are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v)      commercial general liability insurance against claims for personal injury, bodily injury, death, contractual damage or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called “occurrence” form with a combined limit of not less than \$2,000,000.00 in the aggregate and \$1,000,000.00 per occurrence; (B) to continue

at not less than the aforesaid limit until required to be changed by Lender in writing 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; (4) blanket contractual liability for all written contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Security Instrument to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of \$1,000,000.00;

(vii) worker’s compensation and employee’s liability subject to the worker’s compensation laws of the applicable state;

(viii) umbrella and excess liability insurance in an amount not less than: (A) \$5,000,000.00 per occurrence if the amount of the Loan is less than \$35,000,000, or (B) \$25,000,000.00 per occurrence, if the amount of the Loan is \$35,000,000 or more, on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including supplemental coverage for employer liability and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(ix) the insurance required under this Section 6.1(a) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a) above at all times during the term of the Loan. Notwithstanding the foregoing, if the Terrorism Risk Insurance Program Reauthorization Act of 2007 or a similar or subsequent statute (“**TRIPRA**”) is not in effect, Borrower shall be required to carry terrorism insurance throughout the term of the Loan as required by the preceding sentence, but in such event Borrower shall not be required to spend on terrorism insurance coverage more than two times the amount of the insurance premium that is payable at such time in respect of the property and business interruption/rental loss insurance required hereunder on a stand-alone-basis (without giving effect to the cost of the terrorism component of such casualty and business interruption/rental loss insurance), and if the cost of terrorism insurance exceeds such amount, Borrower shall purchase the maximum amount of terrorism insurance available with funds equal to such amount;

(x) if applicable, insurance against employee dishonesty containing minimum limits in an amount reasonably acceptable to Lender;

(xi) if applicable, liquor liability coverage containing minimum limits per occurrence in an amount reasonably acceptable to Lender; and

(xii) upon sixty (60) days written notice, such other reasonable insurance, including sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) hereof, 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 Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a rating of (A) if the amount of the Loan is \$35,000,000 or more, “A:VIII” or better in the current Best’s Insurance Reports and a claims paying ability rating of “A-” or better by S&P, and “A3” or better by Moody’s or (B) if the amount of the Loan is less than \$35,000,000, “A-VIII” or better in the current Best’s Insurance Reports and a claims paying ability rating of “A-” or better by S&P, and “A3” or better by Moody’s. Notwithstanding the foregoing, any required earthquake insurance must satisfy the requirements of subsection (A) hereof regardless of the amount of the Loan. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Lender as loss payee. Borrower shall deliver, or cause to be delivered, to Lender certificates of insurance evidencing the Policies, to be followed by complete copies of the Policies upon issuance (redacted, as necessary, to remove information regarding other properties covered by blanket policies), accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the “Insurance Premiums”). Notwithstanding the foregoing, Borrower shall not be required to provide proof of payment of the Insurance Premiums to the extent such Insurance Premiums are being escrowed. Borrower shall promptly forward to Lender a copy of each written notice received by Borrower of any modification, reduction or cancellation of any of the Policies or of any of the coverages afforded under any of the Policies.

(c) Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 6.1(a) hereof.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof, except for the Policy referenced in Section 6.1(a)(vii) of this Agreement, shall name Borrower as the insured and Lender as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All property Policies shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or Master Tenant, or anyone acting for Borrower or Master Tenant, 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 Lender is concerned;

(ii) to the extent that such endorsement is obtainable by the exercise of commercially reasonable efforts, the Policy shall not be canceled without at least thirty (30) days written notice to Lender, except ten (10) days' notice for non-payment of premium;

(iii) the issuers thereof shall give written notice to Lender if the Policy has not been renewed thirty (30) days prior to its expiration; and

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including the obtaining of such insurance coverage as Lender in its discretion deems appropriate after fifteen (15) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Security Instrument and shall bear interest at the Default Rate.

**Section 6.2** Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), estimated by Borrower to cost more than \$50,000 to repair, Borrower shall give prompt written notice of such damage to Lender and shall promptly commence and diligently prosecute (or shall cause the prompt commencements and diligent prosecution of) the completion of the Restoration of the Property pursuant to Section 6.4 hereof as nearly as possible to the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 hereof. Borrower shall pay or cause to be paid all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than the Availability Threshold and Borrower shall deliver (or shall cause to be delivered) to Lender all instruments required by Lender to permit such participation.

**Section 6.3** Condemnation. Borrower shall give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property promptly after becoming aware thereof, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings if an Event of Default exists or if the amount of the Award exceeds the Threshold Amount, and Borrower shall from time to time deliver (or cause to be delivered) to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute (or cause the diligent prosecution of) any such proceedings, and shall consult with Lender, 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 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 in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt (provided that Awards in respect of any temporary taking of the Property, unless an Event of Default shall have occurred and be continuing, shall be applied as if they constituted Rent). Lender 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 any portion of the Property is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute (or shall cause the prompt commencement and diligent prosecution of) the Restoration of the Property pursuant to Section 6.4 hereof and otherwise comply with the provisions of Section 6.4 hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender 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. Notwithstanding the foregoing provisions of this Section 6.3, and Section 6.4 hereof, if the Loan or any portion thereof is included in a REMIC Trust and, immediately following a release of any portion of the Lien of the Security Instrument in connection with a Condemnation (but taking into account any proposed Restoration on the remaining portion of the Property), the Loan to Value Ratio is greater than 125% (such

value to be determined, in Lender's sole discretion, by any commercially reasonable method permitted to a REMIC Trust), the principal balance of the Loan must be paid down in an amount sufficient to satisfy the REMIC Requirements, unless the Lender receives an opinion of counsel that if such amount is not paid, the 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 Security Instrument. In connection with the foregoing, the Net Proceeds shall not be available for Restoration and shall be used to pay down the principal balance of the Loan, without Yield Maintenance Premium or other penalty or perjury, to the extent set forth above.

Section 6.4      Restoration. The following provisions shall apply in connection with the Restoration of the Property:

(a)      If the Net Proceeds shall be less than the Availability Threshold and the costs of completing the Restoration shall be less than the Availability Threshold, the Net Proceeds shall be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) hereof are met and Borrower delivers to Lender 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 the Availability Threshold or the costs of completing the Restoration are equal to or greater than the Availability Threshold, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 means: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1(a)(i), (iv), (ix) and (x) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including 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 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 provided that each of the following conditions are met:

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

(B)      (1) in the event the Net Proceeds are Insurance Proceeds, less than thirty-five percent (35%) 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 fifteen percent (15%) 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)      The Master Lease shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Master Tenant, as applicable under the Master Lease, shall make all necessary repairs and restorations thereto at their sole cost and expense.

(D)      Borrower shall commence (or cause the commencement of) the Restoration as soon as reasonably practicable (but in no event later than the later of (i) one hundred twenty (120) days after such Casualty or Condemnation, whichever the case may be, and (ii) thirty (30) days after receipt of the first installment of insurance proceeds or Award, whichever the case may be) and shall diligently pursue the same to satisfactory completion;

(E)      Lender 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 6.1(a)(ii) hereof, if applicable, or (3) by other funds of Borrower or Master Tenant;

(F)      Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, the Master Lease and the Franchise Agreement or Replacement Franchise Agreement, as applicable, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(ii) hereof;

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

(H)      the Restoration will not result in a permanent reduction of guest rooms at the Property and the shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

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

(J) the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal to or greater than 1.20 to 1.0;

(K) Borrower shall deliver, or cause to be delivered, to Lender 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 subject to Lender's approval, which shall not be unreasonably withheld unless an Event of Default then exists;

(L) the Net Proceeds (including any undisbursed insurance proceeds that the relevant insurer has agreed to disburse as restoration work progresses), together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration; and

(M) the Management Agreement and the Franchise Agreement (or a Replacement Franchise Agreement) shall remain in full force and effect notwithstanding the occurrence of such Casualty or Condemnation.

(ii) The Net Proceeds, as paid out by the relevant insurer, shall be held by Lender in an interest-bearing Eligible Account and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and Other Obligations under the Loan Documents. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender 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 or are subject to a Casualty Retainage) in connection with the Restoration have been paid for in full, 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 satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy.

(iii) All plans and specifications required in connection with a Restoration the cost of which shall exceed the Threshold Amount shall be subject to prior review and acceptance in all respects by Lender and, at Lender's election, by an independent consulting engineer selected by Lender (the "Casualty Consultant"), such review and acceptance not to be unreasonably withheld unless an Event of Default then exists. Lender 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 in respect of any contract pursuant to which they are to receive compensation in excess of \$100,000, as well as the contracts under which they have been engaged, shall be subject to prior review and approval by Lender and the Casualty Consultant, not to be unreasonably withheld. All reasonable costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender 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, minus the Casualty Retainage. The term "**Casualty Retainage**" means an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, 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 6.4(b), be less than the amount actually held back by Borrower and/or Master Tenant from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender 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 Lender shall 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 the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers (or conditional lien waivers) and evidence of payment in full, upon application of the funds so released, of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and, if requested by Lender, Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, 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) Lender 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 Lender 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 Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender 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 6.4(b) shall constitute additional security for the Debt and Other Obligations under the Loan Documents.

(vii) Provided no continuing Event of Default shall then exist, after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, the excess, if any, of the Net Proceeds (and the remaining balance, if any, of the Net Proceeds Deficiency) deposited with Lender shall be (1) if a Cash Sweep Period then exists, deposited in the Cash Management Account to be disbursed in accordance with this Agreement, and (2) if no Cash Sweep Period then exists, disbursed to or in accordance with the instructions of Borrower.

(c) 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 6.4(b)(vii) hereof may be retained and applied by Lender toward the payment of the Debt in accordance with Section 9(b) of the Note, whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper (provided that, other than during the existence of an Event of Default, no prepayment premium shall be payable in connection therewith), or, at the discretion of Lender, the same may be paid, either in whole or in part, to or at the direction of Borrower for such purposes as Lender shall approve, in its discretion.

(d) In the event of foreclosure of the Security Instrument, 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 Lender or other transferee in the event of such other transfer of title.

## **ARTICLE VII RESERVE FUNDS**

### **Section 7.1      Required Repairs.**

7.1.1. Deposits. Borrower shall complete (or cause the completion of) the repairs at the Property, as more particularly set forth on Schedule II hereto (such repairs hereinafter referred to as “**Required Repairs**”). Borrower shall complete or cause the completion of the Required Repairs on or before the required deadline for each repair as set forth on Schedule II. It shall be an Event of Default under this Agreement if (a) Borrower does not complete (or cause the completion of) the Required Repairs at the Property by the required deadline for each repair as set forth on Schedule II, or (b) Borrower does not satisfy (or cause the satisfaction of) each condition contained in Section 7.1.2 hereof. Subject to Section 7.6(b) hereof, upon the occurrence of such an Event of Default, Lender, at its option, may withdraw all Required Repair Funds from the Required Repair Account and Lender may apply such funds either to completion of the Required Repairs at the Property or toward payment of the Debt in such order, proportion and priority as Lender may determine in its discretion. Lender’s right to withdraw and apply Required Repair Funds shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents. On the Closing Date, Borrower shall deposit with Lender the amount for the Property set forth on such Schedule II hereto to perform the Required Repairs for the Property. Amounts so deposited with Lender shall be held by Lender in accordance with Section 7.6 hereof. Amounts so deposited shall hereinafter be referred to as Borrower’s “**Required Repair Fund**” and the account in which such amounts are held shall hereinafter be referred to as Borrower’s “**Required Repair Account.**”

7.1.2. Release of Required Repair Funds. Lender shall disburse to Borrower the Required Repair Funds from the Required Repair Account from time to time upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least fifteen (15) Business Days prior to the date on which Borrower requests such payment be made and specifies the Required Repairs to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured, (c) Lender shall have received an Officers’ Certificate (i) stating that all Required Repairs to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence or complete the Required Repairs, (ii) identifying each Person that supplied materials or labor in connection with the Required Repairs to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such Officers’ Certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender’s option, if the cost of the Immediate Repairs exceeds \$50,000, a title search for the Property indicating that the Property is free from all liens, claims and other

encumbrances not previously approved by Lender, and (e) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to make disbursements from the Required Repair Account with respect to the Property (i) more than once a month and (ii) unless such requested disbursement is in an amount greater than \$25,000.00 (or a lesser amount if the total amount in the Required Repair Account is less than \$25,000.00), in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this Section 7.1.2.

**Section 7.2      Tax and Insurance Escrow Fund.** Borrower shall pay to Lender (a) on the Closing Date an initial deposit and (b) on each Payment Date thereafter (i) one-twelfth (1/12) of the Taxes and Other Charges that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes and Other Charges at least thirty (30) days prior to their respective delinquency dates, and (ii) one-twelfth (1/12) of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Provided, however, so long as (x) Borrower provides Lender with satisfactory evidence (as determined by Lender) that Guarantor maintains blanket policies of insurance covering substantially all real property owned directly or indirectly by Guarantor, including, without limitation, the Property and in accordance with Section 6.1 hereof and (x) no monetary Event of Default shall have occurred, the provisions of this Section with regard to Insurance Premiums shall not be applicable, until and unless Lender elects to apply such provisions following (i) the issuance by any insurer or its agent of any notice of cancellation, termination, or lapse of any insurance coverage required under Section 6.1 hereof, (ii) any cancellation, termination, or lapse of any insurance coverage required under Section 6.1 hereof whether or not any notice is issued, (iii) Lender having not received from Borrower evidence of insurance coverages as required by and in accordance with the terms of Section 6.1 hereof, or (iv) during the existence of any Event of Default. Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Security Instrument. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), 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 and Insurance Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to Section 5.1.2 hereof, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the delinquency date of the Taxes and Other Charges or thirty (30) days prior to expiration of the Policies, as the case may be.

**Section 7.3      Replacements and Replacement Reserve.**

**7.3.1.      Replacement Reserve Fund.** Borrower shall pay to Lender (a) on the Closing Date an initial deposit of \$16,759 and (b) on each Payment Date thereafter the Replacement Reserve Monthly Deposit for expenses with respect to Replacement incurred after the date hereof. Amounts so deposited shall hereinafter be referred to as Borrower’s “**Replacement Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as Borrower’s “**Replacement Reserve Account**.” Lender may reassess its estimate of the amount necessary for the Replacement Reserve Fund from time to time, and may increase the monthly amounts required to be deposited into the Replacement Reserve Fund upon thirty (30) days’ notice to Borrower if Lender determines in its discretion that an increase is necessary to maintain the proper maintenance and operation of the Property.

**7.3.2.      Disbursements from Replacement Reserve Account.** (14) Lender shall make disbursements from the Replacement Reserve Account to pay, or to reimburse Borrower or Master Tenant, for the costs of the Replacements only. Lender shall not be obligated to make disbursements from the Replacement Reserve Account to pay, or to reimburse Borrower or Master Tenant, for the costs of routine maintenance to the Property, replacements of inventory or for costs which are to be reimbursed from the Required Repair Fund or of a type not typically accounted for as an “FF&E” expense or of inventory consumed in the ordinary course of the operation of the Property.

(b) Lender shall, upon written request from Borrower or Master Tenant and satisfaction of the requirements set forth in this Section 7.3.2, disburse to Borrower or Master Tenant, as the case may be, amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower or Master Tenant therefor, upon completion of such Replacements (or to pay vendors’ required deposits as provided under the terms of the contract relating to Borrower’s purchase of such Replacements, or upon partial completion, or to pay required installment payments, in the case of Replacements made pursuant to Section 7.3.2(e) hereof) as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Lender and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower, or Master Tenant, shall certify that all Replacements for which such disbursement is requested have been or will be made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the Property (or, in the case of a vendor's required deposit, that such deposit is due and payable). Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided, or for the relevant required vendor's deposit and, if Borrower or Master Tenant is seeking reimbursement rather than payment, evidence satisfactory to Lender of payment of all such amounts. Except as provided in this Section 7.3.2 with respect to required vendor's deposits or in Section 7.3.2(e) hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide, or cause Master Tenant to provide, Lender evidence of completion of the subject Replacement satisfactory to Lender in its reasonable judgment.

(d) Borrower shall pay, or shall cause Master Tenant to pay, all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower or Master Tenant, Lender shall issue checks, payable to Borrower or Master Tenant, as applicable (or, in respect of any requested check in excess of \$25,000, joint checks payable to Borrower or Master Tenant (as applicable) and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Lender may require a conditional waiver of lien from each Person who is to receive payment from such payment prior to Lender's disbursement thereof from the Replacement Reserve Account. In addition, as a condition to any disbursement, Lender may require Borrower to obtain lien waivers, or conditional lien waivers, from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than \$100,000.00 for completion of its work or delivery of its materials. Any lien waiver or conditional lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, if payment to such contractor, supplier, subcontractor, mechanic or materialmen is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (ii) in the case of a Replacement the cost of which exceeds \$100,000.00, Lender has approved in writing in advance (such approval not to be unreasonably withheld, conditioned or delayed) such periodic payments, a request for reimbursement from the Replacement Reserve Account may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of the work or payment of a final installment prior to delivery of the Replacements to which such contract relates, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, or delivery thereof is conditioned upon payment of the requested disbursement, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Lender's reasonable judgment, sufficient to complete such Replacement, and (E) if required by Lender in respect of any Replacement the cost of which exceeds \$100,000 and which involves the performance of work to the Property by a contractor engaged for such purpose, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than \$5,000.00.

**7.3.3. Performance of Replacements.** (a) Borrower shall make or cause Master Tenant to make Replacements when required in order to keep the Property in condition and repair consistent with other comparable properties in the same market segment in the metropolitan area in which the Property is located, the brand standards provided in the Franchise Agreement and to keep the Property or any portion thereof from deteriorating. Borrower shall complete or cause Master Tenant to complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender reserves the right, at its option, to approve each contract or work order with any materialman, mechanic, supplier, subcontractor, contractor or other party providing labor or materials in connection with the Replacements the total contracted-for payments to which exceed \$100,000. Upon Lender's request, Borrower shall assign to Lender any such contract or subcontract to which Borrower is a party, or cause Master Tenant to assign to Borrower, and then shall assign to Lender, any such contract or subcontract to which Master Tenant is a party.

(c) In the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner or any Replacement does not comply with brand standards under the Franchise Agreement and such failure continues for more than thirty (30) days after

notice from Lender to Borrower, Lender shall have the option (upon five (5) Business Days' notice to Borrower, except in the case of an emergency) to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, without providing any further notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(d) In order to facilitate Lender's completion or making of such Replacements pursuant to Section 7.3.3(c) above, Borrower grants Lender the right, during the existence of an Event of Default or as necessary to respond to emergency conditions, to enter onto the Property and perform any and all work and labor necessary to complete or make such Replacements or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Security Instrument. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney in fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney in fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this Section 7.3.3 shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(f) Borrower shall permit, and shall cause Master Tenant to permit, Lender and Lender's agents and representatives (including Lender's engineer, architect, or inspector) or third parties making Replacements pursuant to this Section 7.3.3 to enter onto the Property during normal business hours (subject to the rights of Tenants under their Leases or Hotel Transactions) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and to complete any Replacements made pursuant to this Section 7.3.3. Borrower shall cause, or shall cause Master Tenant to cause, all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 7.3.3(f) or the completion of Replacements pursuant to this Section 7.3.3.

(g) Lender may require an inspection of the Property at Borrower's expense prior to making a disbursement in excess of \$100,000 from the Replacement Reserve Account in respect of any completed Replacement in order to verify completion of the Replacements for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amount in excess of \$100,000 from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Lender or otherwise exist in compliance with the Loan Documents).

(i) Before each disbursement from the Replacement Reserve Account, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Property since the date of recordation of the related Security Instrument and that title to the Property is free and clear of all Liens (other than the lien of the related Security Instrument and any other Liens previously approved in writing by Lender, if any).

(j) All Replacements shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements including applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(k) In addition to any insurance required under the Loan Documents, Borrower shall to the extent applicable provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4. Failure to Make Replacements. (a) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this Section 7.3 and such failure is not cured within thirty (30) days after notice from Lender; provided, however, if such failure is not capable of being cured within said thirty (30) day period, then provided that Borrower commences, or causes commencement of, action to complete such cure and thereafter diligently proceeds to complete such cure (or causes it to be so completed), such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower or Master Tenant, in the exercise of due diligence, to cure such failure, but such additional period of time shall not exceed ninety (90) days. Subject to Section 7.6(b) hereof, upon the occurrence and during the continuation of such an Event of Default, Lender may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including completion of the Replacements as provided in Section 7.3.3, or for any other repair or replacement to the Property or toward payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

(b) Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Debt or in any specific order or priority.

7.3.5. Balance in the Replacement Reserve Account. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

#### Section 7.4 Specified Tenant Reserve.

7.4.1. Deposits to Specified Tenant Reserve Fund. Upon Lender's receipt of any funds resulting from the occurrence of a Specified Tenant Deposit Event, such funds shall be deposited into a reserve account for completion of the "Purchaser's Outstanding Conditions" (as such term is defined in the Escrow Agreement). Amounts so deposited shall hereinafter be referred to as the "**Specified Tenant Reserve Funds**" and the account to which such amounts are held shall hereinafter be referred to as the "**Specified Tenant Reserve Account**".

7.4.2. Withdrawal of Specified Tenant Reserve Funds. Lender shall make disbursements from the Specified Tenant Reserve Account to pay, or to reimburse Borrower or Master Tenant, for the costs of completing the Purchaser's Outstanding Conditions only. Lender shall make disbursements as requested by Borrower on a monthly basis in increments of no less than \$5,000.00 upon delivery by Borrower or Master Tenant of (i) Lender's standard form of draw request accompanied by copies of paid invoices for the amounts requested, (ii) if required by Lender, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment, and (iii) such other evidence of completion of the work as Lender shall reasonably require. Lender may require an inspection of the Property at Borrower's expense prior to making a monthly disbursement in order to verify completion of improvements for which reimbursement is sought.

#### Section 7.5 Excess Cash Flow Reserve Fund.

7.5.1. Deposits to Excess Cash Flow Reserve Account. During a Cash Sweep Period Borrower shall deposit with Lender, or shall cause to be deposited with Lender, all Excess Cash Flow in the Cash Management Account, which shall be held by Lender as additional security for the Master Lease (in the case of funds belonging to Master Tenant ("Master Tenant's Excess Cash Flow")) or the Loan (in the case of funds belonging to Borrower ("Borrower's Excess Cash Flow")), and amounts so held shall be hereinafter referred to as the "Excess Cash Flow Reserve Fund" and the account to which such amounts are held shall hereinafter be referred to as the "Excess Cash Flow Reserve Account". Lender shall establish sub-accounts within the Excess Cash Flow Reserve Account for Borrower's Excess Cash Flow ("Borrower's Excess Cash Flow Subaccount") and for Master Tenant's Excess Cash Flow ("Master Tenant's Excess Cash Flow Subaccount"). Pursuant to the terms of the Cash Management Agreement, Excess Cash Flow shall be allocated between Master Tenant's Excess Cash Flow and Borrower's Excess Cash Flow as set forth in written instructions from Master Tenant to Borrower and Lender. All funds in the Borrower's Excess Cash Flow Subaccount shall be held as additional collateral for the Loan. All funds in the Master Tenant's Excess Cash Flow Subaccount shall be held as additional collateral for Master Tenant's obligations under the Master Lease (which has been collaterally assigned by Borrower to Lender).

7.5.2. Release of Excess Cash Flow Reserve Funds. During a Cash Sweep Period caused solely by a DSCR Trigger Event, Lender shall, upon Borrower's or Master Tenant's request, make Master Tenant's Excess Cash Flow available for the payment of payroll, utilities and food services for up to six (6) consecutive months (but in any event, not more than twelve (12) months in the aggregate during the term of the Loan) to the extent that there is insufficient current cash flow from the Property for the payment of same, provided that (a) the total amount disbursed to Borrower or Master Tenant, as applicable, for each such expenditure shall not exceed 110% of the amount set forth in the Approved Annual Budget and (b) no Event of Default then exists. Upon the occurrence of a Cash Sweep Event Cure, all Excess Cash Flow Reserve Funds shall be deposited into the Cash Management Account to be disbursed in accordance with the Cash Management Agreement. Any Excess Cash Flow Reserve Funds remaining after the Debt has been paid in full or the Loan has been defeased shall be paid to Borrower or Master Tenant, as either of them may direct.

Section 7.6 Reserve Funds, Generally. (a) Borrower grants to Lender a first-priority perfected security interest in all of its right, title and interest in and to each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund (provided that, in the case of the Master Tenant's Excess Cash Flow or other funds belonging to Master Tenant pursuant to Section 3.4

of the Cash Management Agreement, Borrower collaterally assigns to Lender Borrower's security interest therein, Borrower collaterally assigns to Lender Borrower's security interest therein) as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds, to the extent of Borrower's interest therein shall constitute additional security for the Debt, and in the case of Master Tenant's Excess Cash Flow, for the obligations of Master Tenant under the Master Lease.

(b) Upon the occurrence of an Event of Default and the acceleration of the Loan by Lender, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds (including, without limitation, any and all Master Tenant's Excess Cash Flow) to the payment of the Debt in any order in its sole discretion. To the extent of any outstanding obligations of Master Tenant under the Master Lease, such application shall be deemed to have been paid in respect of such obligations. If an Event of Default then exists but Lender has not accelerated the Loan, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds that would constitute rent under the Master Lease (including, without limitation, any and all Borrower's Excess Cash Flow) to the payment of the Debt in any order in its sole discretion.

(c) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account in Permitted Investments as directed by Lender or Lender's Servicer. Unless expressly provided for in this Article VII, all interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. Borrower or Master Tenant, as the case may be, shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to it.

(d) Neither Borrower nor Master Tenant shall, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or authorize any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(e) Lender and Servicer shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds provided that they are invested in Permitted Investments. Borrower shall indemnify Lender and Servicer and hold Lender and Servicer harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established, except to the extent due to Lender's or Servicer's willful misconduct or gross negligence. At Lender's request, Borrower shall assign, or shall cause Master Tenant to assign, to Borrower upon which Borrower shall collaterally assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Except as may otherwise be provided in the Cash Management Agreement, the required monthly deposits into the Reserve Funds and the Monthly Debt Service Payment Amount shall be added together and shall be paid, or caused to be paid, as an aggregate sum by Borrower to Lender.

(g) Any amount remaining in the Reserve Funds after the Debt has been paid in full or defeased shall be returned to Borrower or Master Tenant, at the direction of either of them.

#### Section 7.7 Free Rent Reserve.

7.7.1. Free Rent Reserve Fund. Borrower shall pay (or shall cause Master Tenant to pay) to Lender on the Closing Date the amount of \$14,720 (the "**Free Rent Reserve Deposit**"), which amount equals the sum of all outstanding free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Master Tenant to any commercial Tenant (the "**Free Rent**"). Amounts so deposited shall hereinafter be referred to as the "**Free Rent Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Free Rent Reserve Account**". All interest earned on the Free Rent Reserve Fund shall be for the benefit of Master Tenant but shall be added to and become a part of the Free Rent Reserve Fund.

7.7.2. Withdrawal of Free Rent Reserve Funds. Provided no Default or an Event of Default hereunder exists, Lender shall make disbursements from the Free Rent Reserve Fund to (or at the direction of) Master Tenant pursuant to the schedule of Free Rent set forth on Schedule VI hereto so long as Lender has received a Free Rent Reserve Estoppel from the applicable Tenant.

### ARTICLE VIII DEFAULTS

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

(i) if (A) any scheduled payment of principal or interest (including all amounts due on the Maturity Date) or any payment to a Reserve Fund is not paid when due or (B) any other payment of any portion of the Debt is not paid within five (5) days after notice to Borrower;

- (ii) if any of the Taxes or Other Charges, unless being contested in accordance with the Loan Documents, are not paid prior to delinquency;
- (iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies (or other evidence of coverage satisfactory to Lender and as may be expressly permitted hereunder) are not delivered to Lender upon request within the applicable time periods as provided herein, provided, that Borrower shall have the right to cure such failure to deliver the certified copies (or other evidence reasonably satisfactory to Lender) of the Policies to Lender, within five (5) Business Days of receipt of notice from Lender;
- (iv) if, except with Lender's prior written consent, a Transfer occurs in violation of the provisions of this Agreement and Article 6 of the Security Instrument;
- (v) if (subject to Section 8.1(a)(ix)) any representation or warranty made by Borrower or Master Tenant herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;
- (vi) if Borrower, Master Tenant or Principal shall make an assignment for the benefit of creditors;
- (vii) if (A) Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor under any guarantee issued in connection with the Loan shall commence any case, proceeding or other action (I) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (II) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor shall make a general assignment for the benefit of its creditors; or (B) there shall be commenced against Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor any case, proceeding or other action of a nature referred to in clause (A) above that is not dismissed within sixty (60) days of filing; or (C) there shall be commenced against the Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets; or (D) the Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (A), (B), or (C) above; or (E) the Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;
- (viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;
- (ix) if (1) any of the representations contained in Section 4.1.30 were breached, violated and/or false when made, or (2) Borrower or Master Tenant breaches (A) any covenant contained in Section 4.1.30 hereof (provided that (a) if such event was inadvertent or unintentional, (b) does not impair the status of Borrower, Master Tenant or Principal as a single purpose, bankruptcy remote entity, and (c) is not likely to increase the risk of substantive consolidation of the assets and liability of Borrower, Master Tenant or Principal with any other Person as evidenced in a substantive non-consolidation opinion in form and substance satisfactory to Lender, then such event or breach shall not constitute an Event of Default if Borrower shall cure (or shall cause to be cured) the same within ten (10) Business Days of Borrower, Master Tenant and/or Principal becoming aware of such breach or violation (via written notice or otherwise)) or (B) there occurs any breach of any negative covenant contained in Section 5.2 hereof;
- (x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;
- (xi) intentionally omitted;
- (xii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and as a result of which default the Manager thereunder gives notice of termination or cancellation of the Management Agreement or if the Management Agreement is canceled, terminated or surrendered or expires pursuant to its terms, unless in such case Borrower and/or Master Tenant, as applicable, shall enter into a new management agreement with a Qualified Manager in accordance with the applicable terms and provisions hereof;

(xiii) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of Section 9.1 hereof (provided that Borrower shall not be deemed to be in default under Section 9.1 hereof if Borrower's inability to satisfy any requirement thereof is due to circumstances beyond its control, such as the unavailability of information requested by Lender), or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of Section 9.1 hereof, for ten (10) Business Days after notice to Borrower from Lender;

(xiv) if there shall be default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Master Tenant or the Property;

(xv) if (A) an Event of Default (as defined in the Master Lease) occurs under the Master Lease, or (B) if any of the Master Lease Documents are amended, modified or terminated without the prior written consent of Lender; and/or

(xvi) if a material default by Master Tenant has occurred and continues beyond any applicable cure period under the Franchise Agreement (or any Replacement Franchise Agreement), as a result of which default the Franchisor thereunder gives notice of termination or cancellation of the Franchise Agreement (or any Replacement Franchise Agreement), or any expiration or other termination of the Franchise Agreement (or any Replacement Franchise Agreement) unless prior to or concurrently with any such expiration or termination Borrower has entered into a Replacement Franchise Agreement;

(xvii) if Borrower, Master Tenant or Guarantor shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or any Loan Document not specified in subsections (i) to (xvi) above or subsection (xviii) below, for ten (10) days after notice to Borrower or such other Person from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if Lender determines that (A) such non monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, (B) Borrower or such other Person, as applicable, shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, and (C) there is no material impairment to the value, use or operation of the Property, then such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower or such other Person, as applicable, in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days;

(xviii) if there shall occur any other Event of Default, as defined in any other Loan Document; or

(xix) Borrower shall be in default under any other deed of trust, mortgage or security agreement covering any part of the Property whether it be superior or junior in priority to the Security Instrument (it not being implied by this clause that any such encumbrance will be permitted).

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

**Section 8.2 Remedies.** (a) Upon the occurrence of an Event of Default and during the continuation thereof, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any part of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees, to the extent permitted under applicable law, that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Security Instrument has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document, except to the extent specifically limiting Lender's right to take a specified action or specifically requiring Lender to take a specific action, shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its discretion in respect of the Debt. In addition, Lender shall have the

right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its 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, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time during the continuance of an Event of Default to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the “Severed Loan Documents”) in such denominations as Lender shall determine in its discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender 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 lawfully do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until five (5) Business Days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any reasonable costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents, and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) If an Event of Default exists, Borrower shall terminate (or shall cause Master Tenant to terminate) the Franchise Agreement upon the written request of Lender or any receiver of the Property. If for any reason the Franchise Agreement is not terminated upon such request, Lender may terminate the Franchise Agreement upon its acquisition of the Property by foreclosure or deed in lieu thereof, notwithstanding any requirement of the Franchisor that Lender assume the Franchise Agreement or enter into a replacement Franchise Agreement. Borrower shall pay (or shall cause Master Tenant to pay) any liquidated damages owed to Franchisor in connection with any termination of the Franchise Agreement pursuant to this Section 8.2(d).

(e) As used in this Section 8.2, a “foreclosure” shall include, without limitation, any sale by power of sale.

**Section 8.3 Remedies Cumulative; Waivers.** The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower 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.

## **ARTICLE IX SPECIAL PROVISIONS**

### **Section 9.1 Securitization.**

9.1.1. **Sale of Notes and Securitization.** (a) Borrower acknowledges and agrees that Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations or securitizations, collectively, a “**Securitization**”).

(b) At the request of Lender, and to the extent not already required to be provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender or take other actions reasonably required by Lender, in each case in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors or the Rating Agencies in connection with any such Securitization. Lender shall have the right to provide to prospective investors and the Rating Agencies any information in its possession, including financial statements relating to Borrower, Guarantor, if any, the Property and any Tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus or other disclosure documents. Borrower agrees that each of Borrower, Principal, Guarantor and their respective officers and representatives, shall, at Lender’s request, cooperate with Lender’s efforts to arrange for a Securitization in accordance with the market standards to which Lender customarily adheres or which may be required by prospective investors or the

Rating Agencies in connection with any such Securitization. Borrower, Principal and Guarantor agree to review, at Lender's request in connection with the Securitization, the Disclosure Documents as such Disclosure Documents relate to Borrower, Principal, Master Tenant, Guarantor, the Property and the Loan, including, the sections entitled "Risk Factors," "Special Considerations," "Description of the Security Instrument," "Description of the Mortgage Loan and Mortgaged Property," "The Manager," "The Borrower," and "Certain Legal Aspects of the Mortgage Loan," and shall confirm that the factual statements and representations contained in such sections and such other information in the Disclosure Documents (to the extent such information relates to, or is based on, or includes any information regarding the Property, Borrower, Master Tenant, Guarantor, Manager or the Loan) do not, to such Person's knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(c) Borrower agrees to make upon Lender's written request, without limitation, all structural or other changes to the Loan (including delivery of one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan and such new notes or modified note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, creation of one or more mezzanine loans (including amending Borrower's organizational structure to provide for one or more mezzanine borrowers), delivery of opinions of counsel acceptable to the Rating Agencies or potential investors and addressing such matters as the Rating Agencies or potential investors may require; provided, however, that in creating such new notes or modified notes or mezzanine notes Borrower shall not be required to modify (i) the initial weighted average interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the aggregate amortization of principal of the Note, (iv) any other material economic term of the Loan, or (v) decrease the time periods during which Borrower is permitted to perform its obligations under the Loan Documents; and such modifications shall not, in the aggregate, have a material adverse effect on the economics of the Loan to Borrower. In connection with the foregoing, Borrower covenants and agrees to modify the Cash Management Agreement to reflect the newly created components or mezzanine loans.

(d) Intentionally Omitted.

(e) Borrower hereby appoints Lender its attorney-in-fact with full power of substitution (which appointment shall be deemed to be coupled with an interest and to be irrevocable until the Loan is paid and the Security Instrument is discharged of record, with Borrower hereby ratifying all that its said attorney shall do by virtue thereof) to execute and deliver all documents and do all other acts and things necessary or desirable to effect any Securitization authorized hereunder; provided, however, that unless an Event of Default exists, Lender shall not execute or deliver any such documents or do any such acts or things under such power until five (5) days after written notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower's failure to deliver any document or to take any other action Borrower is obligated to take hereunder with respect to any Securitization for a period of ten (10) Business Days after such notice by Lender shall, at Lender's option, constitute an Event of Default hereunder.

9.1.2. Securitization Costs. All reasonable third party costs and expenses incurred by Borrower and Guarantor in connection with Borrower's compliance with this Section 9.1 (including the fees and expenses of the Rating Agencies) shall be paid or reimbursed by Borrower.

Section 9.2 Right To Release Information. Following the occurrence of any Event of Default, Lender may forward to any broker, prospective purchaser of the Property or the Loan, or other person or entity all documents and information which Lender now has or may hereafter acquire relating to the Debt, Borrower, Master Tenant, any Guarantor, any indemnitor, the Property and any other matter in connection with the Loan, whether furnished by Borrower, Master Tenant, any Guarantor, any indemnitor or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have to limit or prevent such disclosure, including any right of privacy or any claims arising therefrom.

Section 9.3 Exculpation. (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Security Instrument and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender 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 Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Security Instrument and the other Loan Documents, agrees that it 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 Security Instrument or the other Loan Documents. The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (ii) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; (iii) affect the validity or enforceability of the Guaranty or Environmental Indemnity or any of the rights and remedies of Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of any assignment of leases and rents contained in the Security Instrument and any other Loan Documents; or (vi) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Security Instrument or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property.

(b) Nothing contained herein shall in any manner or way release, affect or impair the right of Lender to recover, and Borrower shall be fully and personally liable and subject to legal action, for any loss, cost, expense, damage, claim or other obligation (including reasonable attorneys' fees and court costs) incurred or suffered by Lender arising out of or in connection with the following:

(i) fraud or material willful misrepresentation by Borrower, Master Tenant, Principal or Guarantor (or any of their respective Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor) or any agent, employee or other person with actual or apparent authority to make statements or representations on behalf of Borrower, Master Tenant, Principal, or Guarantor (or any of their respective Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor) in connection with the Loan ("apparent authority" meaning such authority as the principal knowingly or negligently permits the agent to assume, or which he holds the agent out as possessing);

(ii) the gross negligence or willful misconduct of Borrower, Principal, Master Tenant or Guarantor (or any of their respective Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor), agent, or employee of the foregoing;

(iii) material physical waste of the Property;

(iv) the removal or disposal of any portion of the Property during the continuation of an Event of Default without the replacement of same, to the extent the same is material to the operation of the Property;

(v) the misapplication, misappropriation, or conversion by Borrower, (or any of its Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor), Principal, Master Tenant or Guarantor of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents or other Property income or collateral proceeds, or (D) any Rents paid more than one month in advance (including, but not limited to, security deposits);

(vi) during the continuation of an Event of Default, the failure to either apply rents or other Property income, whether collected before or after such Event of Default, to the ordinary, customary, and necessary expenses of operating the Property or, upon demand, to deliver such rents or other Property income to Lender;

(vii) failure to maintain insurance or to pay taxes and assessments (unless Lender is escrowing funds therefor and fails to make such payments or has taken possession of the Property following an Event of Default, has received all Rents from the Property applicable to the period for which such insurance, taxes or other items are due, and thereafter fails to make such payments) to the extent that the revenue from the Property is sufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property;

(viii) failure to pay charges for labor or materials or other charges or judgments that can create Liens on any portion of the Property, to the extent that the revenue from the Property is sufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property (and other than any election by Lender not to make funds held in any applicable Reserve Fund available therefor, so long as no Event of Default then exists and Borrower has otherwise complied with the applicable terms of the Loan Documents related to such disbursement);

(ix) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(x) any failure by Borrower to comply with any of the representations, warranties or covenants set forth in Sections 4.1.37 or 5.1.19 hereof;

(xi) Borrower and/or Master Tenant fails to permit on-site inspections of the Property, fails to maintain its status as a Special Purpose Entity or comply with any representation, warranty or covenant set forth in Section 4.1.30 hereof or fails to appoint a new property manager upon the request of Lender as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Security Instrument;

(xii) Borrower and/or Master Tenant's failure to comply with Section 2.7 hereof, the Cash Management Agreement and/or the Clearing Account Agreement relating to the establishment of a Clearing Account, a Cash Management Account, and/or the institution of cash management generally;

(xiii) any amendment, modification or termination of the Master Lease without Lender's consent;

(xiv) any amendment or modification of the Franchise Agreement without Lender's consent (to the extent such consent is required under the Loan Documents);

(xv) the termination, surrender or cancellation of the Franchise Agreement by Master Tenant without Lender's prior written consent or the termination or cancellation of the Franchise Agreement by Franchisor (as a result of the action or omission of Borrower or Master Tenant) prior to the expiration date of the Franchise Agreement unless such termination or cancellation is solely the result of Master Tenant's failure to pay the franchise fees and other charges due under the Franchise Agreement and such failure to pay is solely the result of revenue from the Property being insufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property provided that the foregoing shall not apply to the extent that (A) Borrower would otherwise be liable under this subsection (xvi) and (B) during the continuance of a Cash Sweep Period, Lender has not made funds available to Borrower to pay the charges described above; and/or

(xvi) failure to provide the Evidence of Insurance in accordance with Section 10.28 hereof.

(c) Notwithstanding anything to the contrary in this Agreement, the Note or any of the other Loan Documents,

(i) Borrower and any general partner of Borrower shall be personally liable for the Debt if (A) Borrower fails to obtain Lender's prior written consent to any voluntary Transfer if as required by this Agreement or the Security Instrument, which Transfer results in (x) the transfer of the Property, (y) a change in control of Borrower and/or Master Tenant, and/or (z) a transfer of a fifty percent (50%) or greater direct or indirect interest in Borrower or Master Tenant; (B) Borrower fails to obtain Lender's prior written consent to any Indebtedness or voluntary Lien encumbering the Property; (C) Borrower and/or Master Tenant shall at any time hereafter make an assignment for the benefit of its creditors; (D) Borrower and/or Master Tenant fails to maintain its status as a Special Purpose Entity or comply with any representation, warranty or covenant set forth in Section 4.1.30 hereof as required by, and in accordance with, the terms and provisions of this Agreement or the Security Instrument, and such failure is cited as a factor in the substantive consolidation of Borrower and/or Master Tenant with any other person; (E) other than at Lender's written request, Borrower, Master Tenant or any Principal admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (F) Borrower fails to make the first full monthly payment of principal and interest on or before the first Payment Date; (G) Borrower and/or Master Tenant files (other than at Lender's request), consents to, or acquiesces in a petition for bankruptcy, insolvency, dissolution or liquidation under the Bankruptcy Code or any other Federal or State bankruptcy or insolvency law, or there is a filing of an involuntary petition against Borrower, Master Tenant or any Principal under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law in which Borrower, Master Tenant or Guarantor or any Principal colludes with, or otherwise assists any party in connection with such filing, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower, Master Tenant or such Principal from any party; or (H) there is substantive consolidation of Borrower, Master Tenant or any Restricted Party with any other Person in connection with any federal or state bankruptcy proceeding involving Guarantor or any of Affiliate of Guarantor and one of the factors cited as the bases therefor is a breach by Borrower or Master Tenant of any representation, warranty or covenant contained in Section 4.1.30 of this Agreement.

(d) Nothing herein shall be deemed to constitute a waiver by Lender of any right Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt.

#### Section 9.4 Matters Concerning Manager.

(a) If (i) an Event of Default hereunder has occurred and remains uncured, (ii) Manager shall become subject to a Bankruptcy Action, (iii) a default by Manager occurs under the Management Agreement that would permit Master Tenant to terminate the Management Agreement, or (iv) a DSCR Trigger Event occurs and Lender reasonably determines that the Property is performing at less than eighty percent (80%) of the performance of other hotels generally in the same competitive set, Borrower shall, at the request of Lender, cause Master Tenant to terminate the Management Agreement and replace the Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

(b) Manager shall be permitted to earn management fees in connection with its operation of the Property equal to four percent (4.0%) of gross operating revenues of the Property (the "**Initial Management Fees**") so long as a DSCR Trigger Event does not then exist. For so long as the Debt Service Coverage Ratio for the Property, after giving effect to such increased management fee, shall be equal to or greater than 1.20 to 1.0. For so long as a DSCR Trigger Event exists (if ever), such management fees shall be reduced automatically to the greater of (x) three percent (3.0%) of gross operating revenues of the Property and (y) the then-current market management rate for property managers managing other hotels located in the Austin, Texas area and generally in the same competitive set (the "**Revised Management Fees**"). In furtherance of the foregoing, Lender acknowledges that the difference between the DSCR Trigger Management Fees and the Initial Management Fees shall not be due or paid during any such Cash Sweep Period but may accrue during such period and be paid to Manager upon the cure of all Cash Sweep Events as funds are available.

Section 9.5 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the "Servicing Agreement") between Lender and Servicer. Borrower shall not be responsible for any set up fees or any other initial costs relating to or arising under the Servicing Agreement, nor shall Borrower be responsible for payment of the regular monthly master servicing fee or trustee fee due to Servicer under the Servicing Agreement or any fees or expenses required to be borne by, and not reimbursable to, Servicer. Notwithstanding the foregoing, Borrower shall promptly reimburse Lender on demand for the following costs and expenses payable by Lender to Servicer as a result of the Loan becoming specially serviced: (i) any liquidation fees that are due and payable to Servicer under the Servicing Agreement in connection with the exercise of any or all remedies permitted under this Agreement, (ii) any workout fees and special servicing fees that are due and payable to Servicer under the Servicing Agreement, which fees may be due and payable under the Servicing Agreement on a periodic or continuing basis, and (iii) the costs of all property inspections and/or appraisals of the Property (or any updates to any existing inspection or appraisal) that Servicer may be required to obtain (other than the cost of regular annual inspections required to be borne by Servicer under the Servicing Agreement).

## ARTICLE X MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and all such covenants and agreements shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid (or, in the case of a defeasance, defeased) 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 Lender.

Section 10.2 Lender's Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the state where the Land is located without regard to the conflicts of law provisions thereof ("**Governing State**"). Borrower hereby consents to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("**ACTION**") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. BORROWER HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Borrower hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Agreement may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by telecopier (with answer back acknowledged) and with a second copy to be sent to the intended recipient by any other means permitted under this Section, addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:	KeyBank National Association 11501 Outlook, Suite 300 Overland Park, Kansas 66211 Facsimile No.: 877-379-1625 Attention: Loan Servicing
with a copy to:	Katten Muchin Rosenman LLP 550 South Tryon Street, Suite 2900 Charlotte, North Carolina 28202 Attention: Daniel S. Huffenus, Esq.
If to Borrower:	Moody National Lancaster-Austin Holding, LLC 6363 Woodway, Suite 110 Houston, Texas 77057 Attention: Brett C. Moody Facsimile No.: (713) 997-7505
With a copy to:	Gresham Savage Nolan & Tilden, PC 501 W. Broadway, Suite 800 San Diego, California 92101 Attention: Jerome A. Grossman Facsimile No.: (619) 615-2180

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

**Section 10.7 Trial by Jury. TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER HEREBY AGREES 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 EACH OF BORROWER AND 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 OF BORROWER AND LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY SUCH OTHER PARTY.**

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

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

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

Section 10.12 Remedies of Borrower. If a claim or adjudication is made that Lender 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, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 Expenses; Indemnity. (a) Except to the extent otherwise provided in Article 9: (b) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation other than as provided in Article 9, any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date (provided that nothing herein shall require Borrower to reimburse Lender in respect of its overhead expenses); (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (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, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) 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; 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 gross negligence, illegal acts, fraud or willful misconduct of Lender. Subject to Section 5.2 of the Cash Management Agreement, any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(c) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other 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 in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not an Indemnified Party shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party 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, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to any Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. 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 the Indemnified Parties.

(d) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency, after any Securitization (and excluding any such fees and expenses incurred by such Rating Agency in connection with any Rating Agency review of the Loan, the Loan Documents or any transaction contemplated thereby as part of a Securitization), in connection such Rating Agency's review of the Loan, the Loan documents or any transaction contemplated thereby in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document, and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 Schedules Incorporated. The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries. (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender, Borrower and the other Persons party thereto, and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower, or another Party to any Loan Document, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

(c) Borrower authorizes Lender to act upon any direction it receives from Master Tenant incident to the Loan Documents with respect to matters for which Master Tenant has responsibility pursuant to the Master Lease Documents (including, without limitation, with respect to requests for, and the application of, disbursements from any applicable Reserve Fund), and, as between Lender and Borrower, agrees to be bound by any such direction.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, KeyBank National Association or any of their Affiliates shall be subject to the prior written approval of Lender and KeyBank National Association in their commercially reasonable discretion.

Section 10.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or (unless specifically engaged by Lender in writing) Lender in connection with the transactions contemplated herein. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Liability. If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several. Under no circumstances whatsoever shall Lender have any liability for punitive, special, consequential or incidental damages in connection with, arising out of, or in any way related to or under this Loan Agreement or any other Loan Document or in any way related to the transactions contemplated or any relationship established by this Agreement or any other Loan Document or any act, omission or event occurring in connection herewith or therewith, and, to the extent not expressly prohibited by applicable laws, Borrower for itself and its Guarantor and indemnitors waives all claims for punitive, special, consequential or incidental damages. Lender shall have no duties or responsibilities except those expressly set forth in this Agreement, the Security Instrument and the other Loan Documents and those imposed under applicable law. Neither Lender nor any of its officers, directors, employees or agents shall be liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross negligence or willful misconduct. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 10.24 Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property).

The rights described above in this Section 10.24 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 (OFAC). Borrower hereby represents, warrants and covenants that neither Borrower nor any Guarantor is (or will be) a person with whom Lender is restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not knowingly engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby covenants to provide Lender with any additional information within Borrower's or Guarantor's possession or control that Lender reasonably deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

Section 10.26 Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 10.27 Release of Moody Guarantor. Upon satisfaction of all of the conditions set forth in Section 24 of the Guaranty and Section 25 of the Environmental Indemnity and the release of Moody Guarantor in accordance therewith, Moody Guarantor shall be deemed automatically released from all liability under the Guaranty and the Environmental Indemnity first accruing after such release and all references in this Agreement and the other Loan Documents to "Guarantor" shall be solely a reference to Moody REIT II.

Section 10.28 Post Closing Matters. Borrower covenants and agrees to provide to Lender, within five (5) days of the date hereof, evidence satisfactory to Lender that Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement are in place (the "**Evidence of Insurance**").

**ARTICLE XI**  
**LOCAL LAW PROVISIONS**

Section 11.1     Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article XI and the other provisions of this Agreement, the terms and conditions of this Article XI shall control and be binding.

NONE

**[NO FURTHER TEXT ON THIS PAGE]**

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

**BORROWER:**

**MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC**,  
a Delaware limited liability company

By: /s/ Brett C. Moody  
Name: Brett C. Moody  
Title: President

STATE OF TEXAS            )  
  ) SS:

COUNTY OF HARRIS        )

On October 9, 2015, before me, Lilian C. Aragon, a Notary Public, personally appeared Brett C. Moody, President, and as Authorized Party of Moody National Lancaster-Austin Holding, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(Seal)

/s/ Lilian C. Aragon  
Notary Public in and for Harris County  
Print Name: Lilian C. Aragon

**LENDER:**

**KEYBANK NATIONAL ASSOCIATION**, a national banking association

By: /s/ Mary Ann Gripka  
Name: Mary Ann Gripka  
Title: Vice President

**SCHEDULE I**  
**(RENT ROLL)**

**SCHEDULE II**  
**(REQUIRED REPAIRS – DEADLINES FOR COMPLETION)**  
**None**

**SCHEDULE III**  
**(ORGANIZATIONAL CHART OF BORROWER)**

**SCHEDULE IV**  
**FORM OF TENANT DIRECTION LETTER**  
**[BORROWER LETTERHEAD]**

\_\_\_\_\_, 20\_\_

**[Tenants under Leases]**

Re: Lease dated \_\_\_\_\_ between \_\_\_\_\_, as Landlord, and \_\_\_\_\_, as Tenant, concerning premises known as \_\_\_\_\_

Gentlemen:

This letter shall constitute notice to you that the undersigned has granted a lien and security interest in the captioned lease and all rents, additional rent and all other monetary obligations to landlord thereunder (collectively, “**Rent**”) in favor of KeyBank National Association, its successors and assigns, as lender (“**Lender**”), to secure certain of the undersigned’s obligations to Lender. The undersigned hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with Rent and hereafter to deliver all Rent to the following address:

**[Clearing Bank]**

\_\_\_\_\_  
\_\_\_\_\_

Account Name: “ \_\_\_\_\_ Clearing Account

FBO KeyBank National Association, successors and assigns

Account No.: \_\_\_\_\_

Attention: \_\_\_\_\_

ABA# \_\_\_\_\_

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that Lender, or any successor lender so identified by Lender, may by written notice to you rescind the instructions contained herein.

Sincerely,

**[Borrower]**

**SCHEDULE V**  
**FORM OF CREDIT CARD DIRECTION LETTER**  
**[BORROWER LETTERHEAD]**

[Date]

[Addressee]

Re: Payment Direction Letter for \_\_\_\_\_ (the “**Property**”)

Loan No. \_\_\_\_\_

Dear [\_\_\_\_]:

**MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC** (the “**Owner**”), the owner of the Property has mortgaged the Property to KeyBank National Association (together with its successors and assigns, “**Lender**”) and each of the Owner and **MOODY NATIONAL LANCASTER-AUSTIN MT, LLC** (the “**Lessee**”) has agreed that all receipts received with respect to the Property will be paid directly to a bank selected by the Lender. Therefore, from and after [DATE], please remit all payments due to the Owner and/or Lessee under that certain [REFERENCE AGREEMENT], dated [\_\_\_\_], [\_\_\_\_] (the “**Agreement**”) between the [Owner] [Lessee] and you, as follows:

**[Clearing Bank]**

\_\_\_\_\_

Account Name: “\_\_\_\_\_” Clearing Account FBO KeyBank National Association, successors and assigns

Account No.: \_\_\_\_\_

Attention: \_\_\_\_\_

ABA# \_\_\_\_\_

These payment instructions cannot be withdrawn or modified without the prior written consent of the Lender or its designee, or pursuant to a joint written instruction from the Owner, Lessee and the Lender or its designee. Until you receive written instructions from the Lender or its designee, continue to send all payments due under the Agreement to \_\_\_\_\_ (“**Bank**”) pursuant to the terms hereof. All payments due under the Agreement shall be remitted to Bank no later than the day on which such amounts are due.

If you have any questions concerning this letter, please contact [\_\_\_\_] at [\_\_\_\_]. We appreciate your cooperation in this matter.

**[NO FURTHER TEXT ON THIS PAGE]**

Very truly yours,

**BORROWER:**

\_\_\_\_\_

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE VI**  
**(Schedule of Free Rent)**

<b>Tenant</b>	<b>Free Rent Amount</b>	<b>Release Date</b>
Tiff's Treats .....	\$ 3,097.50	Dec-2015
	\$ 3,097.50	Jan-2016
Gino's Vino .....	\$ 4,262.50	Dec-2015
	\$ 4,262.50	Jan-2016
<b>Total</b> .....	\$ 14,720	

## GUARANTY AGREEMENT

**THIS GUARANTY AGREEMENT** (this “**Guaranty**”) is made as of October 15, 2015, by **BRETT C. MOODY**, an individual having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**Moody Guarantor**”), and **MOODY NATIONAL REIT II, INC.**, a Maryland corporation, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**REIT Guarantor**”); together with Moody Guarantor hereinafter referred to, individually and collectively, as the context may require, as “**Guarantor**”) in favor of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an address at 11501 Outlook, Suite 300, Overland Park, Kansas 66211, (together with its successors and assigns, “**Lender**”).

## RECITALS

The following recitals are a material part of this Guaranty:

A. Lender is making a loan in the principal sum of \$16,575,000.00 (the “**Loan**”) to **MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC**, a Delaware limited liability company, (“**Borrower**”), on or about the date of this Guaranty. Guarantor has a significant financial interest in Lender’s making of the Loan to Borrower, and will realize significant financial benefit from the Loan. The Loan is evidenced by a Loan Agreement of even date herewith between Borrower and Lender (the “**Loan Agreement**”) and a Promissory Note (the “**Note**”) of even date herewith in the principal amount of the Loan from Borrower to Lender and is secured in part by one or more deeds of trust/mortgages/deeds to secure debt (the “**Security Instrument**”) encumbering Borrower’s interest in certain property which is commonly known as Residence Inn - Austin (the real estate, together with all improvements thereon and personal property associated therewith, is hereinafter collectively called the “**Property**”). The Loan Agreement, Note, Security Instrument, and all other documents and instruments existing now or after the date hereof that evidence, secure or otherwise relate to the Loan, including this Guaranty, any assignments of leases and rents, other assignments, security agreements, financing statements, other guaranties, indemnity agreements (including environmental indemnity agreements), letters of credit, or escrow/holdback or similar agreements or arrangements, together with all amendments, modifications, substitutions or replacements thereof, are sometimes herein collectively referred to as the “**Loan Documents**” or individually as a “**Loan Document**.” The Loan Documents are hereby incorporated by this reference as if fully set forth in this Guaranty.

B. Lender has required that Guarantor guaranty to Lender the payment of the Liabilities (as such term is defined in Section 2.1 hereof).

C. Lender is unwilling to make the Loan to Borrower absent this Guaranty.

## AGREEMENT

In consideration of Lender’s agreement to make the Loan to Borrower and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Guarantor hereby states and agrees as follows:

1. **Request to Make Loan.** Guarantor hereby requests that Lender make the Loan to Borrower and that Lender extend credit and give financial accommodations to Borrower, as Borrower may desire and as Lender may grant, from time to time, whether to the Borrower alone or to the Borrower and others, and specifically to make the Loan described in the Loan Documents.

2. **Guaranty of Liabilities.**

2.1 Guarantor hereby absolutely and unconditionally guarantees full and punctual payment and performance when due of the following (collectively, the “**Liabilities**”):

(a) all amounts that shall become due and owing to Lender at any time by virtue of or arising out of any of the acts, omissions, circumstances or conditions included in any of the Nonrecourse Carve-Outs (as hereinafter defined), including all renewals or extensions of any amount owing or obligation under the Nonrecourse Carve-Outs, all liability under the Nonrecourse Carve-Outs whether arising under the original Loan or any extension, modification, future advance, increase, amendment or modification thereof, interest due on amounts owing under the Nonrecourse Carve-Outs at the Default Rate specified in the Note, all expenses, including attorneys’ fees, incurred by Lender in connection with the enforcement of any of Lender’s rights under this Guaranty and all Administration and Enforcement Expenses (as hereinafter defined), to the extent the same arise out of or are incurred by Lender in respect of the Nonrecourse Carve-Outs (the foregoing are sometimes hereinafter collectively referred to as the “**Nonrecourse Carve-Out Liabilities**”). As used herein, the term “**Nonrecourse Carve Outs**” means any loss, damage, cost, expense or liability incurred by Lender (including attorneys’ fees and expenses and other collection and litigation expenses) arising out of or in connection with any of the following:

- (i) fraud or material willful misrepresentation by Borrower, Master Tenant, Principal or Guarantor (or any of their respective Affiliates are controlled by Borrower, Master Tenant, Principal and/or Guarantor) or any agent, employee or other person with actual or apparent authority to make statements or representations on behalf of Borrower, Master Tenant, Principal, or Guarantor (or any of their respective Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor) in connection with the Loan ("apparent authority" meaning such authority as the principal knowingly or negligently permits the agent to assume, or which he holds the agent out as possessing);
- (ii) the gross negligence or willful misconduct of Borrower, Principal, Master Tenant or Guarantor (or any of their respective Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor), agent, or employee of the foregoing;
- (iii) material physical waste of the Property;
- (iv) the removal or disposal of any portion of the Property during the continuation of an Event of Default without the replacement of same, to the extent the same is material to the operation of the Property;
- (v) the misapplication, misappropriation, or conversion by Borrower (or any of its Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor), Principal, Master Tenant or Guarantor of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents or other Property income or collateral proceeds, or (D) any Rents paid more than one month in advance (including, but not limited to, security deposits);
- (vi) during the continuation of an Event of Default, the failure to either apply rents or other Property income, whether collected before or after such Event of Default, to the ordinary, customary, and necessary expenses of operating the Property or, upon demand, to deliver such rents or other Property income to Lender;
- (vii) failure to maintain insurance or to pay taxes and assessments (unless Lender is escrowing funds therefor and fails to make such payments or has taken possession of the Property following an Event of Default, has received all Rents from the Property applicable to the period for which such insurance, taxes or other items are due, and thereafter fails to make such payments) to the extent that the revenue from the Property is sufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property;
- (viii) failure to pay charges for labor or materials or other charges or judgments that can create Liens on any portion of the Property, to the extent that the revenue from the Property is sufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property (and other than any election by Lender not to make funds held in any applicable Reserve Fund available therefor, so long as no Event of Default then exists and Borrower has otherwise complied with the applicable terms of the Loan Documents related to such disbursement);
- (ix) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;
- (x) any failure by Borrower to comply with any of the representations, warranties or covenants set forth in Sections 4.1.37 or 5.1.19 of the Loan Agreement;
- (xi) Borrower and/or Master Tenant fails to permit on-site inspections of the Property, fails to maintain its status as a Special Purpose Entity or comply with any representation, warranty or covenant set forth in Section 4.1.30 of the Loan Agreement or fails to appoint a new property manager upon the request of Lender as permitted under the Loan Agreement, each as required by, and in accordance with, the terms and provisions of the Loan Agreement or the Security Instrument;
- (xii) Borrower and/or Master Tenant's failure to comply with Section 2.7 of the Loan Agreement, the Cash Management Agreement and/or the Clearing Account Agreement relating to the establishment of a Clearing Account, a Cash Management Account, and/or the institution of cash management generally;
- (xiii) any amendment, modification or termination of the Master Lease without Lender's consent;
- (xiv) any amendment or modification of the Franchise Agreement without Lender's consent (to the extent such consent is required under the Loan Documents);

(xv) the termination, surrender or cancellation of the Franchise Agreement by Master Tenant without Lender's prior written consent or the termination or cancellation of the Franchise Agreement by Franchisor (as a result of the action or omission of Borrower or Master Tenant) prior to the expiration date of the Franchise Agreement unless such termination or cancellation is solely the result of Master Tenant's failure to pay the franchise fees and other charges due under the Franchise Agreement and such failure to pay is solely the result of revenue from the Property being insufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property provided that the foregoing shall not apply to the extent that (A) Borrower would otherwise be liable under this subsection (xvi) and (B) during the continuance of a Cash Sweep Period, Lender has not made funds available to Borrower to pay the charges described above; and/or

(xvi) failure to provide the Evidence of Insurance in accordance with Section 10.28 of the Loan Agreement.

(b) (i) all payments due under the Note, including the repayment of all additional advances of any kind that may be made by Lender to Borrower, whether at stated maturity, by acceleration or otherwise, (ii) any and all renewals or extensions of any such item of indebtedness or obligation or any part thereof; (iii) all obligations and indebtedness of any kind or nature arising under any of the Loan Documents; (iv) any future advances that may be made by Lender related to the Loan or the Property, whether made to protect the security or otherwise, and whether or not evidenced by additional promissory notes or other evidences of indebtedness; (v) all interest due on all of the same; (vi) all expenses, including attorney's fees, incurred by Lender in connection with the enforcement of Lender's rights under this Guaranty and all Administration and Enforcement Expenses. PROVIDED HOWEVER, notwithstanding anything herein to the contrary, Lender shall not demand payment or commence any action to enforce Guarantor's liability under this Section 2.1(b) (but in no event shall this provision apply to, or limit, restrict, or prohibit any demand by Lender or action to enforce Guarantor's liability under Section 2.1(a) hereof, notwithstanding that obligations under said Section 2.1(a) may be included in obligations under this Section 2.1(b)) unless and until

(A) Borrower fails to obtain Lender's prior written consent to any voluntary Transfer as required by the Loan Agreement or the Security Instrument, which Transfer results in (x) the transfer of the Property, (y) a change in control of Borrower and/or Master Tenant, and/or (z) a transfer of a fifty percent (50%) or greater direct or indirect interest in Borrower or Master Tenant; (B) Borrower fails to obtain Lender's prior written consent to any Indebtedness or voluntary Lien encumbering the Property; (C) Borrower and/or Master Tenant shall at any time hereafter make an assignment for the benefit of its creditors; (D) Borrower and/or Master Tenant fails to maintain its status as a Special Purpose Entity or comply with any representation, warranty or covenant set forth in Section 4.1.30 of the Loan Agreement as required by, and in accordance with, the terms and provisions of the Loan Agreement or the Security Instrument, and such failure is cited as a factor in the substantive consolidation of Borrower and/or Master Tenant with any other person; (E) Borrower, Master Tenant or any Principal admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (F) Borrower fails to make the first full monthly payment of principal and interest on or before the first Payment Date; (G) Borrower and/or Master Tenant files (other than at Lender's request), consents to, or acquiesces in a petition for bankruptcy, insolvency, dissolution or liquidation under the Bankruptcy Code or any other Federal or State bankruptcy or insolvency law, or there is a filing of an involuntary petition against Borrower, Master Tenant or any Principal under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law in which Borrower, Master Tenant or Guarantor or any Principal colludes with, or otherwise assists any party in connection with such filing, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower, Master Tenant or such Principal from any party; or (H) there is substantive consolidation of Borrower, Master Tenant or any Restricted Party with any other Person in connection with any federal or state bankruptcy proceeding involving Guarantor or any of Affiliate of Guarantor and one of the factors cited as the bases therefor is a breach by Borrower or Master Tenant of any representation, warranty or covenant contained in Section 4.1.30 of the Loan Agreement.

(c) Nothing herein shall be deemed to constitute a waiver by Lender of any right Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt.

2.2 Upon the request of Lender, Guarantor shall immediately pay or perform the Liabilities when they or any of them become due or are to be paid or performed under the term of any of the Loan Documents. Any amounts received by Lender from any sources other than Guarantor and applied by Lender towards the payment of the Liabilities shall be applied in such order of application as Lender may from time to time elect. All Liabilities shall conclusively be presumed to have been created, extended, contracted, or incurred by Lender in reliance upon this Guaranty and all dealings between Borrower and Lender shall likewise be presumed to be in reliance upon this Guaranty. Payments by Guarantor to Lender pursuant to this Guaranty shall be applied against payment of the Liabilities and any other reimbursement obligations of Guarantor pursuant to this Guaranty (including, without limitation, Section 2.1 hereof) in such manner and in such amounts and at such time or times and in such order and priority as Lender may see fit to the payment or reduction of the foregoing obligations of Guarantor as Lender may elect.

2.3 For the purpose of this Guaranty, “**Administration and Enforcement Expenses**” shall mean all fees and expenses incurred at any time or from time to time by Lender, including legal (whether for the purpose of advice, negotiation, documentation, defense, enforcement or otherwise), accounting, financial advisory, auditing, rating agency, appraisal, valuation, title or title insurance, engineering, environmental, collection agency, or other expert or consulting or similar services, in connection with: (a) the origination of the Loan (provided, however, that so long as Borrower shall have paid the fees and expenses relating to origination of the Loan as of the Closing Date, interest shall not accrue thereon), including the negotiation and preparation of the Loan Documents and any amendments or modifications of the Loan or the Loan Documents, whether or not consummated; (b) the administration, servicing or enforcement of the Loan or the Loan Documents, including any request for interpretation or modification of the Loan Documents or any matter related to the Loan or the servicing thereof (which shall include the consideration of any requests for consents, waivers, modifications, approvals, lease reviews or similar matters and any proposed transfer of the Property or any interest therein), (c) any litigation, contest, dispute, suit, arbitration, mediation, proceeding or action (whether instituted by or against Lender, including actions brought by or on behalf of Borrower or Borrower’s bankruptcy estate or any indemnitor or guarantor of the Loan or any other person) in any way relating to the Loan or the Loan Documents including in connection with any bankruptcy, reorganization, insolvency, or receivership proceeding; (d) any attempt to enforce any rights of Lender against Borrower or any other person that may be obligated to Lender by virtue of any Loan Document or otherwise whether or not litigation is commenced in pursuance of such rights; and (e) protection, enforcement against, or liquidation of the Property or any other collateral for the Loan, including any attempt to inspect, verify, preserve, restore, collect, sell, liquidate or otherwise dispose of or realize upon the Loan, the Property or any other collateral for the Loan. Provided no Event of Default has occurred, fees and expenses related solely to origination and administration of the Loan shall be limited to reasonable fees and expenses, but charges of rating agencies, governmental entities or other third parties that are outside of the control of Lender shall not be subject to the reasonableness standard.

3. **Additional Advances, Renewals, Extensions and Releases.** Guarantor hereby agrees and consents that, without notice to or further consent by Guarantor, Lender may make additional advances with respect to the Loan or the Property, and the obligations of Borrower or any other party in connection with the Loan may be renewed, extended, modified, accelerated or released by Lender as Lender may deem advisable, and any collateral the Lender may hold or in which the Lender may have an interest may be exchanged, sold, released or surrendered by it, as it may deem advisable, without impairing or affecting the obligations of Guarantor hereunder in any way whatsoever.

#### 4. **Waivers.**

4.1 Guarantor hereby waives each of the following: (a) any and all notice of the acceptance of this Guaranty or of the creation, renewal or accrual of any Liabilities or the Debt, present or future (including any additional advances made by Lender under the Loan Documents); (b) the reliance of Lender upon this Guaranty; (c) notice of the existence or creation of any Loan Document or of any of the Liabilities or the Debt; (d) protest, presentment, demand for payment, notice of default or nonpayment, notice of dishonor to or upon Guarantor, Borrower or any other party liable for any of the Liabilities or the Debt; (e) any and all other notices or formalities to which Guarantor may otherwise be entitled, including notice of Lender’s granting the Borrower any indulgences or extensions of time on the payment of any Liabilities or the Debt; and (f) promptness in making any claim or demand hereunder.

4.2 No delay or failure on the part of Lender in the exercise of any right or remedy against either Borrower or Guarantor shall operate as a waiver thereof, and no single or partial exercise by Lender of any right or remedy herein shall preclude other or further exercise thereof or of any other right or remedy whether contained herein or in the Note or any of the other Loan Documents. No action of Lender permitted hereunder shall in any way impair or affect this Guaranty.

4.3 Guarantor acknowledges and agrees that Guarantor shall be and remain absolutely and unconditionally liable for the full amount of all Liabilities notwithstanding any of the following, and Guarantor waives any defense or counterclaims, other than compulsory counterclaims, to which Guarantor may be entitled, based upon any of the following, in any proceeding (without prejudice to assert the same in a separate cause of action at a later time):

(a) Any or all of the Liabilities being or hereafter becoming invalid or otherwise unenforceable for any reason whatsoever or being or hereafter becoming released or discharged, in whole or in part, whether pursuant to a proceeding under any bankruptcy or insolvency laws or otherwise; or

(b) Lender failing or delaying to properly perfect or continue the perfection of any security interest or lien on any property which secures any of the Liabilities, or to protect the property covered by such security interest or enforce its rights respecting such property or security interest; or

(c) Lender failing to give notice of any disposition of any property serving as collateral for any Liabilities or failing to dispose of such collateral in a commercially reasonable manner; or

(d) Any other circumstance that might otherwise constitute a defense other than payment in full of the Liabilities.

5. **Guaranty of Payment.** Guarantor agrees that Guarantor's liability hereunder is primary, absolute and unconditional without regard to the liability of any other party. This Guaranty shall be construed as an absolute, irrevocable and unconditional guaranty of payment and performance (and not a guaranty of collection), without regard to the validity, regularity or enforceability of any of the Liabilities.

6. **Guaranty Effective Regardless of Collateral.** This Guaranty is made and shall continue as to any and all Liabilities without regard to any liens or security interests in any collateral, the validity, effectiveness or enforceability of such liens or security interests, or the existence or validity of any other guaranties or rights of Lender against any other obligors. Any and all such collateral, security, guaranties and rights against other obligors, if any, may from time to time without notice to or consent of Guarantor, be granted, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, with or without consideration, on such terms or conditions as may be acceptable to Lender, without in any manner affecting or impairing the liabilities of Guarantor. Without limiting the generality of the foregoing, it is acknowledged that Guarantor's liability hereunder shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release of record of the Security Instrument.

7. **Additional Credit.** Credit or financial accommodation may be granted or continued from time to time by Lender to Borrower regardless of Borrower's financial or other condition at the time of any such grant or continuation, without notice to or the consent of Guarantor and without affecting Guarantor's obligations hereunder. Lender shall have no obligation to disclose or discuss with Guarantor its assessment of the financial condition of Borrower.

8. **Rescission of Payments.** If at any time payment of any of the Liabilities or any part thereof is rescinded or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy or reorganization of Borrower or under any other circumstances whatsoever, this Guaranty shall, upon such rescission, restoration or return, continue to be effective or shall (if previously terminated) be reinstated, as the case may be, as if such payment had not been made.

9. **Additional Waivers.** So long as any portion of the Liabilities or Debt remains unpaid and undefeased or any claim for Liabilities remains pending or any portion of the Liabilities or Debt (or any security therefor) that has been paid to Lender remains pending, or, for up to a one hundred eighty (180) day period after the payment or defeasance in full of the Loan (and so long as no claim for Liabilities remains pending), remains subject to invalidation, reversal or avoidance as a preference, fraudulent transfer or for any other reason whatsoever (whether under bankruptcy or non-bankruptcy law) to being set aside or required to be repaid to Borrower as a debtor in possession or to any trustee in bankruptcy, Guarantor irrevocably waives (a) any rights which it may acquire against Borrower by way of subrogation under this Guaranty or by virtue of any payment made hereunder (whether contractual, under the Bankruptcy Code or similar state or federal statute, under common law, or otherwise), (b) all contractual, common law, statutory or other rights of reimbursement, contribution, exoneration or indemnity (or any similar right) from or against Borrower that may have arisen in connection with this Guaranty, (c) any right to participate in any way in the Loan Documents or in the right, title and interest in any collateral securing the payment of Borrower's obligations to Lender, and (d) all rights, remedies and claims relating to any of the foregoing at any time prior to such time as the Debt has been paid or defeased in full and no claim in respect of the Liabilities remains pending. If any amount is paid to Guarantor on account of subrogation rights or otherwise at any time prior to such time as the Debt has been paid or defeased in full and no claim in respect of the Liabilities remains pending, such amount shall be held in trust for Lender's benefit and shall forthwith be paid to Lender to be applied to the Debt (or, if the Debt has been paid or defeased in full but there is a pending claim in respect of the Liabilities, held as cash collateral in respect thereof), whether matured or unmatured, in such order as Lender shall determine.

10. **Independent Obligations.** The obligations of Guarantor are independent of the obligations of Borrower, and a separate action or actions for payment, damages or performance may be brought and prosecuted against Guarantor, whether or not an action is brought against Borrower or the security for Borrower's obligations, and whether or not Borrower is joined in any such action or actions. Guarantor expressly waives any requirement that Lender institute suit against Borrower or any other persons, or exercise or exhaust its remedies or rights against Borrower or against any other person, other guarantor, or other collateral securing all or any part of the Liabilities, prior to enforcing any rights Lender has under this Guaranty or otherwise. Lender may pursue all or any such remedies at one or more different times without in any way impairing its rights or remedies hereunder. Guarantor hereby further waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. If there shall be more than one guarantor with respect to any of the Liabilities, then the obligations of each such guarantor shall be joint and several.

11. **Subordination of Indebtedness of Borrower to Guarantor.** Any indebtedness of Borrower to Guarantor now or hereafter existing (including, but not limited to, any rights to subrogation or reimbursement Guarantor may have as a result of any payment by Guarantor under this Guaranty, collectively “**Guarantor Claims**”) is hereby subordinated to the prior payment in full of the Liabilities. Guarantor agrees that following the occurrence and during the continuance of an Event of Default, until such time as the Debt has been paid or defeased in full and no claim in respect of the Liabilities remains pending, Guarantor will not seek, accept or retain for Guarantor’s own account, any payment (whether for principal, interest, or otherwise) from Borrower for or on account of such subordinated debt. Following the occurrence and during the continuance of an Event of Default, any payments to Guarantor on account of such subordinated debt shall be collected and received by Guarantor in trust for Lender and shall be paid over to Lender on account of the Liabilities or Debt, as Lender determines in its discretion, without impairing or releasing the obligations of Guarantor hereunder. Guarantor hereby unconditionally and irrevocably agrees that (a) Guarantor will not at any time while the Liabilities remain unpaid, assert against Borrower (or Borrower’s estate in the event that Borrower becomes the subject of any case or proceeding under any federal or state bankruptcy or insolvency laws) any right or claim to indemnification, reimbursement, contribution or payment for or with respect to any and all amounts Guarantor may pay or be obligated to pay Lender, including the Liabilities, and any and all obligations which Guarantor may perform, satisfy or discharge, under or with respect to the Guaranty, and (b) Guarantor subordinates to the Debt all such rights and claims to indemnification, reimbursement, contribution or payment that Guarantor may have now or at any time against Borrower (or Borrower’s estate in the event that Borrower becomes the subject of any case or proceeding under any federal or state bankruptcy or insolvency laws).

12. **Claims in Bankruptcy.** Guarantor shall file all claims against Borrower in any bankruptcy or other proceeding in which the filing of claims is required by law upon any indebtedness of Borrower to Guarantor in respect of any rights of subrogation or reimbursement. In the event of receivership, bankruptcy, reorganization, arrangement, debtor’s relief, or other insolvency proceedings involving Guarantor as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims. Guarantor hereby assigns such dividends and payments to Lender. Guarantor hereby irrevocably appoints Lender its attorney-in-fact, which appointment is coupled with an interest, to file any such claim that Guarantor may fail to file, in the name of Guarantor or, in Lender’s discretion, to assign the claim and to cause proof of claim to be filed in the name of Lender’s nominee. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Lender the full amount thereof and, to the full extent necessary for that purpose, Guarantor hereby assigns to Lender all of Guarantor’s rights to any such payments or distributions to which Guarantor would otherwise be entitled.

13. **Guarantor’s Representations and Warranties.** Each Guarantor represents, warrants and covenants to and with Lender that, with respect to itself only,:

13.1 There is no action or proceeding pending or, to the knowledge of Guarantor, threatened against Guarantor before any court or administrative agency which could reasonably be expected to result in any material adverse change in the business or financial condition or operations of Guarantor, Borrower, Master Tenant and/or the Property which could reasonably be expected, either individually or in the aggregate, to have a material adverse effect on Guarantor’s ability to perform its obligations hereunder or under the Environmental Indemnity Agreement executed by Guarantor for the benefit of Lender in connection with the Loan (the “**Environmental Indemnity Agreement**”);

13.2 Guarantor has filed all Federal and state income tax returns which Guarantor has been required to file, and has paid all taxes as shown on said returns and on all assessments received by Guarantor to the extent that such taxes have become due;

13.3 Neither the execution nor delivery of this Guaranty nor fulfillment of nor compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property or assets of Guarantor under any agreement or instrument to which Guarantor is now a party or by which Guarantor may be bound;

13.4 This Guaranty is a valid and legally binding agreement of Guarantor and is enforceable against Guarantor in accordance with its terms;

13.5 Guarantor has either (i) examined the Loan Documents or (ii) has had an opportunity to examine the Loan Documents and has waived the right to examine them;

13.6 Guarantor has the full power, authority, and legal right to execute and deliver this Guaranty. If Guarantor is not an individual, (i) Guarantor is duly organized, validly existing and in good standing under the laws of the state of its formation, and (ii) the execution, delivery and performance of this Guaranty by Guarantor has been duly and validly authorized and the person(s) signing this Guaranty on Guarantor’s behalf has been validly authorized and directed to sign this Guaranty; and

13.7 So long as the Loan and any of the obligations set forth in the Loan Documents remain outstanding, Guarantor collectively shall maintain (i) a minimum Net Worth of not less than \$25,000,000.00 and (ii) Liquidity of no less than \$2,000,000.00. For the purposes hereof, Guarantor’s Net Worth and Liquidity shall be determined by Lender in its reasonable discretion, at any time and from time to time, and Guarantor’s net worth shall exclude any equity attributable to the Property.

As used herein:

“**Net Worth**” shall mean, as of a given date, (i) the fair market value of a Guarantor’s total assets as of such date (and for the avoidance of doubt and notwithstanding anything to the contrary contained herein, the calculation of Net Worth shall exclude any equity attributable to the Property) less (ii) such Guarantor’s total liabilities as of such date, determined in accordance with generally accepted accounting principles, consistently applied.

“**Liquidity**” shall mean (a) unencumbered Cash and Cash Equivalents of Guarantor and (b) marketable securities of Guarantor, each valued in accordance with GAAP (or other principles acceptable to Lender).

“**Cash and Cash Equivalents**” shall mean all unrestricted or unencumbered (A) cash and (B) any of the following: (x) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by an agency thereof and backed by the full faith and credit of the United States; (y) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof which, at the time of acquisition, has one of the two highest ratings obtainable from any two (2) of Standard & Poor’s Corporation, Moody’s Investors Service, Inc. or Fitch Investors (or, if at any time no two of the foregoing shall be rating such obligations, then from such other nationally recognized rating services as may be acceptable to Lender) and is not listed for possible down-grade in any publication of any of the foregoing rating services; (z) domestic certificates of deposit or domestic time deposits or repurchase agreements issued by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia having combined capital and surplus of not less than \$1,000,000,000.00, which commercial bank has a rating of at least either AA or such comparable rating from Standard & Poor’s Corporation or Moody’s Investors Service, Inc., respectively; (aa) any funds deposited or invested by Guarantor in accounts maintained with Lender and which are not held in escrow for, or pledged as security for, any obligations of Guarantor, Borrower and/or any of their affiliates; (bb) money market funds having assets under management in excess of \$2,000,000,000.00 and/or (cc) any unrestricted stock, shares, certificates, bonds, debentures, notes or other instrument which constitutes a “security” under the Security Act of 1933 (other than Guarantor, Borrower and/or any of their affiliates) which are freely tradable on any nationally recognized securities exchange and are not otherwise encumbered by Guarantor.

14. **Notice of Litigation.** Guarantor shall promptly give Lender notice of all litigation or proceedings before any court or Governmental Authority affecting Guarantor or its property, except litigation or proceedings which, if adversely determined, could not reasonably be expected to have a material adverse effect on the financial condition or operations of Guarantor or its ability to perform any of its obligations hereunder.

15. **Access to Records.** Guarantor shall give Lender and its representatives access to, and permit Lender and such representatives to examine, copy or make extracts from, any and all books, records and documents in the possession of Guarantor relating to the performance of Guarantor’s obligations hereunder and under any of the Loan Documents, upon reasonable notice and all at such times during normal business hours and as often as Lender may reasonably request. If Guarantor is not an individual, Guarantor shall continuously maintain its existence and, except with Lender’s prior written consent shall not dissolve or permit its dissolution.

16. **Assignment by Lender.** In connection with any sale, assignment or transfer of the Loan, Lender may sell, assign or transfer this Guaranty and all or any of its rights, privileges, interests and remedies hereunder to any other person or entity whatsoever without notice to or consent by Guarantor, and in such event the assignee shall be entitled to the benefits of this Guaranty and to exercise all rights, interests and remedies as fully as Lender.

17. **Termination.** This Guaranty shall terminate only when the Debt has been paid or defeased in full and all Liabilities have been paid in full, including all interest thereon, late charges and other charges and fees included within the Liabilities and the Debt. When the conditions described above have been fully met, Lender will, upon request, furnish to Guarantor a written cancellation of this Guaranty.

18. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: KeyBank National Association  
11501 Outlook, Suite 300  
Overland Park, Kansas 66211  
Facsimile No.: 877-379-1625  
Attention: Loan Servicing

with a copy to: Katten Muchin Rosenman LLP  
550 South Tryon Street, Suite 2900  
Charlotte, North Carolina 28202  
Attention: Daniel S. Huffenus, Esq.  
Facsimile No.: (704) 444-2050

If to Guarantor: Moody National REIT II, Inc.  
6363 Woodway, Suite 110  
Houston, Texas 77057  
Attention: Brett C. Moody  
Facsimile No.: (713) 997-7505

Brett C. Moody  
6363 Woodway, Suite 110  
Houston, Texas 77057  
Facsimile No.: (713) 997-7505

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

**19. Waiver of Jury Trial. TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, GUARANTOR HEREBY AGREES 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 THIS GUARANTY, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER 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 GUARANTOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GUARANTOR.**

**20. Miscellaneous.** This Guaranty shall be a continuing guaranty. This Guaranty shall bind the heirs, successors and assigns of Guarantor (except that Guarantor may not assign his, her, or its liabilities under this Guaranty without the prior written consent of Lender, which consent Lender may in its discretion withhold), and shall inure to the benefit of Lender, its successors, transferees and assigns. Each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law. Neither this Guaranty nor any of the terms hereof, including the provisions of this Section, may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Guaranty; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Guaranty; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Guaranty. This Guaranty may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Guaranty. The failure of any party hereto to execute this Guaranty, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. As used in this Guaranty, (i) the terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to," (ii) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa, (iii) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Guaranty, (iv) no inference in favor of, or against, Lender or Guarantor shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document, (v) the term "Borrower" shall mean individually and collectively, jointly and severally, each Borrower (if more than one) and shall include the successors (including any subsequent owner or owners of the Property in fee simple or any part thereof or any fee simple interest therein and Borrower in its capacity as debtor-in-possession after the commencement of any bankruptcy proceeding), assigns, heirs, personal representatives, executors and administrators of Borrower, (vi) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or," (vii) the words "hereof," "herein," "hereby," "hereunder," and similar terms in this Guaranty refer to this Guaranty as a whole and not to any particular provision or section of this Guaranty, and

(viii) an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by Lender. Wherever Lender’s judgment, consent, approval or discretion is required under this Guaranty or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms of this Guaranty, including any right to determine that something is satisfactory or not (“**Decision Power**”), such Decision Power shall be exercised in the sole and absolute discretion of Lender except as may be otherwise expressly and specifically provided herein. Such Decision Power and each other power granted to Lender upon this Guaranty or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer or attorney-in-fact), and Guarantor hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent. If any provision of this Guaranty is held invalid or unenforceable by final and unappealable judgment of the court having jurisdiction over the matter and persons, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, its application in other circumstances, or the remaining provisions of this Guaranty. Any capitalized terms used in this Guaranty and not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

21. **Applicable Law; Jurisdiction and Venue.** This Guaranty shall be governed by and construed in accordance with the laws of jurisdiction in which the real property collateral for the Loan is located (“**Governing State**”). Guarantor hereby consents to personal jurisdiction in the Governing State. Venue of any action brought to enforce this Guaranty or any other Loan Document or any action relating to the Loan or the relationships created by or under the Loan Documents (“**Action**”) shall, at the election of Lender, be in (and if any Action is originally brought in another venue, the Action shall at the election of Lender be transferred to) a state or federal court of appropriate jurisdiction located in the Governing State. Guarantor hereby consents and submits to the personal jurisdiction of the Governing State and of federal courts located in the Governing State in connection with any Action and hereby waives any and all personal rights under the laws of any other state to object to jurisdiction within such State for purposes of any Action. Guarantor hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (a) any claim that it is not subject to such jurisdiction, (b) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Guaranty may not be enforced in or by those courts, or that it is exempt or immune from execution, (c) that the Action is brought in an inconvenient forum, or (d) that the venue for the Action is in any way improper.

22. **OFAC.** Guarantor hereby represents, warrants and covenants that Guarantor is not (and will not be) a person with whom Lender is restricted from doing business under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury of the United States of America (including, those Persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and, to the best of Guarantor’s knowledge, is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Guarantor hereby covenants to provide Lender with any additional information that Lender reasonably deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

23. **Local Law Provisions.** In the event of any inconsistencies between the terms and conditions of this Section and any other terms and conditions of this Guaranty, the terms and conditions of this Section shall be binding.

Moody Guarantor hereby represents and warrants that Moody Guarantor is a resident of the State of Texas and that Moody Guarantor’s primary domicile is in the State of Texas, which is a State that is a community property jurisdiction. In connection with the foregoing, Moody Guarantor’s spouse has executed and delivered to Lender a spousal consent with respect to this Guaranty (the “**Spousal Consent**”), which Spousal Consent is attached hereto as Exhibit A. In the event that Moody Guarantor enters into a new marriage, at any time when Moody Guarantor is a resident (and/or has a primary domicile) in a community property jurisdiction, Moody Guarantor shall cause such spouse to execute and deliver to Lender a replacement Spousal Consent within ten (10) days after the occurrence of any such marriage. Moody Guarantor’s failure to comply with any of the foregoing shall, at Lender’s option, constitute an “**Event of Default**” hereunder and under the Loan Agreement.

24. **Release of Moody Guarantor.** Provided that no Event of Default shall then exist, Moody Guarantor shall be deemed released as guarantor hereunder and as indemnitor under the Environmental Indemnity upon REIT Guarantor delivering to Lender evidence reasonably acceptable to Lender that REIT Guarantor has achieved a Net Worth of not less than \$25,000,000.00 and Liquidity of not less than \$2,000,000.00 (the “**Moody Guarantor Release Event**”). Upon the occurrence of the Moody Guarantor Release Event, Moody Guarantor shall be deemed released automatically from all liability under this Guaranty and the Environmental Indemnity first accruing after such release and all references to “Guarantor” in this Guaranty and the other Loan Documents shall be solely a reference to REIT Guarantor, and Moody Guarantor shall have no further obligations hereunder or under the other Loan Documents.

[NO FURTHER TEXT ON THIS PAGE]

**IN WITNESS WHEREOF**, Guarantor has executed or caused this Guaranty to be executed as of the day and year first above written.

**GUARANTOR:**

**MOODY NATIONAL REIT II, INC.**, a Maryland corporation

By: /s/ Brett C. Moody

Brett C. Moody

Chief Executive Officer

/s/ Brett C. Moody

**BRETT C. MOODY**

Exhibit A

Spousal Consent  
(attached hereto)

**CONSENT OF SPOUSE OF BRETT C. MOODY**

The undersigned spouse of Brett C. Moody hereby consents to the execution of the foregoing Guaranty by her husband and agrees to be bound thereby to the extent of her interest in any assets or property of Brett C. Moody and further agrees that their community assets shall be bound thereby. This consent shall not be construed as an agreement by the undersigned spouse that such spouse's separate property is subject to the claims of Lender arising out of enforcement of this Guaranty.

/s/ Amy Moody

Amy Moody, an Individual

**ENVIRONMENTAL INDEMNITY AGREEMENT**

**THIS ENVIRONMENTAL INDEMNITY AGREEMENT** (this “**Agreement**”) is made as of October 15, 2015, by **MOODY NATIONAL LANCASTER-AUSTIN HOLDING, LLC**, a Delaware limited liability company, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**Borrower**”) and **BRETT C. MOODY**, an individual having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**Moody Guarantor**”), and **MOODY NATIONAL REIT II, INC.**, a Maryland corporation, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**REIT Guarantor**”; together with Moody Guarantor hereinafter referred to, individually and collectively, as the context may require, as “**Guarantor**”; Borrower and Guarantor hereinafter referred to, individually and collectively, as the context may require, as “**Indemnitor**”), in favor of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an address at 11501 Outlook, Suite 300, Overland Park, Kansas 66211 (together with its successors and assigns, “**Indemnitee**”) and the other Indemnified Parties (as defined in the Loan Agreement).

**RECITALS:**

The following recitals are a material part of this Agreement.

- A. Borrower is the owner of the Property.
- B. Indemnitee is prepared to make a loan (the “**Loan**”) to Borrower in the principal amount of \$ 16,575,000.00 pursuant to a Loan Agreement of even date herewith between Indemnitee and Borrower (the “**Loan Agreement**”), which Loan shall be evidenced by that certain Promissory Note of even date herewith given by Borrower in favor of Indemnitee (the “**Note**”) and secured by, among other things one or more mortgages/deeds of trust/deeds to secure debt, dated as of the date hereof, given by Borrower to Indemnitee and encumbering the Property (the “**Security Instrument**”). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.
- C. Indemnitee is unwilling to make the Loan unless Indemnitor agrees to provide the indemnification, representations, warranties, covenants and other matters described in this Agreement for the benefit of the Indemnified Parties.
- D. Indemnitor is entering into this Agreement to induce Indemnitee to make the Loan.

**AGREEMENT:**

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor hereby agrees for the benefit of the Indemnified Parties as follows:

1. **Indemnification.** Indemnitor covenants and agrees, at its sole cost and expense, to protect, defend, indemnify, release and hold the Indemnified Parties harmless from and against any and all Losses (defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way attributable to any one or more of the following: (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Indemnitor, any Person affiliated with Indemnitor, and any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Indemnitor, any Person affiliated with Indemnitor, and any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including any failure by Indemnitor, any Person affiliated with Indemnitor, and any tenant or other user of the Property to comply with any order of any Governmental Authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with the environmental condition of the Property; (h) in each case, to the extent arising from the presence of Hazardous Substances or the violation of any Environmental Law, any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including costs to investigate and assess such injury, destruction or loss; (i) any acts of Indemnitor, any Person affiliated with Indemnitor, and any tenant or other user of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances at any facility or incineration vessel containing such or similar Hazardous Substances; (j) any acts of Indemnitor, any Person affiliated with any Indemnitor, and any tenant

or other user of the Property in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; and (k) in each case, to the extent relating to Hazardous Substances or violation of any Environmental Law, any misrepresentation or inaccuracy in any representation or warranty relating to the environmental condition of the Property or material breach or failure to perform any covenants or other obligations relating to the environmental condition of the Property pursuant to this Agreement, the Loan Agreement or the Security Instrument.

2. **Duty to Defend and Attorneys and Other Fees and Expenses.** Upon written request by any Indemnified Party, Indemnitor shall defend same (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of such Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding, providing that no compromise or settlement shall be entered without Indemnitor's consent, which consent shall not be unreasonably withheld. Upon demand, Indemnitor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

3. **Definitions.** Capitalized terms used herein and not specifically defined herein shall have the respective meanings ascribed to such terms in the Loan Agreement. As used in this Agreement, the following terms shall have the following meanings:

The term "**Legal Action**" means any claim, suit or proceeding, whether administrative or judicial in nature.

The term "**Losses**" means any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including strict liabilities), obligations, debts, diminutions in value (but only to the extent of any deficiency in respect of the Debt), fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys' fees, engineers' fees, environmental consultants' fees, and investigation costs (including costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

4. **Unimpaired Liability.** The liability of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Note, the Loan Agreement, the Security Instrument or any other Loan Document to or with Indemnitee by Indemnitor or any Person who succeeds Indemnitor or any Person as owner of the Property. In addition, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by (i) any extensions of time for performance required by the Note, the Loan Agreement, the Security Instrument or any of the other Loan Documents, (ii) any sale or transfer of all or part of the Property, (iii) except as provided herein, any exculpatory provision in the Note, the Loan Agreement, the Security Instrument, or any of the other Loan Documents limiting Indemnitee's recourse to the Property or to any other security for the Note, or limiting Indemnitee's rights to a deficiency judgment against Indemnitor, (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under the Note, the Loan Agreement, the Security Instrument or any of the other Loan Documents or herein, (v) the release of Indemnitor or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the other Loan Documents by operation of law, Indemnitee's voluntary act, or otherwise, (vi) the release or substitution in whole or in part of any security for the Loan, or (vii) Indemnitee's failure to record the Security Instrument or file any UCC financing statements (or Indemnitee's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

5. **Enforcement.** The Indemnified Parties may enforce the obligations of Indemnitor without first resorting to or exhausting any security or collateral or without first having recourse to the Note, the Loan Agreement, the Security Instrument, or any other Loan Documents or any of the Property, through foreclosure proceedings or otherwise, provided, however, that nothing herein shall inhibit or prevent Indemnitee from suing on the Note, foreclosing, or exercising any power of sale under, the Security Instrument, or exercising any other rights and remedies thereunder. This Agreement is not collateral or security for the Debt, unless Indemnitee expressly elects in writing to make this Agreement additional collateral or security for the Debt, which Indemnitee is entitled to do in its discretion. It is not necessary for an Event of Default to have occurred for the Indemnified Parties to exercise their rights pursuant to this Agreement. Notwithstanding any provision of the Loan Agreement, the obligations pursuant to this Agreement are exceptions to any non-recourse or exculpation provision of the Loan Agreement; Indemnitor is fully and personally liable for such obligations, and such liability is not limited to the original or amortized principal balance of the Loan or the value of the Property.

6. **Survival.** The obligations and liabilities of Indemnitor under this Agreement shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument. Notwithstanding the provisions of this Agreement to the contrary, the liabilities and obligations of Indemnitor hereunder shall not apply to the extent that Indemnitor can prove that such liabilities and obligations arose solely from Hazardous Substances that: (a) were not present on or a threat to the Property prior to the date that Indemnitee or its nominee acquired title to the Property, whether by foreclosure, exercise of power of sale or otherwise (or, if the Property is transferred to an

assuming Transferee in accordance with the provisions of the Loan Agreement, were not present on or a threat to the Property prior to the date on which such Transferee acquired title to the Property) and (b) were not the result of any act or negligence of Indemnitor or any of Indemnitor's affiliates, agents or contractors.

7. **Interest.** Any amounts payable to any Indemnified Parties under this Agreement shall become immediately due and payable on demand and, if not paid within thirty (30) days of such demand therefor, shall bear interest at the lesser of (a) the Default Rate or (b) the maximum interest rate which Indemnitor may by law pay or the Indemnified Parties may charge and collect, from the date payment was due, provided that the foregoing shall be subject to the provisions of Section 10 of the Note.

8. **Waivers.** (a) Indemnitor hereby waives (i) any right or claim of right to cause a marshaling of Indemnitor's assets or to cause Indemnitor or other Indemnified Parties to proceed against any of the security for the Loan before proceeding under this Agreement against Indemnitor; (ii) and relinquishes all rights and remedies accorded by applicable law to indemnitors or guarantors, except any rights of subrogation, reimbursement, contribution or indemnity (collectively, "**Cross-Indemnity Rights**") which Indemnitor may have, provided that the indemnity provided for hereunder shall neither be contingent upon the existence of any such Cross-Indemnity Rights nor subject to any claims or defenses whatsoever which may be asserted in connection with the enforcement or attempted enforcement of such Cross-Indemnity Rights including any claim that such Cross-Indemnity Rights were abrogated by any acts of Indemnitor or other Indemnified Parties; (iii) the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against or by Indemnitor or other Indemnified Parties; (iv) notice of acceptance hereof and of any action taken or omitted in reliance hereon; (v) presentment for payment, demand of payment, protest or notice of nonpayment or failure to perform or observe, or other proof, or notice or demand; and (vi) all homestead exemption rights against the obligations hereunder and the benefits of any statutes of limitations or repose. Notwithstanding anything to the contrary contained herein, Indemnitor hereby agrees to postpone the exercise of any Cross-Indemnity Rights with respect to any collateral securing the Loan until the Loan shall have been paid in full.

(a) Indemnitor hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise, relating to this agreement or the other loan documents or any acts or omissions of any Indemnified Parties in connection therewith.

9. **Subrogation.** Indemnitor shall take any and all reasonable actions, including institution of Legal Action against third parties, necessary or appropriate to obtain reimbursement, payment or compensation from such Person responsible for the presence of any Hazardous Substances at, in, on, under or near the Property or otherwise obligated by law to bear the cost. The Indemnified Parties shall be and hereby are subrogated to all of Indemnitor's rights now or hereafter in such claims.

10. **Indemnitor's Representations and Warranties.** Indemnitor represents and warrants that:

(a) if Indemnitor is a corporation, a limited liability company, a statutory trust or partnership, it has the full corporate/ limited liability company/ partnership/ trust power and authority to execute and deliver this Agreement and to perform its obligations hereunder; the execution, delivery and performance of this Agreement by Indemnitor has been duly and validly authorized; and all requisite corporate/ limited liability company/ partnership/ trust action has been taken by Indemnitor to make this Agreement valid and binding upon Indemnitor, enforceable in accordance with its terms;

(b) if Indemnitor is a corporation, a limited liability company, a statutory trust or partnership, its execution of, and compliance with, this Agreement will not result in the breach of any term or provision of the charter, by-laws, partnership, operating or trust agreement, or other governing instrument of Indemnitor or result in the breach of any term or provision of, or conflict with or constitute a default under, or result in the acceleration of any obligation under, any agreement, indenture or loan or credit agreement or other instrument to which Indemnitor or the Property is subject, or result in the violation of any law, rule, regulation, order, judgment or decree to which Indemnitor or the Property is subject;

(c) to the best of Indemnitor's knowledge, there is no action, suit, proceeding or investigation pending or threatened against it which, either in any one instance or in the aggregate, may result in any material adverse change in the business, operations, financial condition, properties or assets of Indemnitor, or in any material impairment of the right or ability of Indemnitor to carry on its business substantially as now conducted, or in any material liability on the part of Indemnitor, or which would draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of Indemnitor contemplated herein, or which would be likely to impair materially the ability of Indemnitor to perform under the terms of this Agreement;

(d) it does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant contained in this Agreement;

(e) to the best of Indemnitor's knowledge, no approval, authorization, order, license or consent of, or registration or filing with, any governmental authority or other person, and no approval, authorization or consent of any other party is required in connection with this Agreement; and

(f) this Agreement constitutes a valid, legal and binding obligation of Indemnitor, enforceable against it in accordance with the terms hereof.

11. **No Waiver.** No delay by any Indemnified Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of any such privilege, power or right.

12. **Notice of Legal Actions.** Each party hereto shall, within ten (10) business days of receipt thereof, give written notice to the other party hereto of (i) any notice, advice or other communication received in writing from any Governmental Authority or any source whatsoever with respect to Hazardous Substances on, from or affecting the Property, and (ii) any Legal Action brought against such party or related to the Property, with respect to which Indemnitor could reasonably be expected to have liability under this Agreement. Such notice shall comply with the provisions of Section 14 hereof.

13. **Examination of Books and Records.** At reasonable times and upon reasonable notice, the Indemnified Parties and their accountants shall have the right to examine the records, books, management and other papers of Indemnitor pertaining to its financial condition or the income, expenses and operation of the Property, at the Property or at the office regularly maintained by Indemnitor where the books and records are located. The Indemnified Parties and their accountants shall have the right to make copies and extracts from the foregoing records and other papers.

14. **Notices.** All notices or other written communications hereunder shall be made in accordance with (a) Section 10.6 of the Loan Agreement in the case of Lender and Borrower, and (b) the respective Guaranty Agreement executed by Indemnitor in the case of any Indemnitor.

15. **Counterparts.** This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

16. **No Oral Change.** This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Indemnitor or any Indemnified Party, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

17. **Headings, Etc.** The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. **Number and Gender/Successors and Assigns.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person referred to may require. Without limiting the effect of specific references in any provision of this Agreement, the term “**Indemnitor**” shall be deemed to refer to each and every Person comprising an Indemnitor from time to time, as the sense of a particular provision may require, and to include the heirs, executors, administrators, legal representatives, successors and assigns of such Person, all of whom shall be bound by the provisions of this Agreement, provided that no obligation of Indemnitor may be assigned except with the written consent of Indemnitor. Each reference herein to Indemnitor shall be deemed to include its successors and assigns. This Agreement shall inure to the benefit of the Indemnified Parties and their respective successors and assigns forever.

19. **Release of Liability.** Any one or more parties liable upon or in respect of this Agreement may be released without affecting the liability of any party not so released.

20. **Rights Cumulative.** The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies which Indemnitor has under the Note, the Security Instrument, the Loan Agreement or the other Loan Documents or would otherwise have at law or in equity.

21. **Inapplicable Provisions.** If any term, condition or covenant of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

22. **Governing Law.** The governing law and related provisions set forth in Section 10.3 of the Loan Agreement (including, any authorized agent provisions thereof) are hereby incorporated by reference as if fully set forth herein (with Indemnitor substituted in all places where Borrower appears thereunder) and shall be deemed fully applicable to Indemnitor hereunder. Indemnitor hereby certifies that it has received and reviewed the Loan Agreement (including, Section 10.3 thereof).

23. **Miscellaneous.** (a) Wherever pursuant to this Agreement (i) Indemnitor exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Indemnitor, or (iii) any other decision or determination is to be made by Indemnitor, the decision of Indemnitor to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Indemnitor, shall be in the sole and absolute discretion of Indemnitor and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Wherever pursuant to this Agreement it is provided that Indemnitor pay any costs and expenses, such costs and expenses shall include legal fees and disbursements of Indemnitor, whether retained firms, the reimbursements for the expenses of the in-house staff or otherwise.

(c) If Indemnitor consists of more than one person or party, the obligations and liabilities of each such person or party hereunder shall be joint and several.

(d) The following rules of construction shall be applicable for all purposes of this Agreement and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

(i) The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to”;

(ii) The term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”;

(iii) The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision or section of this Agreement;

(iv) An Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by Lender; and

(v) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document.

24. **State Specific Provisions.** In the event of any inconsistencies between the other terms and conditions of this Agreement and this Section, the terms and conditions of this Section shall control and be binding.

None

25. **Release of Moody Guarantor.** Provided that no Event of Default shall then exist, Moody Guarantor shall be deemed released as Indemnitor hereunder and as guarantor under the Guaranty upon REIT Guarantor delivering to Lender evidence reasonably acceptable to Lender that REIT Guarantor has achieved a Net Worth of not less than \$25,000,000.00 and Liquidity of not less than \$2,000,000.00 (the “**Moody Guarantor Release Event**”). Upon the occurrence of the Moody Guarantor Release Event, Moody Guarantor shall be deemed released automatically from all liability under this Agreement and the Guaranty first accruing after such release and all references to “Indemnitor” in this Agreement and the other Loan Documents shall be solely a reference to REIT Guarantor, and Moody Guarantor shall have no further obligations hereunder or under the other Loan Documents. As used in this Section 25, “Net Worth” and Liquidity” shall have the meaning ascribed to such terms in the Guaranty.

**[NO FURTHER TEXT ON THIS PAGE]**

**IN WITNESS WHEREOF**, this Agreement has been executed by Indemnitor as of the day and year first above written.

**INDEMNITOR:**

**MOODY NATIONAL LANCASTER-AUSTIN  
HOLDING, LLC**, a Delaware limited liability company

By: /s/ Brett C. Moody

Brett C. Moody

President

**MOODY NATIONAL REIT II, INC.**,  
a Maryland corporation

By: /s/ Brett C. Moody

Brett C. Moody

Chief Executive Officer

/s/ Brett C. Moody

**BRETT C. MOODY**

**Subsidiaries of the Registrant**

Moody National Operating Partnership II, LP  
Moody OP Holdings II, LLC  
Moody National Lancaster-Austin Holding, LLC  
Moody National Lancaster-Austin MT, LLC  
MN Lancaster-Austin MT, Inc.

Delaware  
Delaware  
Delaware  
Delaware  
Delaware

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors  
Moody National REIT II, Inc.

We consent to the use of our report dated January 12, 2015, with respect to the consolidated balance sheet of Moody National REIT II, Inc. and subsidiaries as of December 31, 2014, and the related consolidated statements of operations, equity and cash flows for the period from July 25, 2014 (date of inception) through December 31, 2014 included herein, and our report dated December 30, 2015, with respect to the balance sheets of Mueller Hospitality, LP as of September 30, 2015 and December 31, 2014 and the related statements of operations, owners' equity, and cash flows for the nine months ended September 30, 2015 and the year ended December 31, 2014, included in the Form 8-K/A of Moody National REIT II, Inc. filed with the Securities and Exchange Commission on December 30, 2015 a copy of which is included as an exhibit to Supplement No. 9 contained within Post-Effective Amendment No. 2 to the Registration Statement on Form S-11, as amended, and to the reference to our firm under the heading "Experts" in the Registration Statement, as amended, and related Prospectus.

Atlanta, Georgia  
January 15, 2016

/s/ Frazier & Deeter, LLC