

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported):
May 26, 2016 (May 20, 2016)

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 1.01 Entry into a Material Definitive Agreement.

Limited Partnership Agreement

On May 20, 2016, Moody National REIT II, Inc. (the “Company”) entered into the Amended and Restated Limited Partnership Agreement (the “Amended Operating Partnership Agreement”) of Moody National Operating Partnership II, LP (the “Operating Partnership”), with Moody OP Holdings II, LLC and Moody National LPOP II, LLC. The Amended Operating Partnership Agreement amends and restates the Limited Partnership Agreement of Moody National Operating Partnership II, LP, entered into on August 15, 2014, by and among the Company, Moody OP Holdings II, LLC and Moody National LPOP II, LLC in connection with the granting of OP Units to certain TIC Owners in connection with the acquisition of the Springhill Suites Seattle (as such terms are defined below), and to make other revisions thereto. Under the Amended Operating Partnership Agreement, the Company remains the sole general partner of the Operating Partnership and has the exclusive power to manage and conduct the business of the Operating Partnership.

The Amended Operating Partnership Agreement provides, among other things, that the limited partners will generally have the right to cause the Operating Partnership to redeem all or a portion of their limited partnership units for, at the sole discretion of the Company, cash, shares of the Company’s common stock, or a combination of both. In connection with the exercise of these redemption rights, a limited partner must make certain representations, including that the delivery of shares of the Company’s common stock upon redemption would not result in such limited partner owning shares in excess of the ownership limits in the Company’s charter.

The Amended Operating Partnership Agreement further provides that, subject to the foregoing, limited partners may exercise their redemption rights only with respect to limited partnership units that they have held for at least one year. A limited partner may not deliver more than two redemption notices in a single calendar year and may not exercise a redemption right for fewer than 1,000 limited partnership units, unless such limited partner holds fewer than 1,000 limited partnership units, in which case, if such limited partner chooses to exercise its redemption right, it must exercise its redemption right for all of its limited partnership units.

With certain exceptions, limited partners may not transfer their limited partnership units, in whole or in part, without the Company’s written consent as general partner of the Operating Partnership.

The foregoing summary of the Amended Operating Partnership Agreement does not purport to be complete and is qualified in its entirety by reference to the Amended Operating Partnership Agreement, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Agreements Related to Springhill Suites Seattle

The information set forth under Items 2.01 and 2.03 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 1.01.

Item 2.01 Completion of Acquisition or Disposition of Assets.

Property Acquisition

As previously disclosed, on January 28, 2016, Moody National Companies L.P. (“Moody LP”) assigned to the Company all of Moody LP’s rights to and interests in the Agreement of Purchase and Sale, dated as of October 26, 2015 (the “Purchase Agreement”), for the acquisition of a hotel property located in Seattle, Washington commonly known as the Springhill Suites Seattle Downtown (the “Springhill Suites Seattle”) from the current tenant-in-common owners of the Springhill Suites Seattle (the “TIC Owners”) and an affiliate of the Company’s advisor (collectively with the TIC Owners, the “Sellers”) for an aggregate purchase price of \$74,100,000, excluding acquisition and other costs. Pursuant to the Purchase Agreement, the Sellers were entitled to elect to receive cash and/or common partnership units (“OP Units”) in the Operating Partnership. On May 24, 2016, the Company assigned all of its rights and interests in and to the Purchase Agreement to Moody National Yale-Seattle Holding, LLC, a wholly-owned subsidiary of the Operating Partnership (“Moody Holding”).

On May 24, 2016, Moody Holding acquired fee simple title to the Springhill Suites Seattle from the Sellers for an aggregate purchase of approximately \$74,100,000 to the Sellers. Two of the TIC Owners received a total of approximately 18,000 OP Units, with an aggregate value of approximately \$450,540 (based on a per OP Unit price of \$25.03). The 18,000 OP Units issued to the TIC Owners represent approximately 1.22% of the total issued and outstanding OP Units of the Operating Partnership. The OP Units were issued in a private transaction exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended. The Company financed the cash portion of the purchase price of the Springhill Suites Seattle with (1) a portion of the proceeds from the Company’s initial public offering and (2) the proceeds of a mortgage loan secured by the Springhill Suites Seattle with an aggregate initial principal balance of \$56,250,000 (the “Property Loan”) from KeyBank National Association (the “Lender”). See Item 2.03 of this Current Report on Form 8-K for an additional discussion of the Property Loan. In connection with the acquisition of the Springhill Suites Seattle, the Company’s advisor earned an acquisition fee of \$1,111,500 and a debt financing fee of \$562,500.

The Springhill Suites Seattle is a select-service hotel consisting of 234 guest rooms. Located on the southeast corner of Stewart Street and Yale Avenue in downtown Seattle, the Springhill Suites Seattle sits in one of the city's major transportation routes with ready access to the corporate headquarters of Amazon, Microsoft, Nordstrom and REI. The Springhill Suites Seattle is also located near Puget Sound and is walking distance to the Seattle Space Needle.

Leasing and Management of the Property

Moody Holding leases the Springhill Suites Seattle to Moody National Yale-Seattle MT, LLC, an indirect, wholly-owned subsidiary of the Operating Partnership (the "Master Tenant") pursuant to a Hotel Lease Agreement between Moody Holding and the Master Tenant (the "Hotel Lease"). The Hotel Lease provides for a ten-year 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 Springhill Suites Seattle to a non-affiliated entity, effective upon the consummation of such a sale of the Springhill Suites Seattle. Pursuant to the Hotel Lease, the Master Tenant will pay an annual base rent of \$6,600,000 per year for the first five years of the term of the Hotel Lease. The annual base rent paid by the Master Tenant will be adjusted as set forth in the Hotel Lease beginning in year six of the lease term. In addition, the 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 percentage of the Springhill Suites Seattle'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 (the "Franchise Agreement") with Marriott International, Inc. ("Marriott") pursuant to which Marriott has granted the Master Tenant a limited, non-exclusive license to establish and operate the Springhill Suites Seattle using the "Springhill Suites" name and brand and certain other proprietary marks and systems. The Franchise Agreement expires on November 2, 2026 but may be extended, by amendment and subject to certain conditions, to May 24, 2031. Pursuant to the Franchise Agreement, the Master Tenant pays Marriott a monthly program fee equal to 5.5% of the Springhill Suites Seattle's gross room revenues (as defined in the Franchise Agreement) and a monthly marketing fee equal to 2.5% of the Springhill Suites Seattle's gross room revenues.

Moody National Hospitality Management, LLC, an affiliate of the Company (the "Property Manager"), manages the Springhill Suites Seattle pursuant to a Hotel Management Agreement between the Property Manager and the Master Tenant (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 Springhill Suites Seattle's gross operating revenues (as defined in the Management Agreement) for the previous month. 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 the Property Manager or the Master Tenant provides written notice of termination at least 180 days prior to the end of the then-current term. The Master Tenant may terminate the Management Agreement upon (1) a material breach, default, or noncompliance by the Property Manager under the Management Agreement, (2) the operation of the Springhill Suites Seattle 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 Springhill Suites Seattle 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 the Master Tenant terminates the Management Agreement for any reason other than the foregoing, the Master Tenant will pay the Property Manager a termination fee equal to the base management fee estimated to be earned by the 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 if such termination fee is not permitted under the terms of the Property Loan documents.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

Property Loan

In connection with the acquisition of the Springhill Suites Seattle, Moody Holding borrowed \$56,250,000 from the Lender pursuant to the Property Loan. The Property Loan is evidenced by a promissory note issued pursuant to a Loan Agreement (the "Loan Agreement").

The Property Loan is a short-term financing facility and, upon closing of the Property Loan, Moody Holding paid the lender a commitment fee of 0.75% of the amount borrowed, or \$421,875. 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 February 23,

2017 (the “Maturity Date”), unless extended pursuant to the terms of the Loan Agreement. Prior to or upon the maturity of the Property Loan, the Company intends to obtain long-term financing with respect to the Property. Interest on the outstanding principal balance of the Property Loan accrues at a rate (the “LIBOR Rate”) equal to LIBOR for the applicable Interest Period, plus either 3.75% or 4.75%, depending on the then-current Loan to Value Ratio, as such terms are defined in the Loan Agreement. If a LIBOR Rate is unavailable pursuant to the terms of the Loan Agreement, then the Property Loan will accrue interest at a rate (the “Base Rate”) equal to (a) the greater of (i) the Lender’s “prime rate,” (ii) one-month LIBOR plus 1% per annum or (iii) 0.5% above the Federal Funds Effective Rate plus (b) either 2.75% or 3.75%, depending on the then-current Loan to Value Ratio, as such terms are defined in the Loan Agreement. In addition, the Company will pay to the Lender \$2,800,000 on each of July 1, 2016, August 1, 2016 and September 1, 2016, and an estimated payment of \$3,390,000 on October 1, 2016. Notwithstanding the payments described in the preceding sentence, monthly payments on the Property Loan are for interest only; provided, however, that Moody Holding may be required to prepay principal of the Property Loan if certain Debt-Yield or Debt Service Coverage targets, as such terms are defined in the Loan Agreement, are not met. To hedge against changes in LIBOR, Moody Holding also entered into a one-year interest rate cap agreement with a notional amount of \$56,250,000. If an event of default occurs, the Property Loan will accrue interest for the remainder of the then-current Interest Period at a rate that is the lesser of the maximum rate allowed by law or 5% above the LIBOR Rate or Base Rate, as applicable, then in effect. If such event of default continues after the end of the then-current Interest Period, then the Property Loan will accrue interest at a rate that is the lesser of the maximum rate allowed by law or 5% above the Base Rate.

Moody Holding may, upon at least three business days prior written notice to the Lender, prepay the outstanding principle balance, plus all accrued interest and other amounts due, in full (but not in part), but such prepayment may be subject to certain additional exit fees and interest payments.

The performance of the obligations of Moody Holding under the Property Loan is secured by, among other things, a security interest in the Springhill Suites Seattle and other collateral granted to the Lender pursuant to a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing. Pursuant to certain Guarantees, the Company and other parties have agreed to irrevocably and unconditionally guarantee the prompt and unconditional payment to the Lender and its successors and assigns of all obligations and liabilities of Moody Holding for which Moody Holding may be personally liable pursuant to the Loan Agreement.

Pursuant to an Environmental Indemnity Agreement (the “Environmental Indemnity”), Moody Holdings and the Company (collectively, 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 Springhill Suites Seattle or release of hazardous substances from the Springhill Suites Seattle, (2) any activity by the Indemnitors or their respective affiliates or any tenant or occupant of the Springhill Suites Seattle in connection with any treatment, storage, release, removal, handling, transfer or transportation to or from the Springhill Suites Seattle of any hazardous substances, (3) any non-compliance or violations of any environmental laws or permits in connection with the Springhill Suites Seattle 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 related loan document.

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements.

It is not practical at this time to provide the required financial statements for the acquired real property described in this Current Report on Form 8-K, and no financial statements (audited or unaudited) are available at this time. The required financial statements will be filed as an amendment to this Current Report on Form 8-K no later than 71 days after the deadline for filing this Current Report on Form 8-K.

(b) Pro Forma Financial Information.

See paragraph (a) above.

(d) Exhibits.

Exhibit Number	Description
10.1	Amended and Restated Limited Partnership Agreement of Moody National Operating Partnership II, LP
10.2	Assignment and Assumption of Agreement of Purchase and Sale, date May 24, 2016
10.3	Hotel Lease Agreement, effective May 24, 2016, between Moody National Yale-Seattle Holding, LLC and Moody National Yale-Seattle MT, LLC

Exhibit Number	Description
10.4	Hotel Management Agreement, effective May 24, 2016, between Moody National Yale-Seattle MT, LLC and Moody National Hospitality Management, LLC
10.5	Promissory Note, dated May 24, 2016, by Moody National Yale-Seattle Holding, LLC in favor of KeyBank National Association
10.6	Loan Agreement, dated as of May 24, 2016, between Moody National Yale-Seattle Holding, LLC and KeyBank National Association
10.7	Guaranty of Recourse Obligations Agreement, made as of May 24, 2016 by and among Brett C. Moody, Moody National Operating Partnership II, LP, Moody National REIT II, Inc. and KeyBank National Association
10.8	Guaranty of Payment Agreement, made as of May 24, 2016 by and among Brett C. Moody, Moody National Operating Partnership II, LP, Moody National REIT II, Inc. and KeyBank National Association
10.9	Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of May 24, 2016, by and among Moody National Yale-Seattle Holdings, LLC, Old Republic Title, Ltd. And KeyBank National Association
10.10	Environmental Indemnity Agreement, made as of May 24, 2016, by and among Moody National Yale-Seattle Holding, LLC, Brett C. Moody, Moody National Operating Partnership II, LP, Moody National REIT II, Inc. and KeyBank National Association
10.11	Relicensing Franchise Agreement, dated as of May 24, 2016, between Marriott International, Inc. and Moody National Yale-Seattle MT, LLC

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.

Date: May 26, 2016

MOODY NATIONAL REIT II, INC.

By: /s/ Brett C. Moody
Brett C. Moody
Chief Executive Officer and President

EXHIBIT INDEX

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AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT
OF
MOODY NATIONAL OPERATING PARTNERSHIP II, LP
A DELAWARE LIMITED PARTNERSHIP
May 20, 2016

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AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

OF

MOODY NATIONAL OPERATING PARTNERSHIP II, LP

This Amended and Restated Limited Partnership Agreement is entered into this 20th day of May, 2016, between Moody National REIT II, Inc., a Maryland corporation, as the General Partner, and the Limited Partners set forth on Exhibit A attached hereto. Capitalized terms used herein but not otherwise defined shall have the meanings given to them in Article 1.

AGREEMENT

WHEREAS, the General Partner intends to qualify as a real estate investment trust under the Internal Revenue Code of 1986, as amended;

WHEREAS, Moody National Operating Partnership II, LP was formed on July 29, 2014 as a limited partnership under the laws of the State of Delaware, pursuant to a Certificate of Limited Partnership filed with the Office of the Secretary of State of the State of Delaware on July 29, 2014;

WHEREAS, the General Partner desires to conduct its current and future business through the Partnership;

WHEREAS, the Partnership was previously governed by that certain Limited Partnership Agreement of the Partnership, dated as of August 15, 2014 (the "Original Agreement");

WHEREAS, the parties hereto wish to amend and restate the Original Agreement to establish herein their respective rights and obligations in connection with all of the foregoing and certain other matters.

NOW, THEREFORE, in consideration of the foregoing, of mutual covenants between the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINED TERMS

The following defined terms used in this Agreement shall have the meanings specified below:

"Act" means the Delaware Revised Uniform Limited Partnership Act, as it may be amended from time to time.

"Additional Funds" has the meaning set forth in Section 4.3 hereof.

"Adjusted Capital Account" means, with respect any Partner, the Capital Account of such Partner as of the end of each Partnership taxable year or other allocation period (i) increased by any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) and the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(g)(5) and (ii) decreased by the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Adjusted Capital Account as of the end of the relevant Partnership taxable year or other allocation period.

"Administrative Expenses" means (i) all administrative and operating costs and expenses incurred by the Partnership, (ii) those administrative costs and expenses of the General Partner, including any salaries or other payments to directors, officers or employees of the General Partner, and any accounting and legal expenses of the General Partner, which expenses, the Partners have agreed, are expenses of the Partnership and not the General Partner, and (iii) to the extent not included in clause (ii) above, REIT Expenses; provided, however, that Administrative Expenses shall not include any administrative costs and expenses incurred by the General Partner that are attributable to a Property or partnership interests in a Subsidiary Partnership that are owned by the General Partner directly.

"Advisor" or "Advisors" means the Person or Persons, if any, appointed, employed or contracted by the General Partner and responsible for directing or performing the day-to-day business affairs of the General Partner, including any Person to whom such Advisor subcontracts substantially all of such functions.

"Advisory Agreement" means the agreement between the General Partner, the Advisor and the partnership pursuant to which the Advisor will direct or perform the day-to-day business affairs of the General Partner.

“Affiliate” means, with respect to any Person, (i) any Person directly or indirectly, owning, controlling or holding with the power to vote 10% or more of the outstanding voting securities of such other Person; (ii) any Person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held, with the power to vote, by such other Person; (iii) any Person directly or indirectly controlling, controlled by or under common control with such other Person; (iv) any executive officer, director, trustee or general partner of such other Person; and (v) any legal entity for which such Person acts an executive officer, director, trustee or general partner.

“Agreement” means this Amended and Restated Limited Partnership Agreement, as amended, modified supplemented or restated from time to time, as the context requires.

“Aggregate Share Ownership Limit” has the meaning provided in the Articles of Incorporation.

“Applicable Percentage” has the meaning provided in Section 8.5(b) of this Agreement.

“Articles of Incorporation” means the Articles of Incorporation of the General Partner, as amended or restated from time to time, as filed with the Maryland State Department of Assessments and Taxation.

“Capital Account” has the meaning provided in Section 4.4 hereof.

“Capital Contribution” means, with respect to any Partner, any cash, cash equivalents or the fair market value of other property which such Partner contributes or is deemed to contribute to the Partnership pursuant to Section 4.1 or 4.2 hereof. Any reference to the Capital Contribution of a Partner shall include the Capital Contribution made by a predecessor holder of the Partnership Interests of such Partner.

“Carrying Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(i) The initial Carrying Value of any asset contributed to the Partnership shall be the gross fair market value of such asset, as agreed by the Contributing Partner and the General Partner.

(ii) The Carrying Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner using such reasonable method of valuation as it may adopt immediately prior to the following events:

(a) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution or the provision of services to or for the benefit of the Partnership, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(b) the distribution by the Partnership to a Partner of more than a de minimis amount of property as consideration for an interest in the Partnership, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(c) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(d) the grant of an interest in the Partnership (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Partnership by an existing Partner acting in a partner capacity, or by a new Partner acting in a partner capacity or in anticipation of becoming a Partner of the Partnership, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership; and

(e) at such other times as the General Partner shall reasonably deem necessary or advisable if permitted by, or required to comply with, Regulations Sections 1.704-1(b) and 1.704-2.

(iii) The Carrying Value of a Partnership asset distributed to a Partner shall be the gross fair market value of such asset on the date of distribution, as agreed by the distributee and the General Partner.

(iv) The Carrying Values of Partnership assets shall be adjusted to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Carrying Values shall not be adjusted pursuant to this clause (iv) to the extent that the General Partner reasonably determines that an adjustment pursuant to clause (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

(v) If the Carrying Values of a Partnership asset has been determined or adjusted pursuant to clause (i), (ii), or (iv) above, such Carrying Values shall thereafter be adjusted by Depreciation.

“Cash Amount” means an amount of cash equal to the lesser of (i) the Value of the REIT Shares Amount on the date of receipt by the General Partner of a Notice of Redemption or (ii) the applicable Redemption Price determined by the General Partner.

“Certificate” means any instrument or document that is required under the laws of the State of Delaware, or any other jurisdiction in which the Partnership conducts business, to be signed and sworn to by the Partners of the Partnership (either by themselves or pursuant to the power-of-attorney granted to the General Partner in Section 8.2 hereof) and filed for recording in the appropriate public offices within the State of Delaware or such other jurisdiction to perfect or maintain the Partnership as a limited partnership, to effect the admission, withdrawal, or substitution of any Partner of the Partnership, or to protect the limited liability of the Limited Partners as limited partners under the laws of the State of Delaware or such other jurisdiction.

“Code” means the Internal Revenue Code of 1986, as amended, and as hereafter amended from time to time. Reference to any particular provision of the Code shall mean that provision in the Code at the date hereof and any successor provision of the Code.

“Commission” means the U.S. Securities and Exchange Commission.

“Common Share Ownership Limit” has the meaning provided in the Articles of Incorporation.

“Common Unit” means a fractional, undivided share of the Partnership Interests of all Partners issued pursuant to Article 4 hereof, but does not include, unless otherwise provided herein for specific purposes, any Preferred Unit, Special Limited Partnership Unit, or any other Partnership Unit specified in a Partnership Unit Designation as being other than a Common Unit; provided, however, that the General Partner Interest and the Limited Partner Interests shall have the differences in rights and privileges as specified in this Agreement.

“Conversion Factor” means 1.0, provided that in the event that the General Partner (i) declares or pays a dividend on its outstanding REIT Shares wholly or partially in REIT Shares or makes a distribution to all holders of its outstanding REIT Shares wholly or partially in REIT Shares, (ii) subdivides its outstanding REIT Shares, or (iii) combines its outstanding REIT Shares into a smaller number of REIT Shares, the Conversion Factor shall be adjusted by multiplying the Conversion Factor by a fraction, the numerator of which shall be the number of REIT Shares issued and outstanding on the record date for such dividend, distribution, subdivision or combination (assuming for such purposes that such dividend, distribution, subdivision or combination has occurred as of such time), and the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on such date and, provided further, that in the event that an entity other than an Affiliate of the General Partner shall become General Partner pursuant to any merger, consolidation or combination of the General Partner with or into another entity (the “Successor Entity”), the Conversion Factor shall be adjusted by multiplying the Conversion Factor by the number of shares of the Successor Entity into which one REIT Share is converted pursuant to such merger, consolidation or combination, determined as of the date of such merger, consolidation or combination. Any adjustment to the Conversion Factor shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event; provided, however, that if the General Partner receives a Notice of Redemption after the record date, but prior to the effective date of such dividend, distribution, subdivision or combination, the Conversion Factor shall be determined as if the General Partner had received the Notice of Redemption immediately prior to the record date for such dividend, distribution, subdivision or combination.

“Defaulting Limited Partner” has the meaning provided in Section 5.2(c) of this Agreement.

“Depreciation” means, for each fiscal year, an amount equal to the federal income tax depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year, except that if the Carrying Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Carrying Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Carrying Value using any reasonable method selected by the General Partner.

“Director” means a member of the board of directors of the General Partner.

“Event of Bankruptcy” means, as to any Person, the filing of a petition for relief as to such Person as debtor or bankrupt under the Bankruptcy Code of 1978 or similar provision of law of any jurisdiction (except if such petition is contested by such Person and has been dismissed within 90 days); insolvency or bankruptcy of such Person as finally determined by a court proceeding; filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of his assets; commencement of any proceedings relating to such Person as a debtor under any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or hereinafter in effect, either by such Person or by another, provided that if such proceeding is commenced by another, such Person indicates his approval of such proceeding, consents thereto or acquiesces therein, or such proceeding is contested by such Person and has not been finally dismissed within 90 days.

“Excepted Holder Limit” has the meaning provided in the Articles of Incorporation.

“General Partner” means Moody National REIT II, Inc. and any Person who becomes a substitute or additional General Partner as provided herein, and any of their successors as General Partner, until such Person ceases to be a General Partner pursuant to the terms of this Agreement.

“General Partnership Interest” means a Partnership Interest held by the General Partner that is a general partnership interest.

“General Partner Loan” has the meaning provided in Section 5.2(c) of this Agreement.

“Indemnatee” means (i) any Person made a party to a proceeding by reason of its status as the General Partner or a director, officer or employee of the General Partner or the Partnership, and (ii) such other Persons (including Affiliates of the General Partner or the Partnership) as the General Partner may designate from time to time, in its sole and absolute discretion.

“Independent Director” means a Director who is not on the date of determination, and within the last two years from the date of determination has not been, directly or indirectly associated with the Sponsor of the General Partner or the Advisor by virtue of (i) ownership of an interest in the Sponsor, the Advisor or any of their Affiliates, other than the General Partner, (ii) employment by the Sponsor, the Advisor or any of their Affiliates, (iii) service as an officer or director of the Sponsor, the Advisor or any of their Affiliates, other than as a Director, (iv) performance of services, other than as a Director, for the General Partner, (v) service as a director or trustee of more than three real estate investment trusts organized by the Sponsor or advised by the Advisor or (vi) maintenance of a material business or professional relationship with the Sponsor, the Advisor or any of their Affiliates. A business or professional relationship is considered “material” if the aggregate gross revenue derived by the Director from the Sponsor, the Advisor and their Affiliates (excluding fees for serving as an independent director of the General Partner or other real estate investment trust or real estate program organized or advised or managed by the Sponsor or its Affiliates) exceeds five percent of either the Director’s annual gross revenue during either of the last two years or the Director’s net worth on a fair market value basis. An indirect association with the Sponsor or the Advisor shall include circumstances in which a Director’s spouse, parent, child, sibling, mother- or father-in-law, son- or daughter-in-law or brother- or sister-in-law is or has been associated with the Sponsor, the Advisor, any of their Affiliates or the General Partner.

“Junior Share” means a share of capital stock of the General Partner now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are inferior or junior to the REIT Shares.

“Limited Partner” means any Person named as a Limited Partner on Exhibit A attached hereto, as such exhibit may be amended and restated from time to time, and any Person who becomes an additional Limited Partner or a Substitute Limited Partner, in such Person’s capacity as a Limited Partner in the Partnership.

“Limited Partnership Interest” means the ownership interest of a Limited Partner in the Partnership at any particular time, including the right of such Limited Partner to any and all benefits to which such Limited Partner may be entitled as provided in this Agreement and in the Act, together with the obligations of such Limited Partner to comply with all the provisions of this Agreement and of such Act. A Limited Partnership Interest may be expressed as a number of Common Units, Preferred Units or other Partnership Units.

“Limited Partnership Unit” means a Limited Partnership Interest designated as a Common Unit.

“Listing” means the listing of the REIT Shares on a national securities exchange or the receipt by holders of the REIT Shares of securities that are listed on a national securities exchange in exchange for REIT Shares. Upon such Listing, the shares shall be deemed “Listed.”

“New Securities” means (i) any rights, options, warrants, or convertible or exchangeable securities having the right to subscribe for or purchase REIT Shares or Preferred Shares, excluding Preferred Shares and Junior Shares or (ii) any debt issued by the General Partner that provides any of the rights described in (i).

“Nonrecourse Deduction” has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

“Nonrecourse Liability” has the meaning provided in Regulations Section 1.704(b)(3).

“Notice of Redemption” means the Notice of Exercise of Redemption Right substantially in the form attached as Exhibit B hereto.

“Offer” has the meaning provided in Section 7.1(b) of this Agreement.

“Original Agreement” has the meaning set forth in the recitals hereto.

“Partner” means any General Partner or Limited Partner.

“Partner Minimum Gain” means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

“Partner Nonrecourse Debt” has the meaning provided in Regulations Section 1.704-2(b)(4).

“Partner Nonrecourse Debt Minimum Gain” means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

“Partner Nonrecourse Deductions” has the meaning provided in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2), and the amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a Partnership Year shall be determined in accordance with Regulations Sections 1.704-2(i)(2).

“Partnership” means Moody National Operating Partnership II, LP, a Delaware limited partnership.

“Partnership Interest” means an ownership interest in the Partnership held by a Limited Partner, the Special Limited Partner or the General Partner and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Partnership Interest may be expressed as a number of Common Units, Preferred Units or other Partnership Units.

“Partnership Loan” has the meaning provided in Section 5.2(c) of this Agreement.

“Partnership Minimum Gain” has the meaning provided in Regulations Sections 1.704-2(b)(2) and 1.704-2(d), and the amount of Partnership Minimum Gain, as well as any net increase or decrease in Partnership Minimum Gain, for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

“Partnership Record Date” means the record date established by the General Partner for the distribution of cash pursuant to Section 5.2 hereof.

“Partnership Representative” has the meaning provided in Section 6223 of the Code.

“Partnership Unit” means a Common Unit, a Preferred Unit, a Special Limited Partnership Unit or any other unit of a fractional, undivided share of the Partnership Interests that the General Partner has authorized pursuant to Article 4 hereof; provided, however, that Partnership Units comprising a General Partner Interest or a Limited Partner Interest shall have the differences in rights and privileges as specified in this Agreement.

“Partnership Year” shall mean the Partnership’s taxable year or any shorter period for which Partnership profits and losses are allocated.

“Percentage Interest” means, with respect to any Partner other than a Special Limited Partner at any time, the percentage determined by dividing the Common Units of such Partner by the sum of the Common Units of all Partners (other than Special Limited Partners).

“Person” means any individual, partnership, limited liability company, corporation, joint venture, trust or other entity.

“Preferred Shares” means a share of capital stock of the General Partner now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to REIT Shares.

“Preferred Unit” means a fractional, undivided share of the Partnership Interests that has distribution rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the Common Units that the General Partner has authorized pursuant to Section 4.2 hereof.

“Profit” and “Loss” means, for each Partnership Year or other applicable period, an amount equal to the Partnership’s taxable income or loss for such Partnership Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

- (i) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profit and Loss pursuant to this definition of “Profit” and “Loss” shall be added to such taxable income or loss;
- (ii) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profit or Loss pursuant to this definition of “Profit” and “Loss” shall be subtracted from such taxable income or loss;

(iii) In the event the Carrying Value of any Partnership asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of Carrying Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profit and Loss;

(iv) Gain or loss resulting from any disposition of Partnership Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Carrying Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Carrying Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Partnership Year or other period;

(vi) To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profit or Loss; and

(vii) Notwithstanding any other provision of this definition of "Profit" and "Loss", any items that are specially allocated pursuant to Section 5.1(c), 5.1(d), or 5.1(e) hereof shall not be taken into account in computing Profits or Losses. The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to Sections 5.1(c) and 5.1(d) hereof shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above. "Property" means any Real Estate Asset or other investment in which the Partnership holds an ownership interest.

"Real Estate Asset" means unimproved and improved real property, real estate related assets and any direct or indirect interest therein, including, without limitation, fee or leasehold interests, options, leases, partnership and joint venture interests, equity and debt securities of entities that own real estate, loans secured by real property including first or second mortgage loans, mezzanine loans and participations in such loans, preferred equity interests secured by a property owner's interest in real property and other contractual rights in real estate.

"Redemption Price" means the Value of the REIT Shares Amount on the date of receipt by the General Partner of a Notice of Redemption multiplied by any discount determined by the General Partner, including but not limited to, any discount based upon the combined number of years that the applicable Partner has held the Partnership Units offered for redemption.

"Redemption Right" has the meaning provided in Section 8.5(a) of this Agreement.

"Regulations" means the Federal income tax regulations promulgated under the Code, as amended and as hereafter amended from time to time. Reference to any particular provision of the Regulations shall mean that provision of the Regulations on the date hereof and any successor provision of the Regulations.

"REIT" means a real estate investment trust under Sections 856 through 860 of the Code.

"REIT Expenses" means (i) costs and expenses relating to the formation and continuity of existence and operation of the General Partner and any Subsidiaries thereof (which Subsidiaries shall, for purposes hereof, be included within the definition of General Partner), including taxes, fees and assessments associated therewith, any and all costs, expenses or fees payable to any director, officer, or employee of the General Partner, (ii) costs and expenses relating to any public offering and registration of securities by the General Partner and all statements, reports, fees and expenses incidental thereto, including, without limitation, underwriting discounts and selling commissions applicable to any such offering of securities, and any costs and expenses associated with any claims made by any holders of such securities or any underwriters or placement agents thereof, (iii) costs and expenses associated with any repurchase of any securities by the General Partner, (iv) costs and expenses associated with the preparation and filing of any periodic or other reports and communications by the General Partner under federal, state or local laws or regulations, including filings with the Commission, (v) costs and expenses associated with compliance by the General Partner with laws, rules and regulations promulgated by any regulatory body, including the Commission and any securities exchange, (vi) costs and expenses associated with any 401(k) plan, incentive plan, bonus plan or other plan providing for compensation for the employees of the General Partner, (vii) costs and expenses incurred by the General Partner relating to any issuing or redemption of Partnership Interests, and (viii) all other operating or administrative costs of the General Partner incurred in the ordinary course of its business on behalf of or in connection with the Partnership.

"REIT Share" means ownership (including beneficial ownership) of a share of common stock in the General Partner (or successor entity, as the case may be).

"REIT Shares Amount" means a number of REIT Shares equal to the product of the number of Partnership Units offered for exchange by a Tendering Party, multiplied by the Conversion Factor as adjusted to and including the Specified Redemption Date; provided that in the event the General Partner issues to all holders of REIT Shares rights, options, warrants or convertible or exchangeable securities entitling the stockholders to subscribe for or purchase REIT Shares, or any other securities or property

(collectively, the “rights”), and the rights have not expired at the Specified Redemption Date, then the REIT Shares Amount shall also include the rights issuable to a holder of the REIT Shares Amount of REIT Shares on the record date fixed for purposes of determining the holders of REIT Shares entitled to rights.

“Related Party” means, with respect to any Person, any other Person whose ownership of shares of the General Partner’s capital stock would be attributed to the first such Person under Code Section 544 (as modified by Code Section 856(h)(1)(B)).

“Restriction Notice” has the meaning provided in Section 8.5(e) of this Agreement.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Special Limited Partner” means the holder of a Special Limited Partnership Unit.

“Special Limited Partnership Unit” means Partnership Units designated as Special Limited Partnership Units issued pursuant to Section 4.2(d) with the rights and obligations provided under this Agreement.

“Specified Redemption Date” means the first business day of the month that is at least sixty (60) business days after the receipt by the General Partner of the Notice of Redemption.

“Sponsor” means any Person which (a) is directly or indirectly instrumental in organizing, wholly or in part, the General Partner, (b) will control, manage or participate in the management of the General Partner, and any Affiliate of any such Person, (c) takes the initiative, directly or indirectly, in founding or organizing the General Partner, either alone or in conjunction with one or more other Persons, (d) receives a material participation in the General Partner in connection with the founding or organizing of the business of the General Partner, in consideration of services or property, or both services and property, (e) has a substantial number of relationships and contacts with the General Partner, (f) possesses significant rights to control Properties, (g) receives fees for providing services to the General Partner which are paid on a basis that is not customary in the industry or (h) provides goods or services to the General Partner on a basis which was not negotiated at arm’s-length with the General Partner. “Sponsor” does not include any Person whose only relationship with the General Partner is that of an independent property manager and whose only compensation is as such, or wholly independent third parties such as attorney, accountants and underwriters whose only compensation is for professional services.

“Subsidiary” means, with respect to any Person, any corporation or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests is owned, directly or indirectly, by such Person.

“Subsidiary Partnership” means any partnership of which the partnership interests therein are owned by the General Partner or a direct or indirect subsidiary of the General Partner.

“Substitute Limited Partner” means any Person admitted to the Partnership as a Limited Partner pursuant to Section 9.2 hereof.

“Successor Entity” has the meaning provided in the definition of Conversion Factor.

“Survivor” has the meaning provided in Section 7.1(d).

“Tax Matters Partner” has the meaning provided in Section 6231(a)(7) of the Code.

“Tendered Units” has the meaning provided in Section 8.5(b) of this Agreement.

“Tendering Party” has the meaning provided in Section 8.5(a) of this Agreement.

“Termination Event” means the termination or nonrenewal of the Advisory Agreement (i) in connection with a merger, sale of assets or transaction involving the General Partner pursuant to which a majority of the Directors then in office are replaced or removed, (ii) by the Advisor for “good reason” (as defined in the Advisory Agreement) or (iii) by the General Partner other than for “cause” (as defined in the Advisory Agreement).

“Transfer” has the meaning provided in Section 9.2(a) hereof.

“Value” means the fair market value per share of REIT Shares which will equal: (i) if REIT Shares are Listed, the average closing price per share for the previous thirty (30) business days, (ii) if REIT Shares are not Listed, the most recent offering price per share or share equivalent of REIT Shares, until December 31st of the year following the year in which the most recently completed offering of REIT Shares has expired, and (iii) thereafter, such price per REIT Share as the management of the General Partner determines in good faith.

ARTICLE 2 PARTNERSHIP FORMATION AND IDENTIFICATION

2.1 Formation.

The Partnership was formed as a limited partnership pursuant to the Act, and all other pertinent laws of the State of Delaware, for the purposes and upon the terms and conditions set forth in this Agreement.

2.2 Name, Office and Registered Agent.

The name of the Partnership is Moody National Operating Partnership II, LP. The specified office and place of business of the Partnership shall be 6363 Woodway Drive, Suite 110, Houston, Texas 77057. The General Partner may at any time change the location of such office, provided the General Partner gives notice to the Partners of any such change. The name and address of the Partnership's registered agent is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19801. The sole duty of the registered agent as such is to forward to the Partnership any notice that is served on him as registered agent.

2.3 Term and Dissolution.

(a) The term of the Partnership shall continue in full force and effect until dissolved upon the first to occur of any of the following events:

(i) the occurrence of an Event of Bankruptcy as to a General Partner or the dissolution, death, removal or withdrawal of a General Partner unless the business of the Partnership is continued pursuant to Section 7.3(b) hereof; provided that if a General Partner is on the date of such occurrence a partnership, the dissolution of such General Partner as a result of the dissolution, death, withdrawal, removal or Event of Bankruptcy of a partner in such partnership shall not be an event of dissolution of the Partnership if the business of such General Partner is continued by the remaining partner or partners, either alone or with additional partners, and such General Partner and such partners comply with any other applicable requirements of this Agreement;

(ii) the passage of 90 days after the sale or other disposition of all or substantially all of the assets of the Partnership (provided that if the Partnership receives an installment obligation as consideration for such sale or other disposition, the Partnership shall continue, unless sooner dissolved under the provisions of this Agreement, until such time as such note or notes are paid in full); or

(iii) the election by the General Partner that the Partnership should be dissolved.

(b) Upon dissolution of the Partnership (unless the business of the Partnership is continued pursuant to Section 7.3(b) hereof), the General Partner (or its trustee, receiver, successor or legal representative) shall amend or cancel any Certificate(s) and liquidate the Partnership's assets and apply and distribute the proceeds thereof in accordance with Section 5.6 hereof. Notwithstanding the foregoing, the liquidating General Partner may either (i) defer liquidation of, or withhold from distribution for a reasonable time, any assets of the Partnership (including those necessary to satisfy the Partnership's debts and obligations), or (ii) distribute the assets to the Partners in kind.

2.4 Filing of Certificate and Perfection of Limited Partnership.

The General Partner shall execute, acknowledge, record and file at the expense of the Partnership, any and all amendments to the Certificate(s) and all requisite fictitious name statements and notices in such places and jurisdictions as may be necessary to cause the Partnership to be treated as a limited partnership under, and otherwise to comply with, the laws of each state or other jurisdiction in which the Partnership conducts business.

ARTICLE 3 BUSINESS OF THE PARTNERSHIP

The purpose and nature of the business to be conducted by the Partnership is (i) to conduct any business that may be lawfully conducted by a limited partnership organized pursuant to the Act, provided, however, that such business shall be limited to and conducted in such a manner as to permit the General Partner at all times to qualify as a REIT, unless the General Partner determines that it no longer intends to qualify as a REIT, and in a manner such that the General Partner will not be subject to any taxes under Section 857 or 4981 of the Code, (ii) to enter into any partnership, joint venture or other similar arrangement to engage in any of the foregoing or the ownership of interests in any entity engaged in any of the foregoing and (iii) to do anything necessary or incidental to the foregoing. In connection with the foregoing, and without limiting the General Partner's right in its sole and absolute discretion to qualify or cease qualifying as a REIT, the Partners acknowledge that the General Partner intends to qualify as a REIT for federal income tax purposes and that such qualification and the avoidance of income and excise taxes on the General Partner inures to the benefit of all the Partners and not solely to the General Partner. Notwithstanding the foregoing, the Limited Partners agree that the General Partner may terminate its status as a REIT under the Code at any time to the full extent permitted under the Articles of Incorporation. The General Partner on behalf of the Partnership shall also be empowered to do any and all acts and things necessary or prudent to ensure that the Partnership will not be classified as a "publicly traded partnership" under Section 7704 of the Code.

ARTICLE 4 CAPITAL CONTRIBUTIONS AND ACCOUNTS

4.1 Capital Contributions.

The Capital Contributions and Partnership Units of each Partner are set forth on Exhibit A, as the same shall be amended from time to time by the General Partner to the extent necessary to reflect accurately sales, exchanges or other Transfers, redemptions, Capital Contributions, the issuance of additional Partnership Units, or similar events having an effect on a Partner's ownership of Partnership Units.

4.2 Additional Capital Contributions and Issuances of Additional Partnership Units.

Except as provided in this Section 4.2 or in Section 4.3, the Partners shall have no right or obligation to make any additional Capital Contributions or loans to the Partnership.

(a) The General Partner is hereby authorized to cause the Partnership to issue additional Partnership Units for any Partnership purpose at any time or from time to time, including but not limited to Partnership Units issued in connection with acquisitions of properties, to the Partners (including the General Partner) or to other Persons for such consideration and on such terms and conditions as shall be established by the General Partner in its sole and absolute discretion, all without the approval of any Limited Partner. Any additional Partnership Units issued thereby may be issued in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers and duties, all as shall be determined by the General Partner in its sole and absolute discretion and without the approval of any Limited Partner, subject to Delaware law, including, without limitation, (i) the allocations of items of Partnership income, gain, loss, deduction and credit to each such class or series of Partnership Units; (ii) the right of each such class or series of Partnership Units to share in Partnership distributions; and (iii) the rights of each such class or series of Partnership Units upon dissolution and liquidation of the Partnership. Without limiting the foregoing, the General Partner is expressly authorized to cause the Partnership to issue Partnership Units for less than fair market value, so long as the General Partner concludes in good faith that such issuance is in the best interests of the General Partner and the Partnership. In the event that the Partnership issues additional Partnership Units pursuant to this Section 4.2(a), the General Partner shall make such revisions to this Agreement as it deems necessary to reflect the issuance of such additional Partnership Units.

(b) No additional Partnership Units shall be issued to the General Partner unless (i) the additional Partnership Units are issued to all Partners in proportion to their respective Percentage Interests with respect to the class of Partnership Units so issued; (ii) (a) the additional Partnership Units are issued in connection with (x) an issuance of REIT Shares, or (y) an issuance of Preferred Shares, New Securities or other interests in the General Partner (other than REIT Shares), which Preferred Shares, New Securities or other interests have designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of the additional Partnership Units issued to the General Partner, and (b) the General Partner contributes to the Partnership the cash proceeds or other consideration received in connection with the issuance of such REIT Shares, Preferred Shares, New Securities or other interests in the General Partner, or (iii) the Additional Partnership Units are issued upon the conversion, redemption or exchange of debt, Partnership Units or other securities issued by the Partnership.

(c) The General Partner shall not issue any additional REIT Shares, Preferred Shares, Junior Shares or New Securities unless the General Partner contributes the cash proceeds or other consideration received from the issuance of such additional REIT Shares, Preferred shares, Junior Shares or New Securities, as the case may be, and from the exercise of the rights contained in any such additional New Securities, to the Partnership in exchange for (x) in the case of an issuance of REIT Shares, Partnership Units, or (y) in the case of an issuance of Preferred Shares, Junior Shares or New Securities, Partnership Units with designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of such Preferred Shares, Junior Shares or New Securities; provided, however, that notwithstanding the foregoing, the General Partner may issue REIT Shares, Preferred Shares, Junior Shares or New Securities (a) pursuant to Section 8.5(b) hereof, (b) pursuant to a dividend or distribution (including any stock split) of REIT Shares, Preferred Shares, Junior Shares, or New Securities to all of the holders of REIT Shares, Preferred Shares, Junior Shares or New Securities, as the case may be, (c) upon a conversion, redemption or exchange of Preferred Shares, (d) upon a conversion of Junior Shares into REIT Shares, (e) upon a conversion, redemption, exchange or exercise of New Securities, or (f) in connection with an acquisition of a property or other asset to be owned, directly or indirectly, by the General Partner if the General Partner determines that such acquisition is in the best interest of the Partnership. In the event of any issuance of additional REIT Shares, Preferred Shares, Junior Shares, or New Securities by the General Partner, and the contribution to the Partnership, by the General Partner, of the cash proceeds or other consideration received from such issuance, if the cash proceeds actually received by the General Partner are less than the gross proceeds of such issuance as a result of any underwriter's discount or other expenses paid or incurred in connection with such issuance, then the General Partner shall be deemed to have made a Capital Contribution to the Partnership in the amount equal to the sum of the cash proceeds of such issuance plus the amount of such underwriter's discount and other expenses paid by the General Partner (which discount and expense shall be treated as an expense for the benefit of the Partnership).

(d) The Partnership issued Special Limited Partnership Units to Moody National LPOP II, LLC in exchange for the cash contribution reflected on Exhibit A hereto and for services performed or to be performed for the Partnership and its Subsidiaries, and admitted such Person as the Special Limited Partner. The Special Limited Partner shall be entitled to certain distributions as provided in Section 5.2 and certain preferential allocations of items of income and gain under Section 5.1. The Special Limited Partnership Units will be subject to the transfer restrictions set forth in Article 9 and will be subject to redemption pursuant to Section 8.6.

4.3 Additional Funding.

If the General Partner determines that it is in the best interests of the Partnership to provide for additional Partnership funds (“Additional Funds”) for any Partnership purpose, the General Partner may (i) cause the Partnership to obtain such funds from outside borrowings or (ii) elect to have the General Partner or any of its Affiliates provide such Additional Funds to the Partnership through loans or otherwise.

4.4 Capital Accounts.

(a) The Partnership shall maintain for each Partner a separate Capital Account in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv). Each Partner’s Capital Account shall be increased by (i) the amount of such Partner’s Capital Contributions and (ii) Profit allocated to such Partner and all items of Partnership income and gain allocated to such Partner pursuant to Sections 5.1(c), 5.1(d) and 5.1(e) and decreased by (x) the amount of cash or Agreed Value of all actual and deemed distributions of cash or property made to such Partner pursuant to this Agreement and (y) Loss allocated to such Partner and all items of Partnership deduction and loss allocated to such Partner pursuant to Section 5.1(c).

(b) In the event any interest in the Partnership is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(c) The provisions of the Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Partnership, the General Partner, or the Limited Partners) are computed in order to comply with such Regulations, the General Partner may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Person upon the dissolution of the Partnership. The General Partner also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership’s balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g) and (ii) make appropriate modifications in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b) or 1.704-2.

4.5 No Interest on Contributions

No Partner shall be entitled to interest on its Capital Contribution.

4.6 Return of Capital Contributions

No Partner shall be entitled to withdraw any part of its Capital Contribution or its Capital Account or to receive any distribution from the Partnership, except as specifically provided in this Agreement. Except as otherwise provided herein, there shall be no obligation to return to any Partner or withdrawn Partner any part of such Partner’s Capital Contribution for so long as the Partnership continues in existence.

4.7 No Third-Party Beneficiary.

No creditor or other third party having dealings with the Partnership shall have the right to enforce the right or obligation of any Partner to make Capital Contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the parties hereto and their respective successors and assigns. None of the rights or obligations of the Partners herein set forth to make Capital Contributions or loans to the Partnership shall be deemed an asset of the Partnership for any purpose by any creditor or other third party, nor may such rights or obligations be sold, transferred or assigned by the Partnership or pledged or encumbered by the Partnership to secure any debt or other obligation of the Partnership or of any of the Partners. In addition, it is the intent of the parties hereto that no distribution to any Limited Partner shall be deemed a return of money or other Property in violation of the Act. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Limited Partner is obligated to return such money or Property, such obligation shall be the obligation of such Limited Partner and not of the General Partner. Without limiting the generality of the foregoing, a deficit Capital Account of a Partner shall not be deemed to be a liability of such Partner nor an asset or Property of the Partnership.

4.8 Redemption of REIT Shares.

If, at any time, any shares of capital stock of the General Partner are redeemed by the General Partner for cash, the Partnership shall, immediately prior to such redemption, redeem an equal number of equivalent Partnership Units (taking into account any relevant Conversion Factor) held by the General Partner upon the same terms and for the same price per Partnership Unit as such shares are redeemed.

ARTICLE 5 PROFITS AND LOSSES; DISTRIBUTIONS

5.1 Allocation of Profit and Loss.

Profit and loss of the Partnership shall be determined in accordance with Section 704(b) of the Code and the Treasury Regulations thereunder and shall be allocated in accordance with this Article 5.

(a) Profit.

After giving effect to the special allocations in Sections 5.1(c) and 5.1(d), profit of the Partnership for each Partnership Year or other applicable period of the Partnership shall be allocated to the Partners in the following order and priority:

(i) Profit shall be allocated to the General Partner until the cumulative Profit allocated to the General Partner pursuant to this Section 5.1(a)(i) equals the cumulative Loss allocated to the General Partner pursuant to Section 5.1(b)(ii).

(ii) Profit shall be allocated to the Partners (other than the Special Limited Partner) in accordance with their Percentage Interests.

(b) Loss.

After giving effect to the special allocations in Sections 5.1(c), 5.1(d) and 5.1(e), loss of the Partnership for each Partnership Year or other applicable period of the Partnership shall be allocated to the Partners in the following order and priority:

(i) Loss shall be allocated to the Partners (other than the Special Limited Partner) in accordance with their Percentage Interests, provided that loss shall not be allocated to a Partner pursuant to this Section 5.1(b)(i) to the extent that such allocation would cause or increase an Adjusted Capital Account Deficit at the end of any fiscal year.

(ii) Loss shall be allocated to the General Partner.

(c) Special Allocations. The following regulatory allocations shall be made in the following order and priority:

(i) **Minimum Gain Chargeback.** Notwithstanding the provisions of this Section 5.1, if there is a net decrease in Partnership Minimum Gain during any Partnership Year, each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) **Partner Minimum Gain Chargeback.** Notwithstanding any other provision of this Section 5.1, if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Year, each Partner who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Partner's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 5.1(c)(ii) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(iii) **Qualified Income Offset.** In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) and such Partner has an Adjusted Capital Account Deficit, items of Partnership income and gain (consisting of a pro rata portion of each item of Partnership income, including gross income and gain for the Partnership Year) shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, its Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible. This Section 5.1(c)(iii) is intended to constitute a "qualified income offset" under Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(iv) No Excess Deficit. To the extent that any Partner has or would have, as a result of an allocation of Net Loss (or item thereof), an Adjusted Capital Account Deficit, such amount of Net Loss (or item thereof) shall be allocated to the other Partners in accordance with Section 5.1(b), but in a manner which will not produce an Adjusted Capital Account Deficit as to such Partners. To the extent such allocation would result in all Partners having Adjusted Capital Account Deficits, such Net Loss (or item thereof) shall be allocated to the General Partner.

(v) Nonrecourse Deductions. Nonrecourse Deductions for any Partnership Year shall be allocated to the Partners (other than the Special Limited Partner) in accordance with their respective Percentage Interests. If the General Partner determines in its good faith discretion that the Partnership's Nonrecourse Deductions must be allocated in a different ratio to satisfy the safe harbor requirements of the Regulations promulgated under Section 704(b) of the Code, the General Partner is authorized, upon notice to the Limited Partners, to revise the prescribed ratio for such Partnership Year to the numerically closest ratio which would satisfy such requirements.

(vi) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Partnership Year shall be specially allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Sections 1.704-2(6)(4) and 1.704-2(i).

(vii) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

(d) Priority Allocations to the Special Limited Partner. Notwithstanding the provisions of Sections 5.1(a) and 5.1(b) above, the Special Limited Partner shall be allocated on a priority basis items of income or gain, including, without limitation, items of gain from a sale (including but not limited to net capital gain realized in connection with the adjustment to the tax book value of Partnership assets under Section 704(b) of the Code) on a cumulative basis pursuant to this Section 5.1(d) in an amount equal to the amount of distributions made (or in connection with a sale or winding up or liquidation of the Partnership, to be made) to such Partner.

(e) Allocations Between Transferor and Transferee. If a Partner transfers any part or all of its Partnership Interests or if Percentage Interests vary during a Partnership Year, the General Partner, in its sole and absolute discretion, shall determine which method authorized under the Code and the Regulations shall be used to allocate the distributive shares.

(f) Allocations for Tax Purposes. All allocations for federal income tax purposes shall be consistent with all allocations in this Section 5.1, except as otherwise required by Section 704(c) of the Code and Regulations Section 1.704-1(b)(4). The General Partner shall have the authority to elect the method to be used by the Partnership for allocating items of income, gain, and expense as required by Section 704(c) of the Code including a method that may result in a Partner receiving a disproportionately larger share of the Partnership tax depreciation deductions, and such election shall be binding on all Partners.

(g) Revisions to Allocations to Reflect Issuance of Additional Interests. In the event that the Partnership issues additional Partnership Interests to the General Partner or any Additional Limited Partner pursuant to Article 4 hereof, the General Partner shall make such revisions to this Section 5.1 as it deems necessary to reflect the terms of the issuance of such additional Partnership Interests, including making preferential allocations to classes of Partnership Interests that are entitled thereto. Such revisions shall not require the consent or approval of any other Partner.

5.2 Distribution of Cash.

(a) The Partnership shall distribute cash on a quarterly (or, at the election of the General Partner, more frequent) basis, in an amount determined by the General Partner in its sole and absolute discretion, to the Partners who are Partners on the Partnership Record Date with respect to such quarter (or other distribution period) in accordance with Section 5.2(b).

(b) Except for distributions pursuant to Section 5.4 of this Agreement in connection with the dissolution and liquidation of the Partnership and subject to the provisions of Section 5.2(c) and 5.3 of this Agreement, distributions shall be made (i) first, 100% to the Partners (other than Special Limited Partner) in accordance with their respective Percentage Interests on the Partnership Record Date until the Limited Partners (other than the Special Limited Partner) have received cumulative distributions under this Section 5.2(b) equal to the aggregate Capital Contributions made by the Limited Partners (other than the Special Limited Partner) to the Partnership plus a cumulative, noncompounded pre-tax rate of return thereon of 6.0% per annum, determined by taking into account the dates on which all such Capital Contributions and distributions were made and (ii) second, (A) 85% to the Partners (other than the Special Limited Partner), in accordance with their respective Percentage Interests on the Partnership Record Date and (B) 15% to the Special Limited Partner.

(c) Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines to be necessary or appropriate to cause the Partnership to comply with any withholding requirements established under the Code or any other federal, state or local law including, without limitation, pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner or assignee (including by reason of Section 1446 of the Code), either (i) if the actual amount to be distributed to the Partner equals or exceeds the amount required to be withheld by the Partnership, the amount withheld shall be treated as a distribution of cash in the amount of such withholding to such Partner, or (ii) if the actual amount to be distributed to the Partner is less than the amount required to be withheld by the Partnership, the actual amount shall be treated as a distribution of cash in the amount of such withholding and the additional amount required to be withheld shall be treated as a loan (a "Partnership Loan") from the Partnership to the Partner on the day the Partnership pays over such amount to a taxing authority. A Partnership Loan shall be repaid through withholding by the Partnership with respect to subsequent distributions to the applicable Partner or assignee. In the event that a Limited Partner (a "Defaulting Limited Partner") fails to pay any amount owed to the Partnership with respect to the Partnership Loan within fifteen (15) days after demand for payment thereof is made by the Partnership on the Limited Partner, the General Partner, in its sole and absolute discretion, may elect to make the payment to the Partnership on behalf of such Defaulting Limited Partner. In such event, on the date of payment, the General Partner shall be deemed to have extended a loan (a "General Partner Loan") to the Defaulting Limited Partner in the amount of the payment made by the General Partner and shall succeed to all rights and remedies of the Partnership against the Defaulting Limited Partner as to that amount. Without limitation, the General Partner shall have the right to receive any distributions that otherwise would be made by the Partnership to the Defaulting Limited Partner until such time as the General Partner Loan has been paid in full, and any such distributions so received by the General Partner shall be treated as having been received by the Defaulting Limited Partner and immediately paid to the General Partner. Any amounts treated as a Partnership Loan or a General Partner Loan pursuant to this Section 5.2(c) shall bear interest at the lesser of (i) the base rate on corporate loans at large United States money center commercial banks, as published from time to time in The Wall Street Journal, or (ii) the maximum lawful rate of interest on such obligation, such interest to accrue from the date the Partnership or the General Partner, as applicable, is deemed to extend the loan until such loan is repaid in full.

(d) In no event may a Partner receive a distribution of cash with respect to a Partnership Unit if such Partner is entitled to receive a cash distribution as the holder of record of a REIT Share for which all or part of such Partnership Unit has been or will be exchanged.

5.3 REIT Distribution Requirements.

The General Partner shall use its commercially reasonable efforts to cause the Partnership to distribute amounts sufficient to enable the General Partner to make stockholder distributions that will allow the General Partner to (i) meet its distribution requirement for qualification as a REIT as set forth in Section 857 of the Code and (ii) avoid any federal income or excise tax liability imposed by the Code.

5.4 No Right to Distributions in Kind.

No Partner shall be entitled to demand property other than cash in connection with any distributions by the Partnership.

5.5 Limitations on Return of Capital Contributions.

Notwithstanding any of the provisions of this Article 5, no Partner shall have the right to receive, and the General Partner shall not have the right to make, a distribution that includes a return of all or part of a Partner's Capital Contributions, unless after giving effect to the return of a Capital Contribution, the sum of all Partnership liabilities, other than the liabilities to a Partner for the return of his Capital Contribution, does not exceed the fair market value of the Partnership's assets.

5.6 Distributions upon Liquidation.

Upon liquidation of the Partnership, after payment of, or adequate provision for, debts and obligations of the Partnership, including any Partner loans, any remaining assets of the Partnership shall be distributed to all Partners in accordance with their Capital Accounts. To the extent deemed advisable by the General Partner, appropriate arrangements (including the use of a liquidating trust) may be made to assure that adequate funds are available to pay any contingent debts or obligations.

5.7 Substantial Economic Effect.

It is the intent of the Partners that the allocations of Profit and Loss under this Agreement have substantial economic effect (or be consistent with the Partners' interests in the Partnership in the case of the allocation of losses attributable to nonrecourse debt) within the meaning of Section 704(b) of the Code as interpreted by the Regulations promulgated pursuant thereto. Article 5 and other relevant provisions of this Agreement shall be interpreted in a manner consistent with such intent.

ARTICLE 6
RIGHTS, OBLIGATIONS AND
POWERS OF THE GENERAL PARTNER

6.1 Management of the Partnership.

(a) Except as otherwise expressly provided in this Agreement, the General Partner shall have full, complete and exclusive discretion to manage and control the business of the Partnership for the purposes herein stated, and shall make all decisions affecting the business and assets of the Partnership. Subject to the restrictions specifically contained in this Agreement, the powers of the General Partner shall include, without limitation, the authority to take the following actions on behalf of the Partnership:

(i) to acquire, purchase, own, operate, lease and dispose of any Real Estate Asset that the General Partner determines is necessary or appropriate or in the best interests of the business of the Partnership;

(ii) to construct buildings and make other improvements on the Properties;

(iii) to authorize, issue, sell, redeem or otherwise purchase any Partnership Interests or any securities (including secured and unsecured debt obligations of the Partnership, debt obligations of the Partnership convertible into any class or series of Partnership Interests, or options, rights, warrants or appreciation rights relating to any Partnership Interests) of the Partnership;

(iv) to borrow or lend money for the Partnership, issue or receive evidence of indebtedness in connection therewith, refinance, increase the amount of, modify, amend or change the terms of, or extend the time for the payment of, any such indebtedness, and secure such indebtedness by mortgage, deed of trust, pledge or other lien on the Partnership's assets;

(v) to pay, either directly or by reimbursement, for all operating costs and general administrative expenses of the Partnership to third parties or to the General Partner or its Affiliates as set forth in this Agreement;

(vi) to guarantee or become a co-maker of indebtedness of the General Partner or any Subsidiary thereof, refinance, increase the amount of, modify, amend or change the terms of, or extend the time for the payment of, any such guarantee or indebtedness, and secure such guarantee or indebtedness by mortgage, deed of trust, pledge or other lien on the Partnership's assets;

(vii) to use assets of the Partnership (including, without limitation, cash on hand) for any purpose consistent with this Agreement, including, without limitation, payment, either directly or by reimbursement, of all Administrative Expenses and REIT Expenses of the General Partner, the Partnership or any Subsidiary of either, to third parties or to the General Partner as set forth in this Agreement;

(viii) to lease all or any portion of any of the Partnership's assets, whether or not the terms of such leases extend beyond the termination date of the Partnership and whether or not any portion of the Partnership's assets so leased are to be occupied by the lessee, or, in turn, subleased in whole or in part to others, for such consideration and on such terms as the General Partner may determine;

(ix) to prosecute, defend, arbitrate, or compromise any and all claims or liabilities in favor of or against the Partnership, on such terms and in such manner as the General Partner may reasonably determine, and similarly to prosecute, settle or defend litigation with respect to the Partners, the Partnership, or the Partnership's assets;

(x) to file applications, communicate, and otherwise deal with any and all governmental agencies having jurisdiction over, or in any way affecting, the Partnership's assets or any other aspect of the Partnership business;

(xi) to make or revoke any election permitted or required of the Partnership by any taxing authority;

(xii) to maintain such insurance coverage for public liability, fire and casualty, and any and all other insurance for the protection of the Partnership, for the conservation of Partnership assets, or for any other purpose convenient or beneficial to the Partnership, in such amounts and such types, as it shall determine from time to time;

(xiii) to determine whether or not to apply any insurance proceeds for any Property to the restoration of such Property or to distribute the same;

(xiv) to establish one or more divisions of the Partnership, to hire and dismiss employees of the Partnership or any division of the Partnership, and to retain legal counsel, accountants, consultants, real estate brokers, and such other persons, as the General Partner may deem necessary or appropriate in connection with the Partnership business and to pay therefor such remuneration as the General Partner may deem reasonable and proper;

(xv) to retain other services of any kind or nature in connection with the Partnership business, and to pay therefor such remuneration as the General Partner may deem reasonable and proper;

(xvi) to negotiate and conclude agreements on behalf of the Partnership with respect to any of the rights, powers and authority conferred upon the General Partner;

(xvii) to maintain accurate accounting records and to file promptly all federal, state and local income tax returns on behalf of the Partnership;

(xviii) to distribute Partnership cash or other Partnership assets in accordance with this Agreement;

(xix) to form or acquire an interest in, and contribute Property to, any further limited or general partnerships, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of Property to, its Subsidiaries and any other Person in which it has an equity interest from time to time);

(xx) to establish Partnership reserves for working capital, capital expenditures, contingent liabilities, or any other valid Partnership purpose;

(xxi) to merge, consolidate or combine the Partnership with or into another Person;

(xxii) to do any and all acts and things necessary or prudent to ensure that the Partnership will not be classified as a “publicly traded partnership” that is taxable as a corporation under Section 7704 of the Code; and

(xxiii) to take such other action, execute, acknowledge, swear to or deliver such other documents and instruments, and perform any and all other acts that the General Partner deems necessary or appropriate for the formation, continuation and conduct of the business and affairs of the Partnership (including, without limitation, all actions consistent with allowing the General Partner at all times to qualify as a REIT unless the General Partner voluntarily terminates its REIT status) and to possess and enjoy all of the rights and powers of a general partner as provided by the Act.

(b) Except as otherwise provided herein, to the extent the duties of the General Partner require expenditures of funds to be paid to third parties, the General Partner shall not have any obligations hereunder except to the extent that Partnership funds are reasonably available to it for the performance of such duties, and nothing herein contained shall be deemed to authorize or require the General Partner, in its capacity as such, to expend its individual funds for payment to third parties or to undertake any individual liability or obligation on behalf of the Partnership.

6.2 Delegation of Authority.

The General Partner may delegate any or all of its powers, rights and obligations hereunder, and may appoint, employ, contract or otherwise deal with any Person for the transaction of the business of the Partnership, which Person may, under supervision of the General Partner, perform any acts or services for the Partnership as the General Partner may approve.

6.3 Indemnification and Exculpation of Indemnitees.

(a) The Partnership shall indemnify an Indemnitee from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including reasonable legal fees and expenses), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Partnership as set forth in this Agreement in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, unless it is established that: (i) the act or omission of the Indemnitee was material to the matter giving rise to the proceeding and either was committed in bad faith or was the result of active and deliberate dishonesty; (ii) the Indemnitee actually received an improper personal benefit in money, Property or services; or (iii) in the case of any criminal proceeding, the Indemnitee had reasonable cause to believe that the act or omission was unlawful. Any indemnification pursuant to this Section 6.3 shall be made only out of the assets of the Partnership.

(b) The Partnership shall reimburse an Indemnitee for reasonable expenses incurred by an Indemnitee who is a party to a proceeding in advance of the final disposition of the proceeding upon receipt by the Partnership of (i) a written affirmation by the Indemnitee of the Indemnitee’s good faith belief that the standard of conduct necessary for indemnification by the Partnership as authorized in this Section 6.3 has been met, and (ii) a written undertaking by or on behalf of the Indemnitee to repay the amount if it shall ultimately be determined that the standard of conduct has not been met.

(c) The indemnification provided by this Section 6.3 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity.

(d) The Partnership may purchase and maintain insurance, on behalf of the Indemnitees and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expenses that may be incurred by such

Person in connection with the Partnership's activities, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) For purposes of this Section 6.3, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute fines within the meaning of this Section 6.3; and actions taken or omitted by the Indemnitee with respect to an employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the Partnership.

(f) In no event may an Indemnitee subject the Limited Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 6.3 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 6.3 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) Notwithstanding the foregoing, the Partnership may not indemnify or hold harmless an Indemnitee for any liability or loss unless all of the following conditions are met: (i) the Indemnitee has determined, in good faith, that the course of conduct that caused the loss or liability was in the best interests of the Partnership; (ii) the Indemnitee was acting on behalf of or performing services for the Partnership; (iii) the liability or loss was not the result of (A) negligence or misconduct, in the case that the Indemnitee is a director of the General Partner (other than an Independent Director), the Advisor or an Affiliate of the Advisor or (B) gross negligence or willful misconduct, in the case that the Indemnitee is an Independent Director; and (iv) the indemnification or agreement to hold harmless is recoverable only out of net assets of the Partnership. In addition, the Partnership shall not provide indemnification for any loss, liability or expense arising from or out of an alleged violation of federal or state securities laws by such party unless one or more of the following conditions are met: (i) there has been a successful adjudication on the merits of each count involving alleged material securities law violations as to the Indemnitee; (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the Indemnitee; or (iii) 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 Commission and of the published position of any state securities regulatory authority in which securities of the General Partner or the Partnership were offered or sold as to indemnification for violations of securities laws.

6.4 Liability of the General Partner.

(a) Notwithstanding anything to the contrary set forth in this Agreement, the General Partner shall not be liable for monetary damages to the Partnership or any Partners for losses sustained or liabilities incurred as a result of errors in judgment or of any act or omission if the General Partner acted in good faith. The General Partner shall not be in breach of any duty that the General Partner may owe to the Limited Partners or the Partnership or any other Persons under this Agreement or of any duty stated or implied by law or equity provided the General Partner, acting in good faith, abides by the terms of this Agreement.

(b) The Limited Partners expressly acknowledge that the General Partner is acting on behalf of the Partnership, itself and its stockholders collectively, that the General Partner is under no obligation to consider the separate interests of the Limited Partners (including, without limitation, the tax consequences to Limited Partners or the tax consequences of some, but not all, of the Limited Partners) in deciding whether to cause the Partnership to take (or decline to take) any actions. In the event of a conflict between the interests of its stockholders on one hand and the Limited Partners on the other, the General Partner shall endeavor in good faith to resolve the conflict in a manner not adverse to either its stockholders or the Limited Partners; provided, however, that for so long as the General Partner directly owns a controlling interest in the Partnership, any such conflict that the General Partner, in its sole and absolute discretion, determines cannot be resolved in a manner not adverse to either its stockholders or the Limited Partner shall be resolved in favor of the stockholders. The General Partner shall not be liable for monetary damages for losses sustained, liabilities incurred, or benefits not derived by Limited Partners in connection with such decisions, provided that the General Partner has acted in good faith.

(c) Subject to its obligations and duties as General Partner set forth in Section 6.1 hereof, the General Partner may exercise any of the powers granted to it under this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents. The General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by it in good faith.

(d) Notwithstanding any other provisions of this Agreement or the Act, any action of the General Partner on behalf of the Partnership or any decision of the General Partner to refrain from acting on behalf of the Partnership, undertaken in the good faith belief that such action or omission is necessary or advisable in order (i) to protect the ability of the General Partner to continue to qualify as a REIT or (ii) to prevent the General Partner from incurring any taxes under Section 857, Section 4981, or any other provision of the Code, is expressly authorized under this Agreement and is deemed approved by all of the Limited Partners.

(e) Any amendment, modification or repeal of this Section 6.4 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the General Partner's liability to the Partnership and the Limited Partners under this Section 6.4 as in effect immediately prior to such amendment, modification or repeal with respect to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when claims relating to such matters may arise or be asserted.

6.5 Reimbursement of General Partner.

(a) Except as provided in this Section 6.5 and elsewhere in this Agreement (including the provisions of Articles 5 and 6 regarding distributions, payments and allocations to which it may be entitled), the General Partner shall not be compensated for its services as general partner of the Partnership.

(b) The General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine in its sole and absolute discretion, for all Administrative Expenses incurred by the General Partner. Reimbursement of Administrative Expenses shall be treated as an expense of the Partnership and not as allocations of Partnership income or gain.

6.6 Outside Activities.

Subject to the Articles of Incorporation and any agreements entered into by the General Partner or its Affiliates with the Partnership or a Subsidiary, any officer, director, employee, agent, trustee, Affiliate or stockholder of the General Partner, the General Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities substantially similar or identical to those of the Partnership. None of the Partnership, Limited Partners or any other Person shall have any rights by virtue of this Agreement or the partnership relationship established hereby in any such business ventures, interests or activities, and the General Partner shall have no obligation pursuant to this Agreement to offer any interest in any such business ventures, interests and activities to the Partnership or any Limited Partner, even if such opportunity is of a character which, if presented to the Partnership or any Limited Partner, could be taken by such Person.

6.7 Employment or Retention of Affiliates.

(a) Any Affiliate of the General Partner may be employed or retained by the Partnership and may otherwise deal with the Partnership (whether as a buyer, lessor, lessee, manager, furnisher of goods or services, broker, agent, lender or otherwise) and may receive from the Partnership any compensation, price, or other payment therefor which the General Partner determines to be fair and reasonable.

(b) The Partnership may lend or contribute to its Subsidiaries or other Persons in which it has an equity investment, and such Persons may borrow funds from the Partnership, on terms and conditions established in the sole and absolute discretion of the General Partner. The foregoing authority shall not create any right or benefit in favor of any Subsidiary or any other Person.

(c) The Partnership may transfer assets to joint ventures, other partnerships, corporations or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions as the General Partner deems are consistent with this Agreement, applicable law and the REIT status of the General Partner.

(d) Except as expressly permitted by this Agreement, neither the General Partner nor any of its Affiliates shall sell, transfer or convey any Property to, or purchase any Property from, the Partnership, directly or indirectly, except pursuant to transactions that are, in the General Partner's sole discretion, on terms that are fair and reasonable to the Partnership.

6.8 Title to Partnership Assets.

Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more nominees, as the General Partner may determine, including Affiliates of the General Partner. The General Partner hereby declares and warrants that any Partnership assets for which legal title is held in the name of the General Partner or any nominee or Affiliate of the General Partner shall be held by the General Partner for the use and benefit of the Partnership in accordance with the provisions of this Agreement; provided, however, that the General Partner shall use its best efforts to cause beneficial and record title to such assets to be vested in the Partnership as soon as reasonably practicable. All Partnership assets shall

be recorded as the Property of the Partnership in its books and records, irrespective of the name in which legal title to such Partnership assets is held.

ARTICLE 7 CHANGES IN GENERAL PARTNER

7.1 Transfer of the General Partner's Partnership Units.

(a) The General Partner shall not transfer all or any portion of its Partnership Units (except as provided in Section 7.4) or withdraw as General Partner except as provided in, or in connection with a transaction contemplated by, Section 7.1(e).

(b) Except as otherwise provided in Section 7.1(e) hereof, the General Partner shall not engage in any merger, consolidation or other combination with or into another Person or the sale of all or substantially all of its assets (other than in connection with a change in the General Partner's state of incorporation or organizational form), in each case which results in a change of control of the General Partner (a "Transaction"), unless:

(i) the consent of Limited Partners holding more than 50% of the Percentage Interests of the Limited Partners is obtained;

(ii) as a result of such Transaction all Limited Partners will receive (A) for each Partnership Unit an amount of cash, securities, or other Property equal to the product of the Conversion Factor and the greatest amount of cash, securities or other Property paid in the Transaction to a holder of one REIT Share in consideration of one REIT Share, provided that if, in connection with the Transaction, a purchase, tender or exchange offer ("Offer") shall have been made to and accepted by the holders of more than 50% of the outstanding REIT Shares, each holder of Partnership Units shall be given the option to exchange its Partnership Units for the greatest amount of cash, securities, or other Property which a Limited Partner holding Partnership Units would have received had it (1) exercised its Redemption Right and (2) sold, tendered or exchanged pursuant to the Offer the REIT Shares received upon exercise of the Redemption Right immediately prior to the expiration of the Offer and (B) for each Special Limited Partnership Unit an amount of cash, securities or other Property (as applicable based upon the type of consideration and the proportions thereof paid to holders of REIT Shares in the Transaction) equal to the fair market value of such Special Limited Partnership Unit at such time as determined in good faith by the General Partner by reference to the value paid for the REIT Shares; or

(iii) the General Partner is the surviving entity in the Transaction and either (A) the holders of REIT Shares do not receive cash, securities, or other Property in the Transaction or (B) all Limited Partners (other than the General Partner or any Subsidiary) receive (1) in exchange for their Partnership Units, an amount of cash, securities, or other Property (expressed as an amount per REIT Share) that is no less than the product of the Conversion Factor and the greatest amount of cash, securities, or other Property (expressed as an amount per REIT Share) received in the Transaction by any holder of REIT Shares and (2) in exchange for their Special Limited Partnership Units, an amount of cash, securities or other Property (as applicable based upon the type of consideration and the proportions thereof paid to holders of REIT Shares in the Transaction) equal to the fair market value of such Special Limited Partnership Units at such time as determined in good faith by the General Partner by reference to the value paid for the REIT Shares.

(d) Notwithstanding Section 7.1(c), the General Partner may merge with or into or consolidate with another entity if immediately after such merger or consolidation (i) substantially all of the assets of the successor or surviving entity (the "Survivor"), other than Partnership Units held by the General Partner, are contributed, directly or indirectly, to the Partnership as a Capital Contribution in exchange for Partnership Units with a fair market value equal to the value of the assets so contributed as determined by the Survivor in good faith and (ii) the Survivor expressly agrees to assume all obligations of the General Partner, as appropriate, hereunder. Upon such contribution and assumption, the Survivor shall have the right and duty to amend this Agreement as set forth in this Section 7.1(d). The Survivor shall in good faith arrive at a new method for the calculation of the Cash Amount, the REIT Shares Amount and Conversion Factor for a Partnership Unit after any such merger or consolidation so as to approximate the existing method for such calculation as closely as reasonably possible. Such calculation shall take into account, among other things, the kind and amount of securities, cash and other Property that was receivable upon such merger or consolidation by a holder of REIT Shares or options, warrants or other rights relating thereto, and which a holder of Partnership Units could have acquired had such Partnership Units been exchanged immediately prior to such merger or consolidation. Such amendment to this Agreement shall provide for adjustment to such method of calculation, which shall be as nearly equivalent as may be practicable to the adjustments provided for with respect to the Conversion Factor. The Survivor also shall in good faith modify the definition of REIT Shares and make such amendments to Sections 8.5 and 8.6 hereof so as to approximate the existing rights and obligations set forth in Sections 8.5 and 8.6 as closely as reasonably possible. The above provisions of this Section 7.1(d) shall similarly apply to successive mergers or consolidations permitted hereunder.

In respect of any transaction described in the preceding paragraph, the General Partner is required to use its commercially reasonable efforts to structure such transaction to avoid causing the Limited Partners to recognize a gain for Federal income tax purposes by virtue of the occurrence of or their participation in such transaction, provided such efforts are consistent with

the exercise of the General Partner's board of directors' fiduciary duties to the stockholders of the General Partner under applicable law.

(e) Notwithstanding Section 7.1(a) or (b),

(i) a General Partner may transfer all or any portion of its Partnership Units to (A) a wholly owned Subsidiary of such General Partner or (B) the owner of all of the ownership interests of such General Partner, and following a transfer of all of its General Partnership Interests, may withdraw as General Partner; and

(ii) the General Partner may engage in a transaction not required by law or by the rules of any national securities exchange on which the General Partner's shares are listed to be submitted to the vote of the holders of the General Partner's shares.

7.2 Admission of a Substitute or Additional General Partner.

A Person shall be admitted as a substitute or additional General Partner of the Partnership only if the following terms and conditions are satisfied:

(a) the Person to be admitted as a substitute or additional General Partner shall have accepted and agreed to be bound by all the terms and provisions of this Agreement by executing a counterpart thereof and such other documents or instruments as may be required or appropriate in order to effect the admission of such Person as a General Partner, and a certificate evidencing the admission of such Person as a General Partner shall have been filed for recordation and all other actions required by Section 2.4 hereof in connection with such admission shall have been performed;

(b) if the Person to be admitted as a substitute or additional General Partner is a corporation or a partnership it shall have provided the Partnership with evidence satisfactory to counsel for the Partnership of such Person's authority to become a General Partner and to be bound by the terms and provisions of this Agreement; and

(c) counsel for the Partnership shall have rendered an opinion (relying on such opinions from other counsel as may be necessary) that (i) the admission of the Person to be admitted as a substitute or additional General Partner is in conformity with the Act and (ii) none of the actions taken in connection with the admission of such Person as a substitute or additional General Partner will cause (x) the Partnership to be classified other than as a partnership for federal tax purposes, or (y) the loss of any Limited Partner's limited liability.

7.3 Effect of Bankruptcy, Withdrawal, Death or Dissolution of a General Partner.

(a) Upon the occurrence of an Event of Bankruptcy as to a General Partner (and its removal pursuant to Section 7.4(a) hereof) or the death, withdrawal, removal or dissolution of a General Partner (except that, if a General Partner is on the date of such occurrence a partnership, the withdrawal, death, dissolution, Event of Bankruptcy as to, or removal of a partner in, such partnership shall be deemed not to be a dissolution of such General Partner if the business of such General Partner is continued by the remaining partner or partners), the Partnership shall be dissolved and terminated unless the Partnership is continued pursuant to Section 7.3(b) hereof. The merger of the General Partner with or into any entity that is admitted as a substitute or successor General Partner pursuant to Section 7.2 hereof shall not be deemed to be the withdrawal, dissolution or removal of the General Partner.

(b) Following the occurrence of an Event of Bankruptcy as to a General Partner (and its removal pursuant to Section 7.4(a) hereof) or the death, withdrawal, removal or dissolution of a General Partner (except that, if a General Partner is, on the date of such occurrence, a partnership, the withdrawal of, death, dissolution, Event of Bankruptcy as to, or removal of a partner in, such partnership shall be deemed not to be a dissolution of such General Partner if the business of such General Partner is continued by the remaining partner or partners), the Limited Partners, within 90 days after such occurrence, may elect to continue the business of the Partnership for the balance of the term specified in Section 2.3 hereof by selecting, subject to Section 7.2 hereof and any other provisions of this Agreement, a substitute General Partner by consent of a majority in interest of the Limited Partners. If the Limited Partners elect to continue the business of the Partnership and admit a substitute General Partner, the relationship with the Partners and of any Person who has acquired an interest of a Partner in the Partnership shall be governed by this Agreement.

7.4 Removal of a General Partner.

(a) Upon the occurrence of an Event of Bankruptcy as to, or the dissolution of, a General Partner, such General Partner shall be deemed to be removed automatically; provided, however, that if a General Partner is on the date of such occurrence a partnership, the withdrawal, death or dissolution of, Event of Bankruptcy as to, or removal of, a partner in, such partnership shall be deemed not to be a dissolution of the General Partner if the business of such General Partner is continued by the remaining partner or partners. The Limited Partners may not remove the General Partner, with or without cause.

(b) If a General Partner has been removed pursuant to this Section 7.4 and the Partnership is continued pursuant to Section 7.3 hereof, such General Partner shall promptly transfer and assign its Partnership Units to the substitute General

Partner approved by a majority in interest of the Limited Partners in accordance with Section 7.3(b) hereof and otherwise be admitted to the Partnership in accordance with Section 7.2 hereof. At the time of assignment, the removed General Partner shall be entitled to receive from the substitute General Partner the fair market value of the Partnership Units of such removed General Partner as reduced by any damages caused to the Partnership by such General Partner. Such fair market value shall be determined by an appraiser mutually agreed upon by the General Partner and a majority in interest of the Limited Partners within ten (10) days following the removal of the General Partner. In the event that the parties are unable to agree upon an appraiser, the removed General Partner and a majority in interest of the Limited Partners each shall select an appraiser. Each such appraiser shall complete an appraisal of the fair market value of the removed General Partner's Partnership Units within thirty (30) days of the General Partner's removal, and the fair market value of the removed General Partner's Partnership Units shall be the average of the two appraisals; provided, however, that if the higher appraisal exceeds the lower appraisal by more than 20% of the amount of the lower appraisal, the two appraisers, no later than forty (40) days after the removal of the General Partner, shall select a third appraiser who shall complete an appraisal of the fair market value of the removed General Partner's Partnership Units no later than sixty (60) days after the removal of the General Partner. In such case, the fair market value of the removed General Partner's Partnership Units shall be the average of the two appraisals closest in value.

(c) The Partnership Units of a removed General Partner, during the time after default until transfer under Section 7.4(b), shall be converted to that of a Limited Partner; provided, however, such removed General Partner shall not have any rights to participate in the management and affairs of the Partnership, and shall not be entitled to any portion of the income, expense, profit, gain or loss allocations or cash distributions allocable or payable, as the case may be, to the Limited Partners. Instead, such removed General Partner shall receive and be entitled only to retain distributions or allocations of such items that it would have been entitled to receive in its capacity as General Partner, until the transfer is effective pursuant to Section 7.4(b).

(d) All Partners shall have given and hereby do give such consents, shall take such actions and shall execute such documents as shall be legally necessary, desirable and sufficient to effect all the foregoing provisions of this Section.

ARTICLE 8

RIGHTS AND OBLIGATIONS OF THE LIMITED PARTNERS

8.1 Management of the Partnership.

The Limited Partners shall not participate in the management or control of Partnership business nor shall they transact any business for the Partnership, nor shall they have the power to sign for or bind the Partnership, such powers being vested solely and exclusively in the General Partner.

8.2 Power of Attorney.

Each Limited Partner hereby irrevocably appoints the General Partner its true and lawful attorney-in-fact, who may act for each Limited Partner and in its name, place and stead, and for its use and benefit, to sign, acknowledge, swear to, deliver, file or record, at the appropriate public offices, any and all documents, certificates, and instruments as may be deemed necessary or desirable by the General Partner to carry out fully the provisions of this Agreement and the Act in accordance with their terms, which power of attorney is coupled with an interest and shall survive the death, dissolution or legal incapacity of the Limited Partner, or the transfer by the Limited Partner of any part or all of its Partnership Interests, unless otherwise stated in this Agreement.

8.3 Limitation on Liability of Limited Partners.

No Limited Partner shall be liable for any debts, liabilities, contracts or obligations of the Partnership. A Limited Partner shall be liable to the Partnership only to make payments of its Capital Contribution, if any, as and when due hereunder. After its Capital Contribution is fully paid, no Limited Partner shall, except as otherwise required by the Act, be required to make any further Capital Contributions or other payments or lend any funds to the Partnership.

8.4 Redemption of Special Limited Partnership Interests.

Upon the earliest to occur of (a) the termination or nonrenewal of the Advisory Agreement for "cause" (as defined in the Advisory Agreement), (b) a Termination Event, or (c) the Listing, the Special Limited Partnership Units will be redeemed.

(a) If the Advisory Agreement is terminated or not renewed by the General Partner for "cause" (as defined in the Advisory Agreement), all of the Special Limited Partnership Units shall be redeemed by the Partnership for \$1 within thirty (30) days after the termination or nonrenewal of the Advisory Agreement.

(b) Upon the occurrence of a Termination Event or the Listing, the Special Limited Partnership Units shall be redeemed for an aggregate amount equal to the amount that would have been distributed to the Special Limited Partner under Section 5.2(b) if all assets of the Partnership had been sold for their fair market value, all liabilities of the Partnership had been satisfied in full according to their terms, and remaining proceeds were distributed to the Partners pursuant to Section 5.2. Such redemption shall occur no later than thirty (30) days after the date of a Termination Event and no later than 240 days after the Listing. In determining the fair

market value of the assets of the Partnership, (i) in connection with a Termination Event, the General Partner shall obtain an appraisal of the assets of the Partnership (excluding any assets which may be readily marked to market) and (ii) in connection with the Listing, the General Partner shall make such determination (a) taking into account, in the event of a Listing on a national securities exchange only, the market value of the General Partner's listed shares based upon the average closing price, or average of bid and asked prices, as the case may be, during a period of thirty (30) days during which such shares are traded beginning one hundred and twenty (120) days after the Listing or (b) taking into account the value of the General Partner's shares based upon the initial public offering price in the event of an underwritten public offering. Payment to the Special Limited Partner upon a Termination Event or a Listing shall be paid, at the Special Limited Partner's discretion, in the form of (a) shares of the General Partner's common stock or (b) a non-interest bearing promissory note. In the event the Advisor elects to receive shares of the General Partner's common stock and the General Partner's shares are not listed on a national securities exchange, at the option of the Advisor, the Advisor and the General Partner shall enter into an agreement whereby the General Partner shall register such shares of common stock with the Commission. However, any payments under a promissory note may not be made in connection with a Termination Event until either (a) the closing of asset sales that result in aggregate, cumulative distributions to the Partners (other than the Special Limited Partner) of the Partnership from operating income, sales proceeds and other sources in an amount equal to their Capital Contributions to the Partnership plus a 6.0% cumulative non-compounded annual pre-tax return thereon, or (b) a Listing (each a "Subsequent Liquidity Event"). In addition, the principal amount of the promissory note issued in connection with a Termination Event will be subject to reduction as of the date of the Subsequent Liquidity Event by an amount that will ensure that, in connection with the Subsequent Liquidity Event, the Special Limited Partner does not receive in excess of 15% of the distributions that are made or are deemed to be made by the Partnership after the Partners (other than the Special Limited Partner) have received or are deemed to have received aggregate, cumulative distributions equal to their Capital Contributions to the Partnership plus a 6.0% cumulative non-compounded annual pre-tax return thereon.

8.5 Redemption Right.

(a) Subject to Sections 8.5(b), 8.5(c), 8.5(d), 8.5(e) and 8.5(f) and the provisions of any agreements between the Partnership and one or more Limited Partners with respect to Partnership Units held by them, each Limited Partner shall have the right (subject to the terms and conditions set forth herein) to require the Partnership to redeem (a "Redemption") all or a portion of the Partnership Units held by such Limited Partner (the "Tendered Units") in exchange (a "Redemption Right") for REIT Shares issuable on, or the Cash Amount payable on, or a combination thereof having an equivalent value to the REIT Shares issuable on, or the Cash Amount payable on, the Specified Redemption Date, as determined by the General Partner in its sole discretion, provided that the Tendered Units shall have been outstanding and held by the Limited Partner for at least one year. Any Redemption Right shall be exercised pursuant to a Notice of Redemption delivered to the Partnership (with a copy to the General Partner) by the Limited Partner exercising the Redemption Right (the "Tendering Party"). No Limited Partner may deliver more than two Notices of Redemption during each calendar year. A Limited Partner may not exercise the Redemption Right for fewer than 1,000 Partnership Units or, if such Limited Partner holds fewer than 1,000 Partnership Units, all of the Partnership Units held by such Partner. The Tendering Party shall have no right, with respect to any Partnership Units so redeemed, to receive any distribution paid with respect to Partnership Units if the record date for such distribution is on or after the Specified Redemption Date.

(b) If the General Partner elects to redeem Tendered Units for REIT Shares rather than cash, then the Partnership shall direct the General Partner to issue and deliver such REIT Shares to the Tendering Party pursuant to the terms set forth in this Section 8.5(b), in which case, (i) the General Partner, acting as a distinct legal entity, shall assume directly the obligation with respect thereto and shall satisfy the Tendering Party's exercise of its Redemption Right, and (ii) such transaction shall be treated, for Federal income tax purposes, as a transfer by the Tendering Party of such Tendered Units to the General Partner in exchange for REIT Shares. The percentage of the Tendered Units tendered for Redemption by the Tendering Party for which the General Partner elects to issue REIT Shares (rather than cash) is referred to as the "Applicable Percentage." In making such election to acquire Tendered Units, the Partnership shall act in a fair, equitable and reasonable manner that neither prefers one group or class of Limited Partners over another nor discriminates against a group or class of Limited Partners. If the Partnership elects to redeem any number of Tendered Units for REIT Shares, rather than cash, on the Specified Redemption Date, the Tendering Party shall sell such number of the Tendered Units to the General Partner in exchange for a number of REIT Shares equal to the product of the REIT Shares Amount and the Applicable Percentage. The product of the Applicable Percentage and the REIT Shares Amount, if applicable, shall be delivered by the General Partner as duly authorized, validly issued, fully paid and accessible REIT Shares free of any pledge, lien, encumbrance or restriction, other than the Aggregate Share Ownership Limit and other restrictions provided in the Articles of Incorporation, the bylaws of the General Partner, the Securities Act and relevant state securities or "blue sky" laws. Notwithstanding the provisions of Section 8.5(a) and this Section 8.5(b), the Tendering Parties shall have no rights under this Agreement that would otherwise be prohibited under the Articles of Incorporation.

(c) In connection with an exercise of Redemption Rights pursuant to this Section 8.5, the Tendering Party shall submit the following to the General Partner, in addition to the Notice of Redemption:

(1) A written affidavit, dated the same date as the Notice of Redemption, (a) disclosing the actual and constructive ownership, as determined for purposes of Code Sections 856(a)(6) and 856(h), of REIT Shares by (i) such Tendering Party and (ii) any Related Party and (b) representing that, after giving effect to the Redemption, and assuming that the General Partner

elects to exchange REIT Shares for the Tendered Units, neither the Tendering Party nor any Related Party will own REIT Shares in excess of the Aggregate Share Ownership Limit (or, if applicable the Excepted Holder Limit);

(2) A written representation that neither the Tendering Party nor any Related Party has any intention to acquire any additional REIT Shares prior to the closing of the Redemption on the Specified Redemption Date;

(3) An undertaking to certify, at and as a condition to the closing of the Redemption on the Specified Redemption Date, that either (a) the actual and constructive ownership of REIT Shares by the Tendering Party and any Related Party remain unchanged from that disclosed in the affidavit required by Section 8.5(c)(1) or (b) after giving effect to the Redemption, neither the Tendering Party nor any Related Party shall own REIT Shares in violation of the Aggregate Share Ownership Limit (or, if applicable, the Excepted Holder Limit); and

(4) Any other documents as the General Partner may reasonably require in connection with the issuance of REIT Shares upon the exercise of the Redemption Right.

(d) Any Cash Amount to be paid to a Tendering Party pursuant to this Section 8.5 shall be paid on the Specified Redemption Date; provided, however, that the General Partner may elect to cause the Specified Redemption Date to be delayed for up to an additional 180 days to the extent required for the General Partner to cause additional REIT Shares to be issued to provide financing to be used to make such payment of the Cash Amount. Notwithstanding the foregoing, the General Partner agrees to use its best efforts to cause the closing of the acquisition of Tendered Units hereunder to occur as quickly as reasonably possible.

(e) Notwithstanding any other provision of this Agreement, the General Partner shall place appropriate restrictions on the ability of the Limited Partners to exercise their Redemption Rights to prevent, among other things, (a) any person from owning shares in excess of the Common Share Ownership Limit, the Aggregate Share Ownership Limit and the Excepted Holder Limit, (b) the General Partner's common stock from being owned by fewer than 100 persons, (c) the General Partner from being "closely held" within the meaning of section 856(h) of the Code, and (d) to ensure that the Partnership does not constitute a "publicly traded partnership" under Section 7704 of the Code. If and when the General Partner determines that imposing such restrictions is necessary, the General Partner shall give prompt written notice thereof (a "Restriction Notice") to each of the Limited Partners holding Partnership Units.

(f) A redemption fee may be charged in connection with an exercise of Redemption Rights pursuant to this Section 8.5.

ARTICLE 9

TRANSFERS OF LIMITED PARTNERSHIP INTERESTS AND SPECIAL LIMITED PARTNERSHIP INTERESTS

9.1 Restrictions on Transfer of Limited Partnership Interests.

(a) No Limited Partner may offer, sell, assign, hypothecate, pledge or otherwise transfer all or any portion of his Limited Partnership Interests, or any of such Limited Partner's economic rights as a Limited Partner, whether voluntarily or by operation of law or at judicial sale or otherwise (collectively, a "Transfer") without the consent of the General Partner, which consent may be granted or withheld in its sole and absolute discretion. Any such purported transfer undertaken without such consent shall be considered to be null and void ab initio and shall not be given effect. The General Partner may require, as a condition of any Transfer to which it consents, that the transferor assume all costs incurred by the Partnership in connection therewith.

(b) No Limited Partner may withdraw from the Partnership other than as a result of a permitted Transfer of all of its Limited Partnership Interest pursuant to this Article 9 or pursuant to a redemption of all of its Partnership Units pursuant to Section 8.5 or, with respect to the Special Limited Partner, pursuant to the redemption of its Special Limited Partnership Interest pursuant to Section 8.4. Upon the permitted Transfer or redemption of all of a Limited Partner's Limited Partnership Units, such Limited Partner shall cease to be a Limited Partner.

(c) No Limited Partner may effect a Transfer of its Limited Partnership Units, in whole or in part, if, in the opinion of legal counsel for the Partnership, such proposed Transfer would require the registration of the Limited Partnership Units under the Securities Act or would otherwise violate any applicable federal or state securities or blue sky law (including investment suitability standards).

(d) No Transfer by a Limited Partner of its Limited Partnership Units, in whole or in part, may be made to any Person if (i) in the opinion of the General Partner based on the advice of legal counsel for the Partnership, if appropriate, the transfer would result in the Partnership's being treated as an association taxable as a corporation (other than a qualified REIT subsidiary within the meaning of Section 856(i) of the Code); (ii) in the opinion of the General Partner based on the advice of legal counsel for the Partnership, if appropriate, it would adversely affect the ability of the General Partner to continue to qualify as a REIT or subject the General Partner to any additional taxes under Section 857 or Section 4981 of the Code; (iii) such transfer is effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of

the Code; (iv) such Transfer would cause the General Partner to own 10% or more of the ownership interests of any tenant of a Property held by the partnership within the meaning of Section 856(d)(2)(B) of the Code; or (v) such Transfer would result in the General Partner being “closely held” within the meaning of Section 856(h) of the Code.

(e) No transfer by a Limited Partner of any Partnership Units may be made to a lender to the Partnership or any Person who is related (within the meaning of Regulations Section 1.752-4(b)) to any lender to the Partnership whose loan constitutes a Nonrecourse Liability, without the consent of the General Partner, which may be withheld in its sole and absolute discretion, provided that as a condition to such consent the lender will be required to enter into an arrangement with the Partnership and the General Partner to exchange or redeem for the Cash Amount any Partnership Units in which a security interest is held simultaneously with the time at which such lender would be deemed to be a Partner in the Partnership for purposes of allocating liabilities to such lender under Section 752 of the Code.

(f) Any Transfer in contravention of any of the provisions of this Article 9 shall be void and ineffectual and shall not be binding upon, or recognized by, the Partnership.

(g) Prior to the consummation of any Transfer under this Article 9, the transferor and/or the transferee shall deliver to the General Partner such opinions, certificates and other documents as the General Partner shall request in connection with such Transfer.

9.2 Admission of Substitute Limited Partner.

(a) Subject to the other provisions of this Article 9, an assignee of the Limited Partnership Units of a Limited Partner (which shall be understood to include any purchaser, transferee, donee, or other recipient of any disposition of such Limited Partnership Units) shall be deemed admitted as a Limited Partner of the Partnership only with the consent of the General Partner and upon the satisfactory completion of the following:

(i) The assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement by executing a counterpart or an amendment thereof, including a revised Exhibit A, and such other documents or instruments as the General Partner may require in order to effect the admission of such Person as a Limited Partner.

(ii) To the extent required, an amended Certificate evidencing the admission of such Person as a Limited Partner shall have been signed, acknowledged and filed for record in accordance with the Act.

(iii) The assignee shall have delivered a letter containing the representation set forth in Section 9.1(a) hereof and the agreement set forth in Section 9.1(b) hereof.

(iv) If the assignee is a corporation, partnership or trust, the assignee shall have provided the General Partner with evidence satisfactory to counsel for the Partnership of the assignee’s authority to become a Limited Partner under the terms and provisions of this Agreement.

(v) The assignee shall have executed a power of attorney containing the terms and provisions set forth in Section 8.2 hereof.

(vi) The assignee shall have paid all legal fees and other expenses of the Partnership and the General Partner and filing and publication costs in connection with its substitution as a Limited Partner.

(vii) The assignee has obtained the prior written consent of the General Partner to its admission as a Substitute Limited Partner, which consent may be given or denied in the exercise of the General Partner’s sole and absolute discretion.

9.3 Rights of Assignees of Partnership Units.

(a) Subject to the provisions of Sections 9.1 and 9.2 hereof, except as required by operation of law, the Partnership shall not be obligated for any purposes whatsoever to recognize the assignment by any Limited Partner of its Partnership Units until the Partnership has received notice thereof.

(b) Any Person who is the assignee of all or any portion of a Limited Partner’s Limited Partnership Units, but does not become a Substitute Limited Partner and desires to make a further assignment of such Limited Partnership Units, shall be subject to all the provisions of this Article 9 to the same extent and in the same manner as any Limited Partner desiring to make an assignment of its Limited Partnership Units.

9.4 Effect of Bankruptcy, Death, Incompetence or Termination of a Limited Partner.

The occurrence of an Event of Bankruptcy as to a Limited Partner, the death of a Limited Partner or a final adjudication that a Limited Partner is incompetent (which term shall include, but not be limited to, insanity) shall not cause the termination or dissolution of the Partnership, and the business of the Partnership shall continue if an order for relief in a bankruptcy proceeding is entered against

a Limited Partner, the trustee or receiver of his estate or, if he dies, his executor, administrator or trustee, or, if he is finally adjudicated incompetent, his committee, guardian or conservator, shall have the rights of such Limited Partner for the purpose of settling or managing his estate property and such power as the bankrupt, deceased or incompetent Limited Partner possessed to assign all or any part of his Partnership Units and to join with the assignee in satisfying conditions precedent to the admission of the assignee as a Substitute Limited Partner.

9.5 Purchase for Investment.

(a) Each Limited Partner hereby represents and warrants to the General Partner and to the Partnership that the acquisition of his Partnership Units is made as a principal for his account for investment purposes only and not with a view to the resale or distribution of such Partnership Units.

(b) Each Limited Partner agrees that he will not sell, assign or otherwise transfer his Partnership Units or any fraction thereof, whether voluntarily or by operation of law or at judicial sale or otherwise, to any Person who does not make the representations and warranties to the General Partner set forth in Section 9.5(a) above and similarly agree not to sell, assign or transfer such Partnership Units or fraction thereof to any Person who does not similarly represent, warrant and agree.

ARTICLE 10 BOOKS AND RECORDS; ACCOUNTING; TAX MATTERS

10.1 Books and Records.

At all times during the continuance of the Partnership, the Partners shall keep or cause to be kept at the Partnership's specified office true and complete books of account in accordance with generally accepted accounting principles, including: (a) a current list of the full name and last known business address of each Partner, (b) a copy of the Certificate of Limited Partnership and all Certificates of amendment thereto, (c) copies of the Partnership's federal, state and local income tax returns and reports, (d) copies of this Agreement and amendments thereto and any financial statements of the Partnership for the three most recent years and (e) all documents and information required under the Act. Any Partner or its duly authorized representative, upon paying the costs of collection, duplication and mailing, shall be entitled to inspect or copy such records during ordinary business hours.

10.2 Custody of Partnership Funds; Bank Accounts.

(a) All funds of the Partnership not otherwise invested shall be deposited in one or more accounts maintained in such banking or brokerage institutions as the General Partner shall determine, and withdrawals shall be made only on such signature or signatures as the General Partner may, from time to time, determine.

(b) All deposits and other funds not needed in the operation of the business of the Partnership may be invested by the General Partner in investment grade instruments (or investment companies whose portfolio consists primarily thereof), government obligations, certificates of deposit, bankers' acceptances and municipal notes and bonds. The funds of the Partnership shall not be commingled with the funds of any other Person except for such commingling as may necessarily result from an investment in those investment companies permitted by this Section 10.2(b).

10.3 Fiscal and Taxable Year.

The fiscal and taxable year of the Partnership shall be the calendar year.

10.4 Annual Tax Information and Report.

Within seventy-five (75) days after the end of each fiscal year of the Partnership, the General Partner shall furnish to each person who was a Limited Partner at any time during such year the tax information necessary to file such Limited Partner's individual tax returns as shall be reasonably required by law.

10.5 Tax Matters Partner; Partnership Representative; Tax Elections; Special Basis Adjustments.

(a) The General Partner shall be the Tax Matters Partner and the Partnership Representative of the Partnership. The General Partner shall have the right to retain professional assistance in respect of any audit of the Partnership by the Service, and all out-of-pocket expenses and fees incurred by the General Partner on behalf of the Partnership as Tax Matters Partner or Partnership Representative shall constitute Partnership expenses.

(b) All elections required or permitted to be made by the Partnership under the Code or any applicable state or local tax law shall be made by the General Partner in its sole and absolute discretion.

(c) In the event of a transfer of all or any part of the Partnership Interest of any Partner, the Partnership, at the option of the General Partner, may elect pursuant to Section 754 of the Code to adjust the basis of the Partnership's assets. Notwithstanding anything contained in Article 5 of this Agreement, any adjustments made pursuant to Section 754 of the Code shall

affect only the successor in interest to the transferring Partner and in no event shall be taken into account in establishing, maintaining or computing Capital Accounts for the other Partners for any purpose under this Agreement. Each Partner will furnish the Partnership with all information necessary to give effect to such election.

ARTICLE 11 AMENDMENT OF AGREEMENT

The General Partner's consent shall be required for any amendment to this Agreement. The General Partner, without the consent of the Limited Partners, may amend this Agreement in any respect; provided, however, that the following amendments shall require the consent of Limited Partners holding more than 50% of the Percentage Interests of the Limited Partners:

- (a) any amendment affecting the operation of the Conversion Factor or the Redemption Right (except as provided in Section 8.5(d) or 7.1(d) hereof) in a manner adverse to the Limited Partners;
- (b) any amendment that would adversely affect the rights of the Limited Partners to receive the distributions payable to them hereunder, other than with respect to the issuance of additional Partnership Interests pursuant to Section 4.2 hereof;
- (c) any amendment that would alter the Partnership's allocations of profit and loss to the Limited Partners, other than with respect to the issuance of additional Partnership Interests pursuant to Section 4.2 hereof; or
- (d) any amendment that would impose on the Limited Partners any obligation to make additional Capital Contributions to the Partnership.

ARTICLE 12 GENERAL PROVISIONS

12.1 Notices.

All communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or upon deposit in the United States mail, registered, postage prepaid return receipt requested, to the Partners at the addresses set forth in Exhibit A attached hereto; provided, however, that any Partner may specify a different address by notifying the General Partner in writing of such different address. Notices to the Partnership shall be delivered or mailed to its specified office.

12.2 Survival of Rights.

Subject to the provisions hereof limiting transfers, this Agreement shall be binding upon and inure to the benefit of the Partners and the Partnership and their respective legal representatives, successors, transferees and assigns.

12.3 Additional Documents.

Each Partner agrees to perform all further acts and execute, swear to, acknowledge and deliver all further documents which may be reasonable, necessary, appropriate or desirable to carry out the provisions of this Agreement or the Act.

12.4 Severability.

If any provision of this Agreement shall be declared illegal, invalid, or unenforceable in any jurisdiction, then such provision shall be deemed to be severable from this Agreement (to the extent permitted by law) and in any event such illegality, invalidity or unenforceability shall not affect the remainder hereof.

12.5 Entire Agreement.

This Agreement and exhibits attached hereto constitute the entire Agreement of the Partners and supersede all prior written agreements and prior and contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof.

12.6 Pronouns and Plurals.

When the context in which words are used in the Agreement indicates that such is the intent, words in the singular number shall include the plural and the masculine gender shall include the neuter or female gender as the context may require.

12.7 Headings.

The Article headings or sections in this Agreement are for convenience only and shall not be used in construing the scope of this Agreement or any particular Article.

12.8 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one and the same instrument binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

12.9 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware; provided, however, that any cause of action for violation of federal or state securities laws shall not be governed by this Section 12.9.

IN WITNESS WHEREOF, the parties hereto have hereunder affixed their signatures to this Agreement, all as of the 20th day of May, 2016.

GENERAL PARTNER:

Moody National REIT II, Inc.

By: /s/ Brett C. Moody
Brett C. Moody
Chief Executive Officer

SPECIAL LIMITED PARTNER:

Moody National LPOP II, LLC

By: Moody National Advisor II, LLC, Sole Member

By: Moody National REIT Sponsor, LLC, Sole Member

By: Moody National REIT Sponsor SM, LLC

By: /s/ Brett C. Moody
Brett C. Moody
Member

LIMITED PARTNERS:

Moody OP Holdings II, LLC

By: Moody National REIT II, Inc., Sole Member

By: /s/ Brett C. Moody
Brett C. Moody
Member

EXHIBIT A
CONTRIBUTIONS & INTERESTS

Partner	Address	Cash Contribution	Contributions	Partnership Units	Special Limited Partnership Units
GENERAL PARTNER:					
Moody National REIT II, Inc.	6363 Woodway Drive Suite 110 Houston, Texas 77057				
LIMITED PARTNERS:					
Moody National LPOP II, LLC	6363 Woodway Drive Suite 110 Houston, Texas 77057	\$ 1,000		100	
Moody OP Holdings II, LLC	6363 Woodway Drive Suite 110 Houston, Texas 77057	\$ 1,000			100
Totals		<u>\$ 2,000</u>			

EXHIBIT B
NOTICE OF EXERCISE OF REDEMPTION RIGHT

In accordance with Section 8.5 of the Amended and Restated Limited Partnership Agreement (the “Agreement”) of Moody National Operating Partnership II, LP, the undersigned hereby irrevocably (i) presents for redemption Partnership Units in Moody National Operating Partnership II, LP in accordance with the terms of the Agreement and the Redemption Right referred to in Section 8.5 thereof, (ii) surrenders such Partnership Units and all right, title and interest therein, and (iii) directs that the Cash Amount or REIT Shares Amount (as defined in the Agreement) as determined by the General Partner deliverable upon exercise of the Redemption Right be delivered to the address specified below, and if REIT Shares (as defined in the Agreement) are to be delivered, such REIT Shares be registered or placed in the name(s) and at the address(es) specified below.

Dated: _____ , _____

(Name of Limited Partner)

(Signature of Limited Partner)

(Mailing Address)

(City) (State) (Zip Code)

Signature Guaranteed by: _____

If REIT Shares are to be issued, issue to:

Name: _____

Social Security
or Tax I.D.
Number: _____

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 24th day of May, 2016, by and between MOODY NATIONAL REIT II, INC., a Maryland corporation ("Assignor"), MOODY NATIONAL YALE-SEATTLE HOLDING, LLC, a Delaware limited liability company ("Fee Owner") and MOODY NATIONAL YALE-SEATTLE MT, LLC, a Delaware limited liability company ("Master Tenant", Fee Owner and Master Tenant are collectively referred to herein as "Assignee").

WITNESSETH:

WHEREAS, Assignor, as successor-in-interest to Moody National Companies, L.P., entered into that certain Agreement of Purchase and Sale for the purchase and sale of the land and the improvements located at 1800 Yale Avenue, Seattle, Washington ("Hotel Site") dated as of October 26, 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 "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.
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 Washington.
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: /s/ Brett C. Moody
Name: Brett C. Moody
Title: CEO

FEE OWNER:

**MOODY NATIONAL YALE-SEATTLE
HOLDING, LLC**, a Delaware limited liability company

By: /s/ Brett C. Moody
Name: Brett C. Moody
Title: President

MASTER TENANT:

MOODY NATIONAL YALE-SEATTLE MT, LLC, a
Delaware limited liability company

By: /s/ Brett C. Moody
Name: Brett C. Moody
Title: President

**HOTEL LEASE AGREEMENT
EFFECTIVE May 24, 2016**

BETWEEN

**Moody National Yale-Seattle Holding, LLC, a
Delaware limited liability company**

AS LESSOR

AND

**Moody National Yale-Seattle MT, LLC, a
Delaware limited liability company**

AS LESSEE

HOTEL LEASE AGREEMENT

THIS HOTEL LEASE AGREEMENT (hereinafter called "*Lease*"), effective as of the 24th day of May, 2016, by and between Moody National Yale-Seattle Holding, LLC, a Delaware limited liability company (hereinafter called "*Lessor*"), and Moody National Yale-Seattle 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 (10th) anniversary of the last day of the month in which the Commencement Date occurs, unless sooner terminated in accordance with the provisions hereof.

(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 \$56,250,000 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) Depository Agreement for Restricted Collateral Account, (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 Washington.

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 (5th) 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 (5th) 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 Springhill Suites 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 \$70,000 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 Yale-Seattle Holding, LLC,
a Delaware limited liability company

By: /s/ Brett C. Moody

Name: Brett C. Moody

Title: President

“LESSEE”

Moody National Yale-Seattle 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

Year	Annual Rent	Monthly
Year 1	\$ 6,600,000	\$ 550,000.00
Year 2	\$ 6,600,000	\$ 550,000.00
Year 3	\$ 6,600,000	\$ 550,000.00
Year 4	\$ 6,600,000	\$ 550,000.00
Year 5	\$ 6,600,000	\$ 550,000.00

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:

Gross Revenue (x)	Factor (y)
\$0 – \$14,400,000	47.0%
Over \$14,400,000 - \$14,900,000	48.0%
Over \$14,900,000 - \$15,400,000	49.0%
Over \$15,400,000 - \$15,900,000	50.0%
Over \$15,900,000	51.0%

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

Springhill Suites Seattle – Seattle, Washington

between

MOODY NATIONAL YALE-SEATTLE MT, LLC

and

MOODY NATIONAL HOSPITALITY MANAGEMENT, LLC

EFFECTIVE DATE: May 24, 2016

HOTEL MANAGEMENT AGREEMENT

This Hotel Management Agreement ("Agreement") is made as of May 24, 2016 by and between MOODY NATIONAL YALE-SEATTLE 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 Yale-Seattle Holding, LLC ("Landlord") owns that certain tract of land located at 1800 Yale Avenue, Seattle, Washington ("Land"), upon which has been constructed a hotel known as the Springhill Suites Seattle ("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 Springhill Suites referred to in the first recital herein consisting of 234 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 May 24, 2016.

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 if such termination fee is not permitted under the terms of the loan documents.

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 of 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 maybe 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 Yale-Seattle 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
6363 Woodway, Suite 110
Houston, Texas 77057
Attn: 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 YALE-SEATTLE 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/ David Gould

Name: David Gould

Title: President

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.

PROMISSORY NOTE

LOAN TERMS TABLE

Lender: KeyBank National Association, a national banking association, its successors and assigns

Loan No.: 10105719

Lender's Address: 127 Public Square, Cleveland, Ohio 44114-1306

Borrower: MOODY NATIONAL YALE-SEATTLE HOLDING, LLC, a Delaware limited liability company

Borrower's Address: 6363 Woodway, Suite 110, Houston, Texas 77057

Property: Real property located at 1800 Yale Avenue, Seattle, WA 98101 in King County, Washington and certain personal property

Closing Date: May 24, 2016

Original Principal Amount: \$56,250,000.00

Maturity Date: February 23, 2017

Interest Rate: The rate at which the outstanding principal amount of the Loan bears interest from time to time in accordance with Article II of the Loan Agreement.

Monthly Debt Service Payment Amount: An amount equal to interest on the Loan in arrears on such Payment Date with respect thereto.

Payment Date: July 1, 2016 and the first (1st) day of each calendar month thereafter during the term of the Loan.

1. **Loan Amount and Rate.** FOR VALUE RECEIVED, Borrower promises to pay to the order of Lender, the Original Principal Amount (or so much thereof as is outstanding from time to time, which is referred to herein as the “**Outstanding Principal Balance**” or “**OPB**”), with interest on the unpaid OPB from the date of disbursement of the Loan (as hereinafter defined) evidenced by this Promissory Note (“**Note**”) at the Interest Rate. Interest on the outstanding principal balance of the Loan shall be calculated as provided in the Loan Agreement (as hereinafter defined). The loan evidenced by this Note will sometimes hereinafter be called the “**Loan**.” The above Loan Terms Table (hereinafter referred to as the “**Table**”) is a part of the Note and all terms used in this Note that are defined in the Table shall have the meanings set forth therein. “**Interest Period**” shall have the meaning set forth in the Loan Agreement.

2. **Principal and Interest Payments.** Payments of principal (including, without limitation, pursuant to Section 2.2.1(b) of the Loan Agreement) and interest shall be payable on the dates specified in the Loan Agreement, except that the Outstanding Principal Balance and all accrued interest shall be paid at the stated or accelerated maturity hereof or upon the prepayment in full hereof.

3. **Security for Note.** This Note is secured by a first deed of trust, mortgage, or deed to secure debt (which is herein called the “**Security Instrument**”) encumbering the Property. This Note, the Security Instrument, that certain Loan Agreement between Borrower and Lender of even date herewith (the “**Loan Agreement**”) and all other documents and instruments existing now or after the date hereof that evidence, secure or otherwise relate to the Loan and pursuant to which any Person assumes or incurs an obligation for the benefit of Lender, including any assignments of leases and rents, other assignments, security agreements, financing statements, 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**.” All amounts that are now or in the future become due and payable by Borrower under this Note, the Security Instrument, or any other Loan Document, including any prepayment premiums payable pursuant to the Loan Agreement as well as all applicable expenses, costs, charges, and fees, will be referred to herein as the “**Debt**.” The remedies of Lender as provided in this Note, any other Loan Document, or under applicable law shall be cumulative and concurrent, may be pursued singularly, successively, or together at the discretion of Lender, and may be exercised as often as the occurrence of an occasion for which Lender is entitled to a remedy under the Loan Documents or applicable law. The failure to exercise any right or remedy shall not be construed as a waiver or release of the right or remedy respecting the same or any subsequent default.

4. **Intentionally Omitted.**

5. **Payments.** All amounts payable hereunder shall be payable in lawful money of the United States of America to Lender at Lender's Address or such other place as the holder hereof may designate in writing, which may include at Lender's option a requirement that payment be made by wire transfer of immediately available funds in accordance with wire transfer instructions provided by Lender. Each payment made hereunder shall be made in immediately available funds and must state the Borrower's Loan Number. If any payment of principal or interest on this Note is due on a day other than a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day. Any payment on this Note received after 1:00 o'clock p.m. local time at the place then designated as the place for receipt of payments hereunder shall be deemed to have been made on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. All amounts due under this Note shall be payable without set off, counterclaim, or any other deduction whatsoever. All payments from Borrower to Lender following the occurrence and during the continuation of an Event of Default shall be applied in such order and manner as Lender elects in reduction of costs, expenses, charges, disbursements and fees payable by Borrower hereunder or under any other Loan Document, in reduction of interest due on the Outstanding Principal Balance, or in reduction of the Outstanding Principal Balance. Lender may, without notice to Borrower or any other person, accept one or more partial payments of any sums due or past due hereunder from time to time while an Event of Default exists hereunder, after Lender accelerates the indebtedness evidenced hereby, or after Lender commences enforcement of its remedies under any Loan Document or applicable law, without thereby waiving any Event of Default, rescinding any acceleration, or waiving, delaying, or forbearing in the pursuit of any remedies under the Loan Documents. Lender may endorse and deposit any check or other instrument tendered in connection with such a partial payment without thereby giving effect to or being bound by any language purporting to make acceptance of such instrument an accord and satisfaction of the indebtedness evidenced hereby. As used herein, the term "**Business Day**" shall have the meaning set forth in the Loan Agreement.

6. **Late Charge.** If any sum payable under this Note or any other Loan Document, other than principal due at maturity or upon acceleration of the Loan, is not received by Lender within five (5) days of the date on which it was due, Borrower shall pay to Lender an amount (the "**Late Charge**") equal to the lesser of (a) five percent (5%) of the full amount of such sum or (b) the maximum amount permitted by applicable law in order to help defray the expenses incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such Late Charge shall be secured by the Security Instrument and other Loan Documents. The collection of any Late Charge shall be in addition to, and shall not constitute a waiver of or limitation of, a default or Event of Default hereunder or a waiver of or limitation of any other rights or remedies that Lender may be entitled to under any Loan Document or applicable law.

7. **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 (as defined in the Loan Agreement), as more fully set forth in the Loan Agreement.

8. **Origination, Administration, Enforcement, and Defense Expenses.** Subject to any express provision of any Loan Document providing otherwise, Borrower shall pay Lender, on demand, all Administration and Enforcement Expenses (as hereinafter defined) now or hereafter incurred by Lender, together with interest thereon at (x) if no Event of Default exists, the Interest Rate, or (y) if an Event of Default exists, the Default Rate, from the date paid or incurred by Lender until such fees and expenses are paid by Borrower, whether or not an Event of Default or Default then exists. 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, except to the extent limited by applicable law. For the purpose of this Note, "**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. All Administration and Enforcement Expenses shall be additional Debt hereunder secured by the Property, and may be funded, if Lender so elects, by Lender paying the same to the appropriate persons and thus making an advance on Borrower's behalf.

9. **Prepayment.** Except as otherwise provided in the Loan Agreement, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date.

10. **Maximum Rate Permitted by Law.** All agreements in this Note and all other Loan Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount agreed to be paid hereunder for the use, forbearance, or detention of money exceed the Maximum Legal Rate (as defined in the Loan Agreement). If, from any circumstance whatsoever, fulfillment of any provision of this Note or any other Loan Document at the time performance of such provision shall be due shall involve exceeding the Maximum Legal Rate, then, ipso facto, the obligations to be fulfilled shall be reduced to allow compliance with the Maximum Legal Rate, and if, from any circumstance whatsoever, Lender shall ever receive as interest an amount that would exceed the Maximum Legal Rate, the receipt of such excess shall be deemed a mistake and shall be canceled automatically or, if theretofore paid, such excess shall be credited against the principal amount of the indebtedness evidenced hereby to which the same may lawfully be credited, and any portion of such excess not capable of being so credited shall be refunded immediately to Borrower.

11. **Events of Default; Acceleration of Amount Due.** Lender may in its discretion, without notice to Borrower, declare the entire Debt, including the Outstanding Principal Balance, all accrued interest, all costs, expenses, charges and fees payable under any Loan Document, and Lender shall have all remedies available to it at law or equity for collection of the amounts due, upon the occurrence and during the continuance of any of the following (the “**Events of Default**”): an “Event of Default” (as defined in the Loan Agreement or in any other Loan Document) under the Loan Agreement or any other Loan Document.

12. **Time of Essence.** Time is of the essence with regard to each provision contained in this Note.

13. **Transfer and Assignment.** This Note may be freely transferred and assigned by Lender. Borrower’s right to transfer its rights and obligations with respect to the Debt, and to be released from liability under this Note, shall be governed by the Loan Agreement.

14. **Authority of Persons Executing Note.** Borrower warrants and represents that the persons or officers who are executing this Note and the other Loan Documents on behalf of Borrower have full right, power and authority to do so, and that this Note and the other Loan Documents constitute valid and binding documents, enforceable against Borrower in accordance with their terms, and that no other person, entity, or party is required to sign, approve, or consent to, this Note.

15. **Severability.** The terms of this Note are severable, and should any provision be declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall, at the option of Lender, remain in full force and effect and shall in no way be impaired.

16. **Borrower’s Waivers.** Borrower and all others liable hereon hereby waive presentation for payment, demand, notice of dishonor, protest, and notice of protest, notice of intent to accelerate, and notice of acceleration, stay of execution and all other suretyship defenses to payment generally. No release of any security held for the payment of this Note, or extension of any time periods for any payments due hereunder, or release of collateral that may be granted by Lender from time to time, and no alteration, amendment or waiver of any provision of this Note or of any of the other Loan Documents, shall modify, waive, extend, change, discharge, terminate or affect the liability of Borrower and any others that may at any time be liable for the payment of this Note or the performance of any covenants contained in any of the Loan Documents.

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

LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

18. JURISDICTION AND VENUE. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS ("ACTION") MAY AT LENDER'S OPTION BE INSTITUTED IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS OF ANY SUCH ACTION, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY ACTION. BORROWER IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE, OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, AT THE ADDRESS SPECIFIED IN SECTION 19 HEREOF AND AGREES THAT SERVICE OF PROCESS AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH ACTION IN THE STATE OF NEW YORK. BORROWER SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS.

19. 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 1200 Abernathy Road, Suite 1550 Atlanta, Georgia 30328 Attention: Jennifer Power, Vice President
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 Yale-Seattle Holding, LLC 6363 Woodway, Suite 110 Houston, Texas 77057 Attention: Brett C. Moody
with a copy to:	Gresham Savage Nolan & Tilden, PC 501 W. Broadway, Suite 800 San Diego, California 92101 Attention: Jerome A. Grossman

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.

20. Avoidance of Debt Payments. To the extent that any payment to Lender or any payment or proceeds of any collateral received by Lender in reduction of the Debt is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, to Borrower (or Borrower's successor) as a debtor in possession, or to a receiver, creditor, or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then the portion of the Debt intended to have been satisfied by such payment or proceeds shall remain due and payable hereunder, be evidenced by this Note, and shall continue in full force and effect as if such payment or proceeds had never been received by Lender whether or not this Note has been marked "paid" or otherwise cancelled or satisfied or has been delivered to Borrower, and in such event Borrower shall be immediately obligated to return the original Note to Lender and any marking of "paid" or other similar marking shall be of no force and effect.

21. **Nonrecourse.** Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in this Note, the Loan 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 this Note, the Loan Agreement, the Security Instrument and the other Loan Documents, or in the Property, the Rents (as defined in the Loan Agreement), 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 this Note, the Loan 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 this Note, the Loan 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.

(a) 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 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, and/or the Cash Management Agreement relating to the establishment of 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;

(xvi) Breakage Costs not being paid;

(xvii) Borrower's failure to obtain and/or maintain the Interest Rate Cap Agreement (as defined in the Loan Agreement) or Replacement Interest Rate Cap Agreement (as defined in the Loan Agreement), as applicable, as required pursuant to Section 2.2.17 of the Loan Agreement; and/or

(xviii) any loss, cost, expense, damage, claim or other obligation (including reasonable attorneys' fees and court costs) incurred or suffered by Lender related, directly or indirectly, to the removal and/or modification of any shoring mechanisms located at or adjacent to the Property (including, without limitation, any tie-back rods and anchors and/or pins) pursuant to the Easement Agreement.

(b) Notwithstanding anything to the contrary in this Note, the Loan Agreement 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 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) 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 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.

22. **Miscellaneous.** Neither this Note 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 Note; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Note; 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 Note. This Note 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 Note. The failure of any party hereto to execute this Note, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. If Borrower consists of more than one person or entity, then the obligations and liabilities of each person or entity shall be joint and several and in such case, the term "Borrower" shall mean individually and collectively, jointly and severally, each Borrower. As used in this Note, (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 Note, (iv) no inference in favor of, or against, Lender or Borrower shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document, (v) the words "Lender" and "Borrower" shall include their respective successors (including, in the case of Borrower, any subsequent owner or owners of a fee interest in the Property or any part thereof or any 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, (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 Note refer to this Note as a whole and not to any particular provision or section of this Note, (viii) an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender, and (ix) in the computation of periods of time from a specified date to a later date, the words "from and including" and the words "to" and "until" each means "to but excluding." Wherever Lender's judgment, consent, approval or discretion is required under this Note or Lender shall have an option, election, or right of determination or any other power to decide any other matter relating to the terms of this Note, 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 Note 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 Borrower hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent. BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS BEEN PROVIDED WITH SUFFICIENT AND NECESSARY TIME AND OPPORTUNITY TO REVIEW THE TERMS OF THIS NOTE, THE SECURITY INSTRUMENT, AND EACH OF THE LOAN DOCUMENTS, WITH ANY AND ALL COUNSEL IT DEEMS APPROPRIATE, AND THAT NO INFERENCE IN FAVOR OF, OR AGAINST, LENDER OR BORROWER SHALL BE DRAWN FROM THE FACT THAT EITHER SUCH PARTY HAS DRAFTED ANY PORTION HEREOF, OR THE SECURITY INSTRUMENT, OR ANY OF THE LOAN DOCUMENTS.

23. **Waiver of Counterclaim and Jury Trial.** BORROWER HEREBY KNOWINGLY WAIVES THE RIGHT TO ASSERT ANY COUNTERCLAIM, OTHER THAN A COMPULSORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST BORROWER BY LENDER OR ITS AGENTS. ADDITIONALLY, TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THE LOAN OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE LOAN, THIS NOTE, THE SECURITY INSTRUMENT, OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION OF BORROWER OR LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S MAKING OF THE LOAN.

24. **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 Note, the terms and conditions of this Section shall be binding.

NONE.

[NO FURTHER TEXT ON THIS PAGE]

Intending to be fully bound, Borrower has executed this Note effective as of the day and year first above written.

BORROWER:

**MOODY NATIONAL YALE-SEATTLE
HOLDING, LLC**, a Delaware limited liability company

By: /s/ Brett C. Moody

Name: Brett C. Moody

Title: President

SIGNATURE PAGE TO PROMISSORY NOTE

LOAN AGREEMENT

Dated as of May 24, 2016

Between

MOODY NATIONAL YALE-SEATTLE HOLDING, LLC,

as Borrower

and

KEYBANK NATIONAL ASSOCIATION,

as Lender

Loan No. 10105719

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LOAN AGREEMENT

THIS LOAN AGREEMENT is made as of May 24, 2016 (this “**Agreement**”), between **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an address at 127 Public Square, Cleveland, Ohio 44114 (“**Lender**”) and **MOODY NATIONAL YALE-SEATTLE 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:

“**Acceptable Counterparty**” shall mean (i) Lender or (ii) a counterparty to the Interest Rate Cap Agreement (or the guarantor of such counterparty’s obligations) that (a) has and shall maintain, until the expiration of the applicable Interest Rate Cap Agreement, (i) a long-term unsecured debt rating of not less than “A+” by S&P and a short-term senior unsecured debt rating of at least “A-1” from S&P, (ii)(x) a long-term unsecured debt rating of not less than “A2” from Moody’s and a short-term senior unsecured debt rating of at least “P1” from Moody’s or (y) if no short-term debt rating exists, a long-term senior unsecured debt rating of at least “A1” from Moody’s, and (iii) if any the Securities or any class thereof in any Secondary Market Transaction are rated by Fitch, a long-term unsecured debt rating of at least “A” by Fitch (and not on Rating Watch Negative) and a short-term unsecured debt rating of at least “F1” by Fitch (and not on Rating Watch Negative), or (b) intentionally omitted.

“**Action**” has the meaning set forth in Section 10.3 hereof.

“**Affected Lender**” shall have the meaning set forth in Section 2.2.16 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.

“**Applicable Margin**” shall mean:

(a) if the then-current Loan to Value Ratio is sixty percent (60%) or less, (i) with respect to a LIBOR Rate Loan, three and seventy five one hundredths percent (3.75%) and (ii) with respect to a Base Rate Loan, two and seventy five one hundredths percent (2.75%); and

(b) if the then-current Loan to Value Ratio is greater than sixty percent (60%), (i) with respect to a LIBOR Rate Loan, four and seventy five one hundredths percent (4.75%) and (ii) with respect to a Base Rate Loan, three and seventy five one hundredths percent (3.75%).

“**Appraisal**” shall mean an appraisal prepared in accordance with the requirements of FIRREA, prepared by an independent third party appraiser holding an MAI designation, who is state licensed or state certified if required under the laws of the state where the Property is located, who meets the requirements of FIRREA.

“**Approved Annual Budget**” has the meaning set forth in Section 5.1.11(g) hereof.

“**Assignment of Interest Rate Cap Agreement**” shall have the meaning set forth in Section 2.2.17 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.

“Base Rate” shall mean the greatest of (a) the fluctuating annual rate of interest announced from time to time by Lender at Lender’s Head Office as its “prime rate”, (b) the then applicable LIBOR Base Rate for a one month Interest Period plus one percent (1%) per annum, or (c) one half of one percent (0.5%) above the Federal Funds Effective Rate. The Base Rate is a reference rate and does not necessarily represent the lowest or best rate being charged to any customer. Any change in the rate of interest payable hereunder resulting from a change in the Base Rate shall become effective as of the opening of business on the day on which such change in the Base Rate becomes effective, without notice or demand of any kind.

“Base Rate Loan” shall mean the Loan bearing interest calculated by reference to the Base Rate.

“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.

“Breakage Costs” shall mean the actual cost to Lender of re-employing funds bearing interest at the LIBOR Base Rate incurred (or reasonably expected to be incurred) in connection with (a) any payment of any portion of the Loan bearing interest at the LIBOR Base Rate prior to the termination of any applicable Interest Period, (b) the conversion of a LIBOR Rate Loan to a Loan of another Type on a date other than the last day of the relevant Interest Period, or (c) if applicable, the failure of the Borrower to borrow, on the first day of the applicable Interest Period, any amount as to which the Borrower has elected a LIBOR Rate Loan.

“Business Day” means any day on which banking institutions located in the same city and State as the Lender’s Head Office are located are open for the transaction of banking business and, in the case of a LIBOR Rate Loan, which also is a LIBOR Business Day.

“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 an Event of Default.

“Cash Sweep Event Cure” means 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); 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, and (ii) 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 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.

“Change in Law” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Closing Date” means the date of the funding of the Loan.

“Co-Lender” shall mean KeyBank National Association, and each and every entity which holds an interest in all or any portion of the Loan in connection with a Syndication, individually and collectively as the context may require.

“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.

“Collected Taxes” shall have the meaning set forth in the Cash Management Agreement.

“Commitment” shall mean, as to each Lender, the amount of the Loan amount multiplied by such Lender’s Commitment Percentage.

“Commitment Percentage” shall mean, with respect to each Lender, the percentage of the Loan amount set forth on Schedule VI hereto opposite such Lender’s name, as the same may be changed from time to time in accordance with the terms of this Agreement.

“Compliance Certificate” shall mean a Compliance Certificate substantially in the form attached hereto as Schedule VII.

“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, but not limited to, any Breakage Costs) 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 (if any) 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 4.0% 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 (6.0%) 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) notwithstanding any “interest only” period under the Loan, the denominator is an assumed Debt Service for such period calculated on the basis of an assumed Interest Rate of six percent (6.0%) and a thirty (30) year amortization schedule).

“Debt Yield” shall mean, as of any date of determination, the percentage obtained by dividing:

(a) the Net Operating Income (excluding interest on credit accounts) for the immediately preceding twelve (12) full calendar month period as of the date of determination as set forth in the statements required hereunder, without deduction for (i) actual management fees incurred in connection with the operation of the Property, or (ii) amounts paid to the Reserve Funds, less (A) management fees equal to the greater of (1) assumed management fees of 4.0% of Gross Income from Operations and (2) the actual management fees incurred, and (B) annual Replacement Reserve Fund contributions equal to four percent (4%) of Gross Income from Operations; and

(b) the outstanding principal balance of 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.

“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 Secondary Market Transaction.

“Dollars” shall mean lawful currency of the United States of America.

“Easement Agreement” shall mean that certain Easement Agreement, dated as of May 5, 2000, by and between SeaFx Property, LP and Diamond Parking, Inc., recorded on or about May 16, 2000 in the Official Records of King County, Washington under Recording Number 20000516000769.

“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.

“ERISA Affiliate” shall mean any Person that for purposes of Title IV of ERISA is a member of Borrower’s, Master Tenant’s or Guarantor’s controlled group, under common control with Borrower, Master Tenant or Guarantor, within the meaning of Section 414 of the Code.

“ERISA Event” shall mean shall mean (a) the occurrence with respect to a Plan of a reportable event, within the meaning of Section 4043 of ERISA, unless the 30-day notice requirement with respect thereto has been waived by the Pension Benefit Guaranty Corporation (or any successor) (“**PBGC**”); (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of Borrower, Guarantor, or any ERISA Affiliates in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by Borrower, Master Tenant, Guarantor, or any ERISA Affiliates from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions set forth in Section 430(e) of the Internal Revenue Code or Section 303(k)(1)(A) and (B) of ERISA to the creation of a lien upon property or assets or rights to property or assets of Borrower, Master Tenant, Guarantor, or any ERISA Affiliates for failure to make a required payment to a Plan are satisfied; (g) the termination of a Plan by the PBGC pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Plan; (h) any failure by any Plan to satisfy the minimum funding standards, within the meaning of Sections 412 or 430 of the Internal Revenue Code or Section 302 of ERISA, whether or not waived; (i) the determination that any Plan is or is expected to be in “at-risk” status, within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA or (j) the receipt by Borrower, Master Tenant, Guarantor, or any ERISA Affiliate of any notice concerning the imposition of liability with respect to the withdrawal or partial withdrawal from a Multiemployer Plan or a determination that a Multiemployer Plan is, or is expected to be “insolvent” (within the meaning of Section 4245 of ERISA), in “reorganization” (within the meaning of Section 4241 of ERISA) or in “endangered” or “critical status” (within the meaning of Section 432 of the Internal Revenue Code or Section 305 of ERISA).

“Event of Default” has the meaning set forth in Section 8.1(a) 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.

“Exit Fee” shall have the meaning set forth in the Fee Letter Agreement.

“Extended Maturity Date” shall have the meaning set forth in Section 2.7 hereof.

“Extraordinary Expense” has the meaning set forth in Section 5.1.11(h) hereof.

“FATCA” shall have the meaning set forth in Section 2.2.4(b) hereof.

“Federal Funds Effective Rate” shall mean, for any day, the rate per annum (rounded upward to the nearest one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of Cleveland on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the “Federal Funds Effective Rate”.

“Fee Letter Agreement” shall mean that certain Letter Agreement, dated as of the date hereof, by and between Borrower and Lender.

“Financial Covenant Compliance Certificate” shall mean an Officer’s Certificate, in form and substance reasonably acceptable to Lender, certifying (a) that the Debt Service Coverage Ratio for the Property equals or exceeds the Minimum DSCR and that the Debt Yield equals or exceeds the Minimum Debt Yield (or, if either of such statements would not be true, citing such failure) and (b) calculations reflecting (x) 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 (y) the Debt Yield as of the last day of such quarter, together with an exhibit attached thereto detailing such calculations of the Debt Service Coverage Ratio and Debt Yield (which shall in each case be subject to verification by Lender).

“FIRREA” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (as the same may have been or may hereafter be amended, restated, supplemented or otherwise modified).

“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.

“Foreign Benefit Arrangement” shall mean any employee benefit arrangement mandated by non-U.S. law that is maintained or contributed to by Borrower, Master Tenant, Guarantor or any ERISA Affiliate.

“Foreign Plan” shall mean each “employee benefit plan” (within the meaning of Section 3(3) of ERISA) that is not subject to U.S. law and is maintained or contributed to by Borrower, Master Tenant, Guarantor or any ERISA Affiliate.

“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.

“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) intentionally omitted; 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; (h) rent payable to Borrower under the Master Lease; (i) the proceeds of any financing; (j) 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; (k) any credits or refunds made to customers, guests or patrons in the form of allowances or adjustments to previously recorded revenues; and (l) payments made to Borrower pursuant to the Interest Rate Cap Agreement.

"Guarantor" means, individually and/or collectively as the context may require, Moody Guarantor, Moody REIT Guarantor and Moody LP Guarantor.

"Guaranty" means, individually and/or collectively as the context may require, the Recourse Guaranty and the Payment Guaranty.

"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 Secondary Market Transaction or has acted as the sponsor or depositor in connection with the Secondary Market Transaction, any Affiliate of Lender that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Secondary Market Transaction, any other co underwriters, co placement agents or co initial purchasers of Securities issued in the Secondary Market Transaction, 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 Maturity Date" shall mean February 23, 2017 or such earlier date on which the final payment of the Note becomes due and payable as therein or herein provided whether at such stated maturity date, by declaration of acceleration, or otherwise.

"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 Period" shall mean, with respect to a LIBOR Rate Loan, (a) initially, the period commencing on the Closing Date and ending one, two, or three (if available from Lender) months thereafter, and (b) thereafter, each period commencing on the day following the last day of the next preceding Interest Period applicable to the Loan and ending on the last day of one of the periods set forth above, as selected by Borrower pursuant to an Interest Period Request; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period with respect to a LIBOR Rate Loan would otherwise end on a day that is not a LIBOR Business Day, such Interest Period shall end on the next succeeding LIBOR Business Day, unless such next succeeding LIBOR Business Day occurs in the next calendar month, in which case such Interest Period shall end on the next preceding LIBOR Business Day, as determined conclusively by Lender in accordance with the then current bank practice in London;

(ii) any Interest Period pertaining to a LIBOR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the applicable calendar month; and

(iii) no Interest Period relating to any LIBOR Rate Loan shall extend beyond the Maturity Date.

"Interest Period Request" shall mean a written notice delivered by Borrower to Lender detailing Borrower's decision to select a one, two, or three month period (subject to availability from Lender) as set forth, and in accordance with, the definition of Interest Period.

"Interest Rate" shall mean the rate at which the outstanding principal amount of the Loan bears interest from time to time in accordance with Article II hereof.

"Interest Rate Cap Agreement" shall mean, collectively, one or more interest rate protection agreements (together with the confirmation and schedules relating thereto) acceptable to Lender, between an Acceptable Counterparty and Borrower obtained by Borrower as and when required pursuant to Section 2.2.17 and Section 2.7 hereof. After delivery of a Replacement Interest Rate Cap Agreement to Lender, the term "Interest Rate Cap Agreement" shall be deemed to mean such Replacement Interest Rate Cap Agreement and such Replacement Interest Rate Cap Agreement shall be subject to all requirements applicable to the Interest Rate Cap Agreement.

"Key Principal" shall mean Brett C. Moody.

"KeyBank" shall mean KeyBank National Association, a national banking association.

"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.

“**Lender’s Head Office**” means Lender’s head office located at 127 Public Square, Cleveland, Ohio 44114-1306, or at such other location as Lender may designate from time to time by notice to Borrower.

“**LIBOR Base Rate**” means, with respect to a LIBOR Rate Loan for the relevant Interest Period, the applicable British Bankers’ Association LIBOR rate (rounded upwards to the nearest one one-hundredth of one percent (0.01%)) for deposits in U.S. dollars as reported by any generally recognized financial information service as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, and having a maturity equal to such Interest Period, provided that, if no such British Bankers’ Association LIBOR rate is available to Lender, the applicable LIBOR Base Rate for the relevant Interest Period shall instead be the rate determined by Lender to be the rate at which KeyBank or one of its Affiliate banks offers to place deposits in U.S. dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, in the approximate amount of Lender’s relevant LIBOR Rate Loan and having a maturity equal to such Interest Period, provided, that, if any such LIBOR rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**LIBOR Business Day**” shall mean any day on which commercial banks are open for international business (including dealings in Dollar deposits) in London, England.

“**LIBOR Lending Office**” shall mean, initially, the office of Lender designated as such on Schedule VI hereto; thereafter, such other office of such Lender, if any, that shall be making or maintaining LIBOR Rate Loans.

“**LIBOR Rate Loan**” shall mean the Loan bearing interest calculated by reference to the LIBOR Base Rate.

“**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 Recourse Guaranty, the Payment Guaranty, the Cash Management Agreement, the Master Lease Subordination Agreement, the Master Lease ALR, the Interest Rate Cap Agreement, the Assignment of Interest Rate Cap Agreement, the Fee Letter Agreement, 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, a percentage calculated by multiplying (i) a fraction, the numerator of which is the outstanding principal amount of the Loan as of the date of such calculation and the denominator of which is the value of the Property based on a current Appraisal thereof, by (ii) one hundred (100).

“**MAI**” shall mean that the designee has earned the “MAI” designation from The Appraisal Institute.

“**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, 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 Yale-Seattle 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**” shall mean the Initial Maturity Date or, following an exercise by Borrower of the Extension Option described in Section 2.7 hereof, the Extended Maturity Date, 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**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**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.

“**Minimum Debt Yield**” shall mean that the Debt Yield, as determined by Lender, shall be equal to or greater than (i) from the Closing Date to (but not including) July 1, 2016, eight and 82/100 percent (8.82%), (ii) from July 1, 2016 to (but not including) October 1, 2016, nine percent (9.00%) and (iii) from October 1, 2016 until the Maturity Date, ten percent (10.00%).

“**Minimum DSCR**” shall mean that the Debt Service Coverage Ratio for the Property, as determined by Lender, shall be greater than (i) through (but not including) October 1, 2016, 1.20 to 1.0 and (ii) from October 1, 2016 until the Maturity Date, 1.40 to 1.0.

“**MNOP II**” shall mean Moody National Operating Partnership II, L.P., a Delaware limited partnership.

“**Monthly Debt Service Payment Amount**” means an amount equal to interest on the Loan in arrears on such Payment Date with respect thereto.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Moody Guarantor**” shall mean Brett C. Moody, a natural person.

“**Moody LP Guarantor**” shall mean MNOP II.

“**Moody REIT Guarantor**” means Moody REIT II.

“**Moody REIT II**” means Moody National REIT II, Inc., a Maryland corporation.

“**Multiemployer Plan**” shall mean a multiemployer plan, as defined in Section 3(37) or Section 4001(a)(3) of ERISA, as applicable, in respect of which Borrower, Master Tenant, Guarantor or any ERISA Affiliate could have any obligation or liability, contingent or otherwise.

“Multiple Employer Plan” shall mean a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of Borrower, Master Tenant, Guarantor or any ERISA Affiliate and at least one Person other than Borrower, Master Tenant, Guarantor and the ERISA Affiliates, or (b) was so maintained, and in respect of which Borrower, Master Tenant, Guarantor or any ERISA Affiliate could have liability under Sections 4062-4069 of ERISA in the event such plan has been or were to be terminated.

“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.

“Non-Excluded Taxes” shall have the meaning set forth in Section 2.2.4(b) hereof.

“Non-U.S. Lender” shall have the meaning set forth in Section 2.2.4(c) hereof.

“Note” means that certain Promissory Note, dated the date hereof, in the principal amount of \$56,250,000.00, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Obligations” has the meaning as set forth in the Security Instrument.

“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 \$56,250,000.00.

"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

"Participant Register" shall have the meaning set forth in Section 9.1.1(f) hereof.

"Payment Date" means July 1, 2016 and the first (1st) day of each calendar month thereafter during the term of the Loan.

"Payment Guaranty" means that certain Guaranty of Payment, dated as of the date hereof, executed and delivered by Moody Guarantor, Moody REIT Guarantor and Moody LP 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.

"PBGC" shall have the meaning assigned to that term in the definition of ERISA Event.

"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 Secondary Market Transaction 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 two (2) Rating Agencies in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing); 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 two (2) Rating Agencies in the highest short term 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;

(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 two (2) Rating Agencies) 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 two (2) Rating Agencies) 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 two (2) Rating Agencies) 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;

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 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.

“**PIP Requirements**” shall mean each plan for replacing the Replacements, remodeling, redecorating and modifying the Property required of Borrower by the Franchisor pursuant to the Franchise Agreement.

“**PIP Reserve Account**” shall have the meaning set forth in Section 7.4.1 hereof.

“**PIP Reserve Fund**” shall have the meaning set forth in Section 7.4.1 hereof.

“**Plan**” shall mean a Single Employer Plan, a Multiple Employer Plan or a Multiemployer Plan.

“**Plan Asset Regulations**” shall have the meaning set forth in Section 5.29(b) hereof.

“**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.

“**Principal Reduction Amount**” shall mean a prepayment of a portion of the Outstanding Principal Balance to a level such that the Loan to Value Ratio shall equal sixty percent (60%). As of the date hereof, Lender estimates such amount to be \$3,390,000.00.

“**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.

“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.

“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, if applicable, designated by Lender to assign a rating to the Securities.

“Recourse Guaranty” means that certain Guaranty of Recourse Obligations, dated as of the date hereof, executed and delivered by Moody Guarantor, Moody REIT Guarantor and Moody LP 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.

“Register” shall have the meaning set forth in Section 9.1.1(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 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 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.

“Replacement Interest Rate Cap Agreement” shall mean, collectively, one or more interest rate protection agreements, reasonably acceptable to Lender, from an Acceptable Counterparty with terms substantially similar to the Interest Rate Cap Agreement except that the same shall be effective as of the date required in Section 2.2.17(c).

“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, 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 \$44,680, 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 PIP Reserve Fund, 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.

“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.

“Securities” has the meaning set forth in Section 9.1 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.

“Similar Law” has the meaning set forth in Section 4.1.9(b) hereof.

“Single Employer Plan” shall mean a single employer plan, as defined in Section 3(41) or Section 4001(a)(15) of ERISA, as applicable, that (a) is maintained for employees of Borrower, Guarantor or any ERISA Affiliate and no Person other than Borrower, Guarantor and the ERISA Affiliates, or (b) was so maintained, and in respect of which Borrower, Guarantor or any ERISA Affiliate could have liability under Sections 4062-4069 of ERISA in the event such plan has been or were to be terminated.

“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, 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:

(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 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.

“State” means, the State or Commonwealth in which the Land or any part thereof is located.

“Strike Price” shall mean a strike price reasonably acceptable to Lender.

“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.

“Syndication” shall have the meaning set forth in Section 9.1.1(a) hereof.

“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.

“Type” shall mean the then-applicable classification of the Loan as a Base Rate Loan or a LIBOR Rate Loan.

“U.S. Lender” shall have the meaning set forth in Section 2.2.4(c) 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.

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 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, and (e) fund any working capital requirements of the Property.

Section 2.2 Loan Payments; Interest Rate.

2.2.1. Monthly Debt Service Payments; Principal Repayments; Interest on Loans.

(a) The Borrower promises to pay on each Payment Date commencing on the Payment Date occurring in July 1, 2016, and on each Payment Date thereafter up to and including the Maturity Date, a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest then due in accordance with this Agreement, and then to the principal amount of the Loan then due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto.

(b) In addition to Borrower’s payment of the Monthly Debt Service Payment Amount in accordance with subsection (a) of this Section 2.2.1 (and not in lieu thereof), Borrower promises to make the following payments to Lender:

(i) On July 1, 2016, a payment equal to \$2,800,000.00, which payment shall be applied to the Outstanding Principal Balance of the Loan;

(ii) On August 1, 2016, a payment equal to \$2,800,000.00, which payment shall be applied to the Outstanding Principal Balance of the Loan;

(iii) On September 1, 2016, a payment equal to \$2,800,000.00, which payment shall be applied to the Outstanding Principal Balance of the Loan; and

(iv) On October 1, 2016, a payment equal to the Principal Reduction Amount.

(c) A Base Rate Loan shall bear interest until the date on which such Base Rate Loan is repaid or converted to a LIBOR Rate Loan, at the rate per annum equal to the Base Rate plus the Applicable Margin, provided the Base Rate shall only be available hereunder in the event the LIBOR Base Rate is not available in accordance with the terms hereof.

(d) A LIBOR Rate Loan shall bear interest, for the subject Interest Period with respect thereto, at the rate per annum equal to the sum of the LIBOR Base Rate determined for such Interest Period plus the Applicable Margin.

(e) A Base Rate Loan and LIBOR Rate Loan may be converted to a Loan of the other Type as provided in Section 2.2.3 hereof.

2.2.2. Intentionally Omitted.

2.2.3. Interest Rates.

(a) The Loan shall bear interest and shall continue as a LIBOR Rate Loan during each Interest Period unless the LIBOR Base Rate is otherwise unavailable pursuant to the terms hereof; provided that no LIBOR Rate Loan may be continued as such when any Default or Event of Default has occurred and is continuing, but shall be automatically converted to a Base Rate Loan on the last day of the Interest Period relating thereto ending during the continuance of any Default or Event of Default.

(b) Lender shall promptly notify Borrower of the interest rate applicable to a LIBOR Rate Loan upon determination thereof pursuant to the Loan Documents.

2.2.4. Funds for Payments.

(a) All payments of principal, interest, facility fees, closing fees and any other amounts due hereunder or under any of the other Loan Documents shall be made to Lender at the Lender's Head Office, not later than 1:00 p.m. (Eastern time) on the day when due (or such later time as is acceptable to Lender in the event of a prepayment in full of the Loan prior to the Maturity Date in accordance with the terms and conditions of this Agreement), in each case in lawful money of the United States in immediately available funds. All payments received by Lender after 1:00 p.m. (Eastern time) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. To the extent not already paid pursuant to the foregoing, Lender is hereby authorized to charge the accounts of Borrower and/or Master Tenant (but not, for the avoidance of doubt, with respect to any cash belonging to Master Tenant, unless an Event of Default then exists and Lender has accelerated the Loan) with KeyBank, on the dates when the amount thereof shall become due and payable, with the amounts of the principal of and interest on the Loans and all fees, charges, expenses and other amounts owing to Lender under the Loan Documents.

(b) All payments by Borrower hereunder and under any of the other Loan Documents shall be made without setoff or counterclaim and free and clear of and without deduction for any present or future taxes, levies, imposts, duties, charges, fees, or similar deductions or withholdings now or hereafter imposed or levied by the United States of America or any political subdivision thereof or taxing or other authority therein or any jurisdiction from or through which a payment is made by Borrower, excluding any income taxes, franchise taxes imposed in lieu of income taxes and any taxes imposed by a jurisdiction as a result of any connection between a Lender and such jurisdiction other than any connection arising solely from executing, delivering, performing its obligations under, or enforcing any Loan Document ("**Non-Excluded Taxes**"), unless Borrower is compelled by law to make such deduction or withholding. If any such obligation is imposed upon Borrower with respect to any amount payable by Borrower hereunder or under any of the other Loan Documents, Borrower will pay to Lenders, on the date on which such amount is due and payable hereunder or under such other Loan Document, such additional amount in Dollars as shall be necessary to enable Lenders to receive the same net amount which the Lenders would have received on such due date had no such obligation been imposed upon Borrower; provided, however, that Borrower shall not be required to increase any such amounts payable to any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Lender's failure to comply with the requirements of Section 2.2.4(c) hereof or such Lender's failure to comply with Sections 1471 through 1474 of the Code or any regulations promulgated thereunder ("**FATCA**") to establish an exemption from withholding thereunder; (ii) that are branch profits taxes imposed by the United States or any similar taxes imposed by any other jurisdiction under the laws of which a Lender is organized or in which its applicable lending office is located; or (iii) in the case of a Non-U.S. Lender, that are imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment) to receive additional amounts from Borrower with respect to such Non-Excluded Taxes pursuant to this Section 2.2.4(b), including as evidenced by such Non-U.S. Lender's compliance with the provisions of Section 2.2.4(b). Borrower will deliver promptly to Lender certificates or other valid vouchers for all such taxes, levies, imposts, duties, charges, fees, or similar deductions or withholdings or other charges deducted from or paid with respect to payments made by Borrower hereunder or under any other Loan Document. In the event a Lender receives a refund or credit of any Non-Excluded Taxes paid by Borrower pursuant to this section, such Lender will pay to Borrower the amount of such refund or credit (and any interest received with respect thereto) promptly upon receipt thereof; provided that if at any time thereafter such Lender is required to return such refund or credit, Borrower shall promptly repay to such Lender the amount of such refund or credit, net of any reasonable incremental additional costs.

(c) Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a "**Non-U.S. Lender**"), to the extent such Lender is lawfully able to do so, shall provide Borrower on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date to which it becomes a party to this Agreement (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower, with (x) two (2) original copies of Internal Revenue Service Form W-8BEN, W-8ECI and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Lender, and any other such duly executed form(s) or statement(s) (including whether such Lender has complied with the FATCA) which may, from time to time, be prescribed by law and, which, pursuant to applicable provisions of (i) an income tax treaty between the United States and the country of residence of such Lender, (ii) the Code, or (iii) any applicable rules or regulations in effect under (i) or (ii) above, establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Loan Documents, or (y) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Code, a Certificate Regarding Non-Bank Status together with two (2) original copies of Internal

Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Code and requested by Borrower to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Loan Documents. Each Lender that is a United States Person (as such term is defined in Section 7701(a)(30) of the Code) for United States federal income tax purposes (a “**U.S. Lender**”) and is not an exempt recipient within the meaning of Treasury Regulations Section 1.6049-4(c) shall provide Borrower on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two (2) original copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from United States backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this section hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly provide Borrower two (2) new original copies of Internal Revenue Service Form W-9, W-8BEN, W-8ECI and/or W-8IMY (or, in each case, any successor form), or a Certificate Regarding Non-Bank Status and two (2) original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Code and requested by Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Loan Documents, or notify Borrower of its inability to deliver any such forms, certificates or other evidence.

(d) The obligations of Borrower to Lenders under this Section 2.2.4 shall be absolute, unconditional and irrevocable, and shall be paid and performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including, without limitation, the following circumstances: (i) any lack of validity or enforceability of this Agreement or any of the other Loan Documents; (ii) the existence of any claim, set-off, defense or any right which Borrower or any of its subsidiaries or Affiliates may have at any time against Lender (other than the defense of payment to the Lenders or performance in accordance with the terms of this Agreement) or any other person, whether in connection with this Agreement, any other Loan Document, or any unrelated transaction; (iii) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents; (iv) the occurrence of any Default or Event of Default; and (v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

2.2.5. Computations. All computations of interest on the Loans and of other fees to the extent applicable shall be based on a 360-day year and paid for the actual number of days elapsed. Except as otherwise provided in the definition of the term “Interest Period” with respect to a LIBOR Rate Loan, whenever a payment hereunder or under any of the other Loan Documents becomes due on a day that is not a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and interest shall accrue during such extension. The Outstanding Loans as reflected on the records of Lender from time to time shall be considered prima facie evidence of such amount absent demonstrable error.

2.2.6. Suspension of LIBOR Rate Loan. In the event that, prior to the commencement of any Interest Period relating to any LIBOR Rate Loan, Lender shall reasonably determine that adequate and reasonable methods do not exist for ascertaining the LIBOR Base Rate for such Interest Period, or Lender shall reasonably determine in good faith that the LIBOR Base Rate will not accurately and fairly reflect the cost of Lender for making or maintaining LIBOR Rate Loan for such Interest Period, Lender shall forthwith give notice of such determination (which shall be conclusive and binding on Borrower and the Lenders absent demonstrable error) to Borrower. In such event the LIBOR Rate Loan will automatically, on the last day of the then current Interest Period applicable thereto, become a Base Rate Loan, and the obligations of Lender to make a LIBOR Rate Loan shall be suspended until Lender determines that the circumstances giving rise to such suspension no longer exist, whereupon Lender shall so notify Borrower and the Loan shall automatically be converted to a LIBOR Rate Loan.

2.2.7. Illegality. Notwithstanding any other provisions herein, if any Change in Law shall make it unlawful, or any central bank or other governmental authority having jurisdiction over a Lender or its LIBOR Lending Office shall assert that it is unlawful, for Lender to make or maintain a LIBOR Rate Loan, Lender shall forthwith give notice of such circumstances to Borrower and thereupon (a) the commitment of Lender to make a LIBOR Rate Loan shall forthwith be suspended and (b) the LIBOR Rate Loan then outstanding shall be converted automatically to a Base Rate Loan on the last day of each Interest Period applicable to such LIBOR Rate Loan or within such earlier period as may be required by law.

2.2.8. Fees. In addition to all fees specified herein, Borrower agrees to pay to KeyBank for its own account the Exit Fee upon the earlier to occur of (a) the acceleration of the Loan as a result of an Event of Default hereunder, or (b) the repayment in full of the Loan, provided KeyBank agrees to waive payment of such Exit Fee under this clause (b) if the Obligations are repaid through a refinancing arrangement facilitated through KeyBank.

2.2.9. Additional Interest. If any LIBOR Rate Loan or any portion thereof is repaid or is converted to a Base Rate Loan for any reason on a date which is prior to the last day of the Interest Period applicable to such LIBOR Rate Loan, or if repayment of the Loan has been accelerated pursuant to Article VIII hereof, Borrower will pay to Lender upon demand, in addition to any amounts of interest otherwise payable hereunder, the Breakage Costs. The Borrower understands, agrees and acknowledges the following: (i)

Lender does not have any obligation to purchase, sell and/or match funds in connection with the use of the LIBOR Base Rate as a basis for calculating the rate of interest on a LIBOR Rate Loan; (ii) the LIBOR Base Rate is used merely as a reference in determining such rate; and (iii) Borrower has accepted the LIBOR Base Rate as a reasonable and fair basis for calculating such rate and any Breakage Costs. Borrower further agrees to pay the Breakage Costs, if any, whether or not a Lender elects to purchase, sell and/or match funds, provided that Lender shall provide a computation to Borrower of its method of computing such costs.

2.2.10. Additional Costs.

(a) Notwithstanding anything herein to the contrary, if any Change in Law shall:

(i) subject Lender to any tax, levy, impost, duty, charge, fee, deduction or withholding of any nature with respect to this Agreement, the other Loan Documents, or the Loan (other than taxes based upon or measured by the gross receipts, income or profits of such Lender or its franchise tax), or

(ii) materially change the basis of taxation (except for changes in taxes on gross receipts, income or profits or its franchise tax) of payments to Lender of the principal of or the interest on the Loan or any other amounts payable to Lender under this Agreement or the other Loan Documents, or

(iii) impose or increase or render applicable any special deposit, reserve, assessment, liquidity, capital adequacy or other similar requirements (whether or not having the force of law and which are not already reflected in any amounts payable by Borrower hereunder) against assets held by, or deposits in or for the account of, or loans by, or commitments of an office of Lender, or

(iv) impose on Lender any other conditions or requirements with respect to this Agreement, the other Loan Documents, the Loan, or any class of loans or commitments of which any of the Loan forms a part; and

(b) the result of any of the foregoing scenarios as set forth in clauses (a)(i) through (iv) above is:

(i) to increase the cost to Lender of making, funding, issuing, renewing, extending or maintaining the Loan, or

(ii) to reduce the amount of principal, interest or other amount payable to Lender hereunder on account of the Loan, or

(iii) to require Lender to make any payment or to forego any interest or other sum payable hereunder, the amount of which payment or foregone interest or other sum is calculated by reference to the gross amount of any sum receivable or deemed received by (or on behalf of) such Lender from Borrower hereunder,

then, and in each such case, Borrower will (and as to clauses (a)(i) and (a)(ii) above, subject to the provisions of Section 2.2.4 hereof), within thirty (30) days of demand made by (or on behalf of) such Lender at any time and from time to time and as often as the occasion therefor may arise, pay to (or on behalf of) such Lender such additional amounts as such Lender shall determine in good faith to be sufficient to compensate such Lender for such additional cost, reduction, payment or foregone interest or other sum, provided that Lender shall provide a computation of the same to Borrower.

2.2.11. Capital Adequacy. If after the date hereof Lender determines that (a) as a result of any Change in Law, or (b) compliance by such Lender or its parent bank holding company with any directive of any such entity issued after the date hereof regarding capital adequacy, has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's commitment to make the Loan hereunder to a level below that which such Lender or holding company could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material, then such Lender may notify Borrower thereof. Borrower agrees to pay to such Lender the amount of such reduction in the return on capital as and when such reduction is determined, within fifteen (15) days of such Lender's presentation a statement of the amount setting forth the Lender's good faith calculation thereof. In determining such amount, such Lender may use any averaging and attribution methods generally applied by such Lender.

2.2.12. Intentionally Omitted.

2.2.13. 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.

2.2.14. Certificate. A certificate setting forth any amounts payable pursuant to Sections 2.2.9, 2.2.10, 2.2.11, 2.2.12, or 2.2.13 of such amounts which are due, submitted by Lender to Borrower, shall be conclusive for purposes of this Agreement in the absence of manifest error.

2.2.15. 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.

2.2.16. Certain Provisions Relating to Increased Costs. If a Lender gives notice of the existence of the circumstances set forth in Section 2.2.7 hereof or any Lender requests compensation for any losses or costs to be reimbursed pursuant to any one or more of the provisions of Section 2.2.4(b) (as a result of the imposition of U.S. withholding taxes on amounts paid to such Lender under this Agreement), Section 2.2.10 or Section 2.2.11 hereof, then, upon the request of Borrower, such Lender, as applicable, shall use reasonable efforts in a manner consistent with such institution's practice in connection with loans like the Loan of such Lender to eliminate, mitigate or reduce amounts that would otherwise be payable by Borrower under the foregoing provisions, provided that such action would not be otherwise materially prejudicial to such Lender (as determined by such Lender in its sole reasonable discretion), including, without limitation, by designating another of such Lender's offices, branches or affiliates; Borrower shall pay all reasonably incurred costs and expenses incurred by such Lender in connection with any such action within ten (10) Business Days of written demand of such Lender. Notwithstanding anything to the contrary contained herein, if no Default or Event of Default shall have occurred and be continuing, and if any Lender has given notice of the existence of the circumstances set forth in Section 2.2.7 hereof or has requested payment or compensation for any losses or costs to be reimbursed pursuant to any one or more of the provisions of Section 2.2.4(b) (as a result of the imposition of U.S. withholding taxes on amounts paid to such Lender under this Agreement), Section 2.2.10 or Section 2.2.11 hereof and following the request of Borrower has not taken the steps described above to mitigate such amounts (each, an "**Affected Lender**"), then, within thirty (30) days after such notice or request for payment or compensation or failure to fund, as applicable, Borrower shall have the right as to such Affected Lender, to be exercised by delivery of written notice delivered to the Affected Lender, within thirty (30) days of receipt of such notice, to elect to cause the Affected Lender to transfer its Commitment. The administrative agent for the Lenders shall promptly notify the remaining Lenders shall be promptly notified that each of such Lenders shall have the right, but not the obligation, to acquire a portion of the Commitment, pro rata based upon their relevant Commitment Percentages, of the Affected Lender (or if any of such Lenders does not elect to purchase its pro rata share, then to such remaining Lenders in such proportion as approved by such administrative agent). In the event that the Lenders do not elect to acquire all of the Affected Lender's Commitment, then the administrative agent for the Lenders shall use commercially reasonable efforts to obtain a new Lender to acquire such remaining Commitment. Upon any such purchase of the Commitment of the Affected Lender, the Affected Lender's interest in the Loan and its rights hereunder and under the Loan Documents shall terminate at the date of purchase, and the Affected Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest, with the administrative agent being granted a power of attorney by each Affected Lender to executed documents on behalf of each such Affected Lender if such Affected Lender shall refuse to execute any documents in accordance with the terms hereof. The purchase price for the Affected Lender's Commitment shall equal any and all amounts outstanding and owed by Borrower to the Affected Lender including principal, prepayment premium or fee, and all accrued and unpaid interest and fees (including any covenants under Section 2.2.12 hereof).

2.2.17. Interest Rate Cap Agreement.

(a) On or before May 25, 2016, Borrower shall enter into an Interest Rate Cap Agreement with a LIBOR strike price equal to the Strike Price. The Interest Rate Cap Agreement (i) shall at all times be in a form and substance reasonably acceptable to Lender, (ii) shall at all times be with an Acceptable Counterparty, (iii) shall direct such Acceptable Counterparty to deposit directly into the Cash Management Account any amounts due Borrower under such Interest Rate Cap Agreement so long as any portion of the

Debt exists, provided that the Debt shall be deemed to exist if (x) the Property is transferred by judicial or non-judicial foreclosure or deed-in-lieu thereof and (y) Lender shall not have received amounts sufficient to pay the Debt (whether or not a deficiency judgment on the Note shall have been sought, recovered or denied), (iv) shall be for a period through and including the end of the Interest Period in which the Initial Maturity Date occurs, and (v) shall at all times have a notional amount equal to or greater than the principal balance of the Loan and shall at all times provide for the applicable Strike Price. Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement (the “**Assignment of Interest Rate Cap Agreement**”), all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement, and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement (which shall, by its terms and/or by the terms of the Assignment of Interest Rate Cap Agreement, authorize the assignment to Lender and require that payments be deposited directly into the Cash Management Account) and shall notify the Acceptable Counterparty of such assignment.

(b) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Acceptable Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be deposited immediately into the Cash Management Account or into such account as specified by Lender. Borrower shall take all actions reasonably requested by Lender to enforce Lender’s rights under the Interest Rate Cap Agreement in the event of a default by the Acceptable Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Acceptable Counterparty by any Approved Rating Agency, Borrower shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement not later than thirty (30) days following receipt of notice from Lender of such downgrade, withdrawal or qualification.

(d) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or fails to maintain the Interest Rate Cap Agreement in accordance with the terms and provisions of this Agreement, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is reimbursed by Borrower to Lender.

(e) If required by Lender, in connection with the Interest Rate Cap Agreement where KeyBank or any affiliate thereof is not the counterparty thereunder, Borrower shall obtain and deliver to Lender (a) a resolution/consent, as applicable, of the Acceptable Counterparty authorizing the delivery of the Interest Rate Cap Agreement acceptable to Lender, and (b) an opinion from counsel (which counsel may be in-house counsel for the Acceptable Counterparty) for the Acceptable Counterparty (upon which Lender and its successors and assigns may rely) which shall provide, in relevant part, that:

(i) the Acceptable Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or formation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Agreement;

(ii) the execution and delivery of the Interest Rate Cap Agreement by the Acceptable Counterparty, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property;

(iii) all consents, authorizations and approvals required for the execution and delivery by the Acceptable Counterparty of the Interest Rate Cap Agreement, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance; and

(iv) the Interest Rate Cap Agreement, and any other agreement which the Acceptable Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by the Acceptable Counterparty and constitutes the legal, valid and binding obligation of the Acceptable Counterparty, enforceable against the Acceptable Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 2.3 Loan Payment.

2.3.1. Maturity. Borrower promises to pay on the Maturity Date and there shall become absolutely due and payable on the Maturity Date all of the Loan outstanding on such date, together with any and all accrued and unpaid interest thereon.

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

2.3.3. **Mandatory Prepayments.** On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or any part thereof or otherwise remit such Net Proceeds to Borrower pursuant to Section 6.4 of this Agreement, Borrower authorizes Lender, at Lender's option, to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest on the portion of the principal balance of the Loan prepaid and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds (except that Awards (as defined in the Loan Agreement) 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 Rents; provided, however, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its discretion. Other than during the existence of an Event of Default, no premium shall be due in connection with any prepayment made pursuant to this Section 2.3.3. If Net Proceeds are so applied to payment of the Debt rather than made available to Borrower for Restoration, then, provided no Event of Default exists, Borrower shall have a one-time right to prepay the Debt in full only, without payment of any premium or penalty, provided that: (a) the amount of Net Proceeds so applied is not less than fifty-one percent (51%) of the outstanding principal amount of the Debt, (b) Borrower gives written notice of such election to prepay the Debt in full not later than three (3) months after the date which is the earlier of (i) the date Lender notifies Borrower that the Net Proceeds shall be applied to the Debt; and (ii) the date Lender applies the Net Proceeds to the Debt; (c) the Debt is prepaid in full not later than three (3) months after Borrower gives Lender such notice; and (d) such prepayment is made on a Payment Date or if such prepayment is not made on a Monthly Payment Date, then Borrower shall pay to Lender interest for the full Accrual Period during which the prepayment occurs. No premium shall be due in connection with any prepayment made pursuant to this Section 2.3.3, provided that, for the avoidance of doubt, Borrower shall remain liable for payment of the Exit Fee and any Breakage Costs.

2.3.4. **Optional Prepayments.**

(a) Borrower shall have the right, at its election, to prepay the outstanding amount of the Loan, as a whole (but not in part, except to the extent set forth in Section 5.1.27 hereof), at any time without penalty or premium except as provided in Section 2.2.8 hereof; provided, that if any prepayment of the outstanding amount of a LIBOR Rate Loan pursuant to this Section 2.3.4 is made on a date that is not the last day of the Interest Period relating thereto, such prepayment shall be accompanied by the payment of any amounts due pursuant to Section 2.2.9 hereof.

(b) Borrower shall give Lender, no later than 10:00 a.m. (Eastern time) at least three (3) Business Days' prior written notice of any prepayment pursuant to this Section 2.3.4, in each case specifying the proposed date of prepayment of the Loan and the principal amount to be prepaid (provided that (i) any such notice may be revoked or modified upon one (1) Business Day's prior notice to Lender and (ii) any such notice may be conditioned upon the consummation of a transaction).

Section 2.4 **Intentionally Omitted.**

Section 2.5 **Release of Property.** Except as set forth in this Section 2.5 or upon repayment of the Loan in full on or after the Maturity Date, no repayment, or prepayment 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.

2.5.1. **Release of Property.** (a) If Borrower has the right to and has elected to prepay in full the Loan in accordance with this Agreement and the Note, upon satisfaction of the requirements of Section 2.3 and this Section 2.5, all of the Property shall be released from the Liens of the Loan Documents.

(b) In connection with the release of the Security Instrument, Borrower shall submit to Lender, concurrently with any prepayment notice delivered to Lender pursuant to Section 2.3.4(b) hereof (or such shorter time period as Lender may agree to in its sole discretion) prior to the Payment Date on which Borrower intends to prepay the Loan in full, 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.

Section 2.6 **Cash Management.**

2.6.1. **Cash Management Account.** (a) During the term of the Loan, Borrower shall establish and maintain a segregated Eligible Account (the "**Cash Management Account**") with Agent for the benefit of Lender, 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, as security for Master Tenant's obligations under the Master Lease, 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 necessary 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 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 authorizing the filing of UCC-1 Financing Statements and continuations thereof. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower or Master Tenant. All monies now or hereafter deposited into the Cash Management 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. If a Cash Sweep Period does not then exist, all funds in the Cash Management Account, less the reasonable fees of Agent and any minimum balance required to be maintained therein, shall be wire transferred each Business Day to Master Tenant's operating account specified pursuant to the Cash Management Agreement. The Cash Management Agreement and Cash Management Account shall remain in effect until the Loan has been repaid in full.

(b) On or before the Closing Date, Borrower shall, or shall cause Master Tenant to (or cause Manager to), execute and deliver (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 Cash Management 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 Cash Management Account, and deposit all Rents payable under the Master Lease directly to the Cash Management Account. In connection with each commercial Lease executed after the date hereof, Borrower shall simultaneously deliver to such Tenant a Tenant Direction Letter. 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. 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 Cash Management 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) 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.

(d) 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 2.7.1(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) 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.

(f) Neither Borrower nor Master Tenant shall further pledge, assign or grant any security interest in the Cash Management 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 Cash Management Account or the Cash Management Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Cash Management Account was established.

2.6.2. 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.

Section 2.7 Extension of the Maturity Date. Borrower shall have the option to extend the Initial Maturity Date of the Loan for one (1) term (such option, the "**Extension Option**") and such successive term, the "**Extension Term**") of three (3) months (the Maturity Date following the exercise of each such option is hereinafter the "**Extended Maturity Date**") upon satisfaction of the following terms and conditions:

(a) no Default or Event of Default shall have occurred and be continuing at the time the Extension Option is exercised and at the time that the extension occurs;

(b) Borrower shall provide Lender with written revocable notice of its election to extend the Maturity Date as aforesaid not later than fifteen (15) days and not earlier than one hundred twenty (120) days prior to the Initial Maturity Date (provided that if Borrower shall subsequently revoke such notice, Borrower shall be responsible for Lender's costs and expenses incurred in connection with same);

(c) if the Interest Rate Cap Agreement is scheduled to mature prior to the Extended Maturity Date, Borrower shall (i) obtain and deliver to Lender on or prior to the first day of the Extension Term, a Replacement Interest Rate Cap Agreement from an Acceptable Counterparty which Replacement Interest Rate Cap Agreement shall have a LIBOR strike price equal to the Strike Price, be effective commencing on the first date of such Extension Term and shall have a maturity date not earlier than the end of the last Interest Period of the Extended Maturity Date and (ii) deliver an assignment of interest rate cap agreement with respect to any Replacement Interest Rate Cap Agreement in form and substance substantially similar to the Assignment of Interest Rate Cap Agreement delivered on the Closing Date, together with legal opinions of counsel to the counterparty and Borrower as reasonably required by Lender;

(d) Borrower shall have delivered to Lender together with its notice pursuant to subsection (b) of this Section 2.7 and at Lender's reasonable request, on the commencement date of the Extension Option, an Officer's Certificate in form acceptable to Lender certifying that each of the representations and warranties of Borrower contained in the Loan Documents is true, complete and correct in all material respects as of the giving of the notice to the extent such representations and warranties are not matters which by their nature can no longer be true and correct as a result of the passage of time;

(e) Borrower shall pay to Lender in connection with the exercise of the Extension Option an extension fee equal to 0.20% of the outstanding principal amount of the Loan, which extension fee shall be deemed earned by Lender and non-refundable upon receipt.

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. ERISA.

(a) Generally. Each of Borrower, Master Tenant, Guarantor and their ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable law relating to any Plans and the regulations and published interpretations thereunder. Neither Borrower, Master Tenant nor Guarantor has incurred or reasonably expects to incur any liability for a Prohibited Transaction (as such term is defined in Section 406 of ERISA or Section 4975 of the Code). No ERISA Event or termination of any Plan has occurred or is reasonably expected to occur and no notice of termination has been filed by or with the PBGC with respect to any Plan established or maintained by Borrower, Master Tenant, Guarantor or any ERISA Affiliate. Neither Borrower, Master Tenant, Guarantor nor any ERISA Affiliate is or was a party to any Multiemployer Plan. With respect to each Foreign Benefit Arrangement and with respect to each Foreign Plan, (i) any employer and employee contributions required by law or by the terms of any Foreign Benefit Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices, (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles, and (iii) each Foreign Plan that is required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

(b) Plan Assets; Prohibited Transactions. Neither Borrower, Master Tenant nor Guarantor is, and neither shall become an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. § 2510.3-101 (as modified by Section 3(42) of ERISA) of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of and subject to Section 4975 of the Code). Neither Borrower, Master Tenant nor Guarantor is a "governmental plan" within the meaning of Section 3(32) of ERISA and transactions by or with Borrower, Master Tenant or Guarantor 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 Section 406 of ERISA or Section 4975 of the Code ("**Similar Law**"). The execution of this Agreement, the making of the Loan and the other transactions contemplated by the Loan Documents, including but not limited to the exercise by the Lender of its rights under the Loan Documents, are not and will not give rise to an unexempt Prohibited Transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code, and are not prohibited or otherwise restricted by Similar Law.

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 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 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 Borrower’s interest in 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 Cash Management Account (and shall not take any of the foregoing actions);

(b) The Cash Management Account constitutes 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, Agent has agreed to comply with all instructions originated by Lender, without further consent by Borrower or Master Tenant, directing disposition of the 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 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 Agent complying with instructions with respect to the 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 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, Guarantor 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) the Financial Covenant Compliance Certificate, (iv) occupancy statistics for the Property, and (v) a status report of Moody REIT II, in form and substance reasonably satisfactory to Lender and including an executed Compliance Certificate, covering the investment and other investment and/or economic activities of Moody REIT II during such period. In addition, such certificate shall also be accompanied by an Officer's Certificate stating that (x) the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and (y) no Event of Default then exists (or, if any Event of Default then exists, detailing such Event of Default and describing in reasonable detail such remedial actions that Borrower and/or Master Tenant shall take in connection therewith). 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) Intentionally omitted.

(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, and (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 Secondary Market Transaction 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 Secondary Market Transaction to such parties requesting such information in connection with such Secondary Market Transaction.

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 Secondary Market Transaction, (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 Secondary Market Transaction 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 Secondary Market Transaction.

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 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. 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. Opinion of Counsel. Notwithstanding anything contained herein to the contrary, upon request by Lender, Borrower shall promptly deliver to Lender, at Borrower's sole cost and expense, a legal opinion in form and substance reasonably acceptable to Lender from counsel licensed in the State of Delaware.

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 Cash Management Account in accordance with the provisions of the Loan Documents.

5.1.27. Financial Covenants.

(a) At all times, the Debt Service Coverage Ratio for the Property shall equal or exceed the Minimum DSCR; provided that, if the Minimum DSCR shall fail to be satisfied, Borrower shall, within ten (10) Business Days of Borrower, Master Tenant and/or Guarantor becoming aware of such failure, prepay a portion of the Outstanding Principal Balance to a level such that the Debt Service Coverage Ratio shall equal or exceed the Minimum DSCR (provided, further, that any such prepayment shall satisfy the requirements of Section 2.3.4 hereof).

(b) At all times, the Debt Yield shall equal or exceed the Minimum Debt Yield; provided that, if the Minimum Debt Yield shall fail to be satisfied at any time, Borrower shall, within ten (10) Business Days of Borrower, Master Tenant and/or Guarantor becoming aware of such failure, prepay a portion of the Outstanding Principal Balance to a level such that the Debt Yield of the Outstanding Principal Balance shall equal or exceed the Minimum Debt Yield (provided, further, that any such prepayment shall satisfy the requirements of Section 2.3.4 hereof).

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) Neither Borrower, Master Tenant nor Guarantor shall engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (including but not limited to 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 or Section 4975 of the Code or Similar Law

(b) Borrower further covenants and agrees to deliver to Lender (or cause to be delivered) such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (A) neither Borrower, Master Tenant nor Guarantor is subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans which is a Similar Law and (B) one or more of the following circumstances is true:

(i) Equity interests in each of Borrower, Master Tenant and Guarantor are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101 as modified by Section 3 (42) of ERISA (the “**Plan Asset Regulations**”);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in each of Borrower, Master Tenant and Guarantor are held by “benefit plan investors” within the meaning of the Plan Asset Regulations; or

(iii) Each of Borrower, Master Tenant and Guarantor qualifies as an “operating company” or a “real estate operating company” within the meaning of the Plan Asset Regulations or another exception to ERISA applies such that each of Borrower’s, Master Tenant’s and Guarantor’s assets should not constitute “plan assets” of any “benefit plan investor” within the meaning of the Plan Asset Regulations.

(c) Borrower, Master Tenant and Guarantor will fund or cause to be funded each Plan established or maintained by Borrower, Master Tenant, Guarantor, or any ERISA Affiliate, as the case may be, so that there is never a failure to satisfy the minimum funding standards, within the meaning of Sections 412 or 430 of the Internal Revenue Code or Section 302 of ERISA (whether or not such standards are waived). As soon as possible and in any event within ten (10) days after Borrower knows that any ERISA Event has occurred with respect to any Plan, Lender will be provided with a statement, signed by an Authorized Representative of Borrower, Master Tenant and/or Guarantor, describing said ERISA Event and the action which Borrower, Master Tenant and/or Guarantor proposes to take with respect thereto.

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 non-consolidation opinion letter acceptable to Lender and delivered by counsel reasonably satisfactory to Lender; 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) For the avoidance of doubt, and notwithstanding anything in this Section 5.2.10 to the contrary, (i) MNOP II must, at all times, own 100% of the direct equity interests in each of Borrower and MN Lancaster-Austin MT, Inc., a Delaware corporation, (ii) MN Lancaster-Austin MT, Inc., a Delaware corporation, must, at all times, own 100% of the direct equity interests in Master Tenant, and (iii) Moody REIT II continues to own, directly or indirectly, at least seventy-five percent (75%) of the ownership interests in MNOP II.

(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.

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 and the Debt Yield for the Property, after giving effect to the Restoration, shall be equal to or greater than nine percent (9.0%);

(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**"). 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 \$0 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.

(a) 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 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 PIP Reserve Fund.

7.4.1. PIP Reserve Fund. Borrower shall deposit with Lender on the date hereof \$70,000.00 in respect of the PIP Requirements. Amounts deposited pursuant to this Section 7.4 are referred to herein as the "**PIP Reserve Fund**" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "**PIP Reserve Account**."

7.4.2. Disbursements from the PIP Reserve Account. Lender shall disburse PIP Reserve Funds only for PIP Requirements or upon completion of PIP Requirements. Provided no Event of Default has occurred and is continuing, Lender shall disburse PIP Reserve Funds to Borrower or Master Tenant, as the case may be, within fifteen (15) Business Days after the delivery by Borrower or Master Tenant to Lender of a request therefor (but not more often than once per month), in increments of at least \$10,000 (or a lesser amount if the total amount of the PIP Reserve Funds is less than \$10,000, in which case only one disbursement of the amount remaining shall be made), accompanied by the following items (which items shall be in form and substance satisfactory to Lender): (i) an Officer's Certificate (A) stating that the items to be funded by the requested disbursement are PIP Requirements, (B) stating that all PIP Requirements at the Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all Legal Requirements, (C) identifying each Person that supplied materials or labor in connection with the PIP Requirements to be funded by the requested disbursement, (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, or to pay vendors' required deposits or installment payments as provided under the terms of the contract relating to Borrower's purchase of such PIP Requirements (and certifying that such deposit is due and payable), or, if such payment is a progress payment, that such payment represents full payment to such Person, less any applicable retention amount, for work completed through the date of the relevant invoice from such Person, (E) stating that the PIP Requirements (or relevant portion thereof) to be funded have not been the subject of a previous disbursement, and (F) stating that all previous disbursements for PIP Requirements have been used to pay the previously identified PIP Requirements, (ii) as to any completed PIP Requirements, a copy of any license, permit or other approval by any Governmental Authority required, if any, in connection with such PIP Requirement and not previously delivered to Lender, (iii) copies of appropriate lien waivers (or conditional lien waivers) or other evidence of payment or entitlement to payment satisfactory to Lender, (iv) at Lender's option, if the cost of the PIP Requirements to be funded 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, (v) intentionally omitted, and (vi) such other evidence as Lender shall reasonably request to demonstrate that the PIP Requirements to be funded by the requested disbursement have been completed (or completed to the extent of the requested payment) and are paid for or will be paid upon such disbursement to Borrower or Master Tenant, as the case may be.

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, which shall be provided to Lender promptly by Master Tenant (and in any event, no later than one (1) Business Day after Lender’s written request therefor). All funds in the Borrower’s Excess Cash Flow Subaccount shall be held as additional collateral for the Loan, provided that during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in Borrower’s Excess Cash Flow Subaccount to the payment of the Debt in any order in its sole discretion. 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); provided, further, that 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 Master Tenant’s Excess Cash Flow Subaccount to the payment of the Debt in any order in its sole discretion.

7.5.2. Release of Excess Cash Flow Reserve Funds. 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 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 shall be returned to Borrower or Master Tenant, at the direction of either of them.

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 and/or any amounts under Section 5.1.27 hereof) 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 Secondary Market Transaction 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) Moody REIT Guarantor (1) shall fail to pay when due (including, without limitation, at maturity), or within any applicable period of notice and grace, any principal, interest or other amount on account of any obligation for borrowed money or credit received, or any obligation of Moody REIT Guarantor under any guarantee or indemnity issued in connection with indebtedness incurred by any Affiliate and/or subsidiary of Moody REIT Guarantor, provided in each case such obligations shall in the aggregate be equal or greater than \$10,000,000.00, or (ii) shall fail to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any material obligation for borrowed money or credit received (whether by Moody REIT Guarantor or by any Affiliate and/or subsidiary thereof) equal or greater than \$10,000,000.00 in the aggregate and the holder or holders thereof or of any obligations issued thereunder have accelerated the maturity thereof;
- (xviii) if Borrower shall fail to obtain and/or maintain the Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement, as applicable, as required pursuant to Section 2.2.17 hereof;
- (xix) 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 (xviii) 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;
- (xx) if there shall occur any other Event of Default, as defined in any other Loan Document;
- (xxi) 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); or
- (xxii) if an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, could reasonably be expected to result in a material adverse effect.

(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 continuance 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 Secondary Market Transaction.

9.1.1. Secondary Market Transaction. (a) Borrower acknowledges and agrees that Lender may (i) sell all or any portion of the Loan and the Loan Documents, (ii) issue one or more participations therein, (iii) sell with novation all or any part of its right, title and interest in, and to, and under the Loan to one or more additional Co-Lenders (a "**Syndication**"), or (iv) 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, Syndications, or securitizations, collectively, a "**Secondary Market Transaction**").

(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 Secondary Market Transaction. 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, Master Tenant, 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, Master Tenant, Guarantor and their respective officers and representatives, shall, at Lender's request, cooperate with Lender's efforts to arrange for a Secondary Market Transaction 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 Secondary Market Transaction. Borrower, Principal and Guarantor agree to review, at Lender's request in connection with the Secondary Market Transaction (to the extent applicable), 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 Lender, the Rating Agencies or potential investors and addressing such matters as Lender, 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) Borrower agrees that each participant pursuant to Section 9.1.1(a) shall be entitled to the benefits of Section 2.2.12 and Section 2.2.4 (subject to the requirements and limitations therein, including the requirements under Section 2.2.4(c) (it being understood that the documentation required under Section 2.2.4(c) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment; provided that such participant shall not be entitled to receive any greater payment under Section 2.2.12 or Section 2.2.4 with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in a requirement of law or in the interpretation or application thereof, or compliance by such participant or the participating Lender with any request or directive

(whether or not having the force of law) issued from any central bank or other Governmental Authority, in each case after the participant acquired the applicable participation.

(e) KeyBank, National Association, or an agent appointed by it, in either case acting solely for this purpose as an agent of Borrower, shall maintain a register for the recordation of the names and addresses of each Lender, and the principal amounts (and stated interest) of the Loan owing to each Lender pursuant to the terms hereof from time to time as set forth on Schedule VI hereof (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and Borrower and each Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(f) Each Lender that sells a participation pursuant to Section 9.1.1(a) shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant’s interest in the Loan or other Obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant’s interest in any Obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(g) In the event Lender elects to effect a Syndication, Borrower agrees to assist Lender in completing a Syndication satisfactory to Lender. Such assistance shall include (i) direct contact between senior management and advisors of Borrower and the proposed Co-Lenders, (ii) assistance in the preparation of a confidential information memorandum and other marketing materials to be used in connection with the Syndication, (iii) the hosting, with Lender, of one or more meetings of prospective Co-Lenders or with the Rating Agencies, (iv) the delivery of appraisals satisfactory to Lender if required, and (v) working with Lender to procure a rating for the Loan by the Rating Agencies, (vi) amending the Loan Documents to provide for such customary syndication provisions as Lender determines necessary in connection with the Syndication and to give Lender the right, at Borrower’s sole cost and expense, to have the Property reappraised on an annual basis (provided, however, that in connection with any such amendment, 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), and (vii) deliver reliance letters reasonably satisfactory to Lender with respect to the environmental assessments and reports delivered to Lender prior to the Closing Date, which will run to each Co-Lender and its successors and assigns.

(h) 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 Secondary Market Transaction 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 Secondary Market Transaction 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. Secondary Market Transaction 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 and/or the Cash Management Agreement relating to the establishment of 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 (xv) and (B) during the continuance of a Cash Sweep Period, Lender has not made funds available to Borrower to pay the charges described above;

(xvi) Breakage Costs not being paid;

(xvii) Borrower's failure to obtain and/or maintain the Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement, as applicable, as required pursuant to Section 2.2.17 hereof; and/or

(xviii) any loss, cost, expense, damage, claim or other obligation (including reasonable attorneys' fees and court costs) incurred or suffered by Lender related, directly or indirectly, to the removal and/or modification of any shoring mechanisms located at or adjacent to the Property (including, without limitation, any tie-back rods and anchors and/or pins) pursuant to the Easement Agreement.

(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. 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) 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 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.

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 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.

(a) **LENDER HAS OFFICES IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK ("GOVERNING STATE"), WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF**

NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS ("ACTION") MAY AT LENDER'S OPTION BE INSTITUTED IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS OF ANY SUCH ACTION, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY ACTION. BORROWER IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE, OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, AT THE ADDRESS SPECIFIED IN SECTION 10.6 HEREOF AND AGREES THAT SERVICE OF PROCESS AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH ACTION IN THE STATE OF NEW YORK. BORROWER SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS.

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
1200 Abernathy Road, Suite 1550
Atlanta, Georgia 30328
Attention: Jennifer Power, Vice President

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 Yale-Seattle 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 Cash Management Account.

(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 Secondary Market Transaction (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 Secondary Market Transaction), 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 25 of the Payment Guaranty and the release of Moody Guarantor in accordance therewith, Moody Guarantor shall be deemed automatically released from all liability under the Payment Guaranty (but not, for the avoidance of doubt, under the Recourse Guaranty) first accruing after such release and all references in this Agreement and the other Loan Documents to "Guarantor" with respect to the Payment Guaranty (but not, for the avoidance of doubt, the Recourse Guaranty) shall be solely a reference to Moody REIT Guarantor and Moody LP Guarantor.

Section 10.28 Post Closing Matters. Borrower covenants and agrees to provide to Lender, within sixty (60) days of the date hereof, evidence satisfactory to Lender that Borrower shall have caused the striping of two (2) additional handicap spaces at the parking lot located on the Property.

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 YALE-SEATTLE
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 _____, 2015, before me, _____, a Notary Public, personally appeared Brett C. Moody, President, and as Authorized Party of Moody National Yale-Seattle 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)

Notary Public in and for _____ County
Print Name:

LENDER:

KEYBANK NATIONAL ASSOCIATION,
a national banking association

By: /s/ Jennifer Power
Name: Jennifer Power
Title: Vice President

SCHEDULE I

(RENT ROLL)

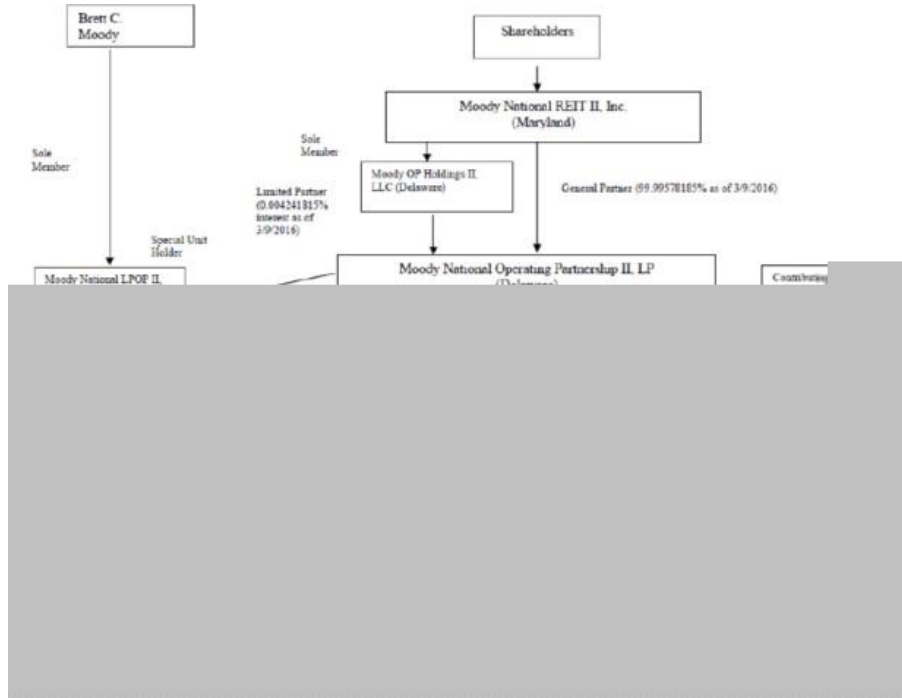
N/A

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: “_____” Cash Management
Account FBO Key Bank 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 YALE-SEATTLE 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 YALE-SEATTLE 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: “_____” Cash Management 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**Commitment Percentage**

<u>Name and Address</u>	<u>Commitment</u>	<u>Commitment Percentage</u>
KeyBank National Association 1200 Abernathy Road, Suite 1550 Atlanta, Georgia 30328 Attention: Jennifer Power, Vice President Telephone: 770 510 2100 Facsimile: 770 510 2195	\$56,250,000.00	100%
LIBOR Lending Office Same as Above		

SCHEDULE VII

Form of Compliance Certificate

FORM OF COMPLIANCE CERTIFICATE

KeyBank National Association
1200 Abernathy Road, N.E., Suite 1550
Atlanta, Georgia 30328
Attention: Jennifer Power

Ladies and Gentlemen:

Reference is made to that certain Loan Agreement dated as of May [___], 2016 (as the same may hereafter be amended, the "Loan Agreement") by and among Moody National Yale-Seattle Holding, LLC (the "Borrower"), KeyBank National Association as Lender, and the other Lenders from time to time party thereto. Terms defined in the Loan Agreement and not otherwise defined herein are used herein as defined in the Loan Agreement.

Pursuant to the Loan Agreement, the Borrower (or Master Tenant and/or Moody REIT II, on the Borrower's behalf) is furnishing to you herewith (or has most recently furnished to you) the consolidated financial statements of Moody REIT II for the fiscal period ended _____ (the "Balance Sheet Date"). Such financial statements have been prepared in accordance with GAAP and present fairly the consolidated financial position of Moody REIT II at the date thereof and the results of its operations for the periods covered thereby.

This certificate is submitted in compliance with requirements of Section 5.1.11(c) of the Loan Agreement. If this certificate is provided under a provision other than such Section 5.1.11(c), the calculations provided below are made using the consolidated financial statements of Moody REIT II as of the Balance Sheet Date adjusted in the best good faith estimate of Moody REIT II to give effect to the making of a Loan, issuance of a letter of credit, acquisition or disposition of property or other event that occasions the preparation of this certificate; and the nature of such event and the estimate of Moody REIT II of its effects are set forth in reasonable detail in an attachment hereto. The undersigned officer is the chief financial officer, chief executive officer, treasurer or chief accounting officer of the Borrower (or Moody REIT II, if this certificate is delivered by Moody REIT II on the Borrower's behalf).

The undersigned representative has caused the provisions of the Loan Documents to be reviewed and has no knowledge of any Default or Event of Default. (Note: If the signer does have knowledge of any Default or Event of Default, the form of certificate should be revised to specify the Default or Event of Default, the nature thereof and the actions taken, being taken or proposed to be taken by the Borrower with respect thereto.)

The undersigned is providing the attached information to demonstrate compliance as of the date hereof with the covenants described in the attachment hereto.

IN WITNESS WHEREOF, the undersigned has duly executed this Compliance Certificate this ____ day of _____, 201__.

**MOODY NATIONAL YALE-SEATTLE
HOLDING, LLC**, a Delaware limited liability company

By: _____

Name: _____

Title: _____

(SEAL)

GUARANTY OF RECOURSE OBLIGATIONS AGREEMENT

THIS GUARANTY OF RECOURSE OBLIGATIONS AGREEMENT (this “**Guaranty**”) is made as of May 24, 2016, by **BRETT C. MOODY**, an individual having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**Moody Guarantor**”), **MOODY NATIONAL OPERATING PARTNERSHIP II, LP**, a Delaware limited partnership, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**LP 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 and LP 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 127 Public Square, Cleveland, Ohio 44114, (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 \$56,250,000.00 (the “**Loan**”) to **MOODY NATIONAL YALE-SEATTLE 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 Springhill Suites Seattle (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 and/or the Cash Management Agreement relating to the establishment of 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) Breakage Costs not being paid;

(xvi) 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;

(xvii) Borrower's failure to obtain and/or maintain the Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement, as applicable, as required pursuant to Section 2.2.17 hereof; and/or

(xviii) any loss, cost, expense, damage, claim or other obligation (including reasonable attorneys' fees and court costs) incurred or suffered by Lender related, directly or indirectly, to the removal and/or modification of any shoring mechanisms located at or adjacent to the Property (including, without limitation, any tie-back rods and anchors and/or pins) pursuant to the Easement 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 plus 75% of any new equity raised by REIT Guarantor after the Closing Date 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 1200 Abernathy Road, Suite 1550 Atlanta, Georgia 30328 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 Moody National Operating Partnership II, LP 6363 Woodway, Suite 110 Houston, Texas 77057 Attention: Brett C. Moody 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.

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

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE OTHER LOAN DOCUMENTS ("ACTION") MAY AT LENDER'S OPTION BE INSTITUTED IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE

ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND GUARANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS OF ANY SUCH ACTION, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY ACTION. GUARANTOR IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE, OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, AT THE ADDRESS SPECIFIED IN SECTION 18 HEREOF AND AGREES THAT SERVICE OF PROCESS AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO GUARANTOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON GUARANTOR IN ANY SUCH ACTION IN THE STATE OF NEW YORK. GUARANTOR SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS.

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. **Intentionally Omitted.**

24. **REIT Guarantor Distribution Strategy.** For so long as the Loan remains outstanding, REIT Guarantor agrees that it shall not make any modifications to its strategy and/or policies regarding distributions to its shareholders, partners, members, directors, officers, managers, and/or other beneficial interest holders of any kind.

25. **REIT Guarantor Distributions.** For so long as the Loan remains outstanding, REIT Guarantor agrees that, during the occurrence and continuance of any monetary Event of Default, it shall not make any distributions to its shareholders, partners, members, directors, officers, managers, and/or other beneficial interest holders of any kind, except to the extent required to maintain its status as a real estate investment trust.

[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

**MOODY NATIONAL OPERATING
PARTNERSHIP II, LP**, a Delaware limited partnership

By: Moody National REIT II, Inc., a Maryland corporation, its
General Partner

By: /s/ Brett C. Moody
Brett C. Moody
Chief Executive Officer

SIGNATURE PAGE TO GUARANTY AGREEMENT

GUARANTY OF PAYMENT AGREEMENT

THIS GUARANTY OF PAYMENT AGREEMENT (this “**Guaranty**”) is made as of May 24, 2016, by **BRETT C. MOODY**, an individual having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**Moody Guarantor**”), **MOODY NATIONAL OPERATING PARTNERSHIP II, LP**, a Delaware limited partnership, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**LP 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 and LP 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 127 Public Square, Cleveland, Ohio 44114, (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 \$56,250,000.00 (the “**Loan**”) to **MOODY NATIONAL YALE-SEATTLE 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 Springhill Suites Seattle (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) intentionally omitted.

(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.

(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 plus 75% of any new equity raised by REIT Guarantor after the Closing Date 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
1200 Abernathy Road, Suite 1550
Atlanta, Georgia 30328
Attention: Jennifer Power, Vice President

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

Moody National Operating Partnership II, LP
6363 Woodway, Suite 110
Houston, Texas 77057
Attention: Brett C. Moody
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.

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

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE OTHER LOAN DOCUMENTS ("ACTION") MAY AT LENDER'S OPTION BE INSTITUTED IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND GUARANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS OF ANY SUCH ACTION, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY ACTION. GUARANTOR IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE,

OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, AT THE ADDRESS SPECIFIED IN SECTION 18 HEREOF AND AGREES THAT SERVICE OF PROCESS AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO GUARANTOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON GUARANTOR IN ANY SUCH ACTION IN THE STATE OF NEW YORK. GUARANTOR SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS.

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. **Intentionally Omitted.**

24. **REIT Guarantor Distribution Strategy.** For so long as the Loan remains outstanding, REIT Guarantor agrees that it shall not make any modifications to its strategy and/or policies regarding distributions to its shareholders, partners, members, directors, officers, managers, and/or other beneficial interest holders of any kind.

25. **REIT Guarantor Distributions.** For so long as the Loan remains outstanding, REIT Guarantor agrees that, during the occurrence and continuance of any monetary Event of Default, it shall not make any distributions to its shareholders, partners, members, directors, officers, managers, and/or other beneficial interest holders of any kind, except to the extent required to maintain its status as a real estate investment trust.

26. **Release of Moody Guarantor.** Provided that no Event of Default shall then exist, Moody Guarantor shall be deemed released as guarantor hereunder upon the Loan to Value Ratio decreasing to sixty percent (60%) or less (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 first accruing after such release and all references to “Guarantor” in this Guaranty shall be solely a reference to REIT Guarantor and LP Guarantor, and Moody Guarantor shall have no further obligations hereunder.

27. **Moody Guarantor Liability Limitation.** Notwithstanding the foregoing provisions of this Guaranty, Moody Guarantor’s liability under this Guaranty shall be limited to twenty percent (20%) of the principal amount of the Loan as of the Closing Date.

[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

**MOODY NATIONAL OPERATING
PARTNERSHIP II, LP**, a Delaware limited partnership

By: Moody National REIT II, Inc., a Maryland corporation, its
General Partner

By: /s/ Brett C. Moody
Brett C. Moody
Chief Executive Officer

SIGNATURE PAGE TO GUARANTY AGREEMENT

Return Address:

Katten Muchin Rosenman LLP
 550 South Tryon Street, Suite 2900
 Charlotte, North Carolina 28202
 Attention: Daniel S. Huffenus, Esq.

Document Title(s) (or transactions contained therein):

Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing

Reference Number(s) of Documents assigned or released:

(on page [____] of documents(s))

N/A

Grantor(s) (Last name first, then first name and initials):

Moody National Yale-Seattle Holding, LLC

Grantee(s) (Last name first, then first name and initials):

1. KeyBank National Association
2. Old Republic Title, Ltd.

Abbreviated Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Lots 1, 2 and 3, Block 60, SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL (DECEASED), (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S SECOND ADDITION TO THE CITY OF SEATTLE)

☒ Full legal is on pages 33-34 of document.

Assessor's Property Tax Parcel/Account Number

066000-2685-09 and 066000-2680-04

MOODY NATIONAL YALE-SEATTLE HOLDING, LLC, as grantor
(Borrower)

to

OLD REPUBLIC TITLE, LTD., as trustee
(Trustee)

for the benefit of

KEYBANK NATIONAL ASSOCIATION, as beneficiary
(Lender)

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

Dated: As of May 24, 2016
Location: 1800 Yale Avenue
Seattle, WA 98101

RECORD AND RETURN TO:

Katten Muchin Rosenman LLP
550 South Tryon Street, Suite 2900
Charlotte, North Carolina 28202
Attention: Daniel S. Huffenus, Esq.

Loan No. 10105719

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “**Security Instrument**”) is made as of May 24, 2016, by and between **MOODY NATIONAL YALE-SEATTLE HOLDING, LLC**, a Delaware limited liability company, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057, as Grantor (“**Borrower**”) to **OLD REPUBLIC TITLE, LTD.**, having an address at 1111 3rd Avenue, Ste. 820, Seattle Washington 98101, as Trustee (“**Trustee**”), for the benefit of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an address at 127 Public Square, Cleveland, Ohio 44114, as beneficiary (together with its successors and assigns, “**Lender**”).

RECITALS:

The following recitals are a material part of this Security Instrument.

A. This Security Instrument is given to secure a loan (the “**Loan**”) in the principal sum of \$56,250,000.00 advanced pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (the “**Loan Agreement**”) and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower in favor of Lender (the “**Note**”). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

B. Borrower desires to secure the payment of the Debt and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined).

C. This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument. The Loan Agreement, the Note, this Security Instrument and all other documents and instruments existing now or after the date hereof that evidence or secure or otherwise relate to the Loan are sometimes herein collectively referred to as the “**Loan Documents**” or individually as a “**Loan Document**”.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE I GRANTS OF SECURITY

Section 1.1 **Property Mortgaged.** Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee for the benefit of Lender and its successors and assigns, all of Borrower’s right, title and interest in, to and under the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the “**Property**”):

- (a) **Land.** The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);
- (b) **Additional Land.** All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;
- (c) **Improvements.** The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);
- (d) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;
- (e) **Equipment.** All “goods” and “equipment,” as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the

foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, other than Fixtures, which are now or hereafter owned by Borrower and which items of personal property are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Master Lease. All rights, benefits, privileges, and interests of Borrower in that certain Hotel Lease Agreement dated of even date herewith, between Moody National Yale-Seattle MT, LLC, a Delaware limited liability company ("**Master Tenant**"), as master tenant, and Borrower, as landlord (the "**Master Lease**") and that certain Assignment of Leases and Rents and Security Agreement dated of even date herewith between Master Tenant, as assignor, and Borrower, as landlord (as it may from time to time be assigned, renewed, extended, amended or supplemented, the "**Master Lease ALR**"; together with the Master Lease, the "**Master Lease Documents**"), and all modifications, extensions, renewals, and replacements of the Master Lease Documents, and all remedies, privileges and security interests granted to Borrower under the Master Lease Documents, and all deposits, credits, options, privileges, and rights of Borrower under the Master Lease Documents, together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired.

(i) Leases and Rents. All other leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**") provided that, except for purposes of ensuring that Borrower's right, title and interest in respect of Hotel Transactions have been assigned to Lender and are subject to the lien hereof, the term "Leases" shall not include Hotel Transactions), whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all right, title and interest of Borrower and Borrower's successors and assigns therein and thereunder, including cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses and all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, and including, the avoidance of doubt, all rent and other amounts payable by Master Tenant to Borrower pursuant to the Master Lease, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(j) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(k) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(l) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(m) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including proceeds of insurance and condemnation awards, into cash or liquidation claims;

(n) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(o) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting or pertaining to any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including the right, upon the occurrence and during the continuance of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(p) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(q) Accounts. All reserves, escrows and deposit accounts maintained by Borrower (or, to the extent of Borrower's interest therein, Master Tenant) with respect to the Property, including the Clearing Account and the Cash Management Account, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(r) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1; and

(t) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (s) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Lender as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and subject to this Security Instrument.

PROVIDED, HOWEVER FOR THE AVOIDANCE OF DOUBT, THAT, for so long as the Master Lease (or any replacement Master Lease entered into in accordance with the Loan Agreement) is in effect, Borrower's interests in the Rents shall be limited to payments of rent due under the Master Lease (together with the assignment by Borrower to Lender pursuant to Section 1.1(h) hereof of Borrower's interest in the assignment and conveyance of the Rents (as such term is defined in the Master Lease ALR) by Master Tenant to Borrower pursuant to the Master Lease ALR).

Section 1.2 Assignment of Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Cash Management Agreement and Section 7.1(h) of this Security Instrument, Lender grants to Borrower a license revocable upon the occurrence and during the continuation of an Event of Default to collect, receive, use and enjoy the Rents and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 Security Agreement. This Security Instrument is both a real property deed of trust and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment and the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys’ fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Borrower’s (debtor’s) principal place of business is as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof.

Borrower shall promptly notify Lender of the existence of any commercial tort claim now or hereafter existing for the benefit of Borrower or the Property, and shall execute, acknowledge and deliver a security agreement or other documentation as Lender shall from time to time require to acquire and perfect a valid and binding security interest in such commercial tort claim.

Section 1.4 Fixture Filing. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Borrower hereby pledges to Lender, to the extent of Borrower’s interest therein, any and all monies now or hereafter held by Lender or on behalf of Lender, including any sums deposited in the Clearing Account, the Cash Management Account, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Agreement.

Section 1.6 Common Law Pledge/Assignment. To the extent that the Uniform Commercial Code does not apply to any item of the Personal Property, it is the intention of this Security Instrument that Lender have a common law pledge or collateral assignment of such item of Personal Property.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Trustee for the use and benefit of Lender, and its successors and assigns, forever;

IN TRUST, WITH POWER OF SALE, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Loan Agreement, the Note and in this Security Instrument.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower’s obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

ARTICLE II DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the Debt.

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (the “**Other Obligations**”):

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

Section 2.3 Debt and Other Obligations. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "Obligations."

ARTICLE III BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 Payment of Debt. Borrower shall pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 3.2 Incorporation by Reference. Borrower covenants and agrees that all the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance. Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.4 Maintenance of Property. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property, if material in any way to the operation or value of the Property, shall not be removed, demolished or materially altered (except for normal replacement of equal or better quality of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements or as otherwise expressly permitted under the Loan Agreement) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall, or shall cause Master Tenant to, complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.5 Waste. Borrower shall not commit or suffer any physical waste of the Property ("physical waste" meaning the diminution in the Property's value resulting from Borrower's grossly negligent or willful failure to manage, maintain, repair and otherwise operate the Property in a commercially reasonable manner) or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower shall not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 Payment for Labor and Materials. (a) Subject to Section 3.6(b), Borrower shall promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal or other 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 of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, Security Instrument or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid all of the Labor and Material Costs under protest, (iv) neither the Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower or Master Tenant shall promptly upon final determination thereof pay (or cause to be paid) any such contested Labor and Material Costs determined to be valid, applicable or unpaid; (vi) such proceeding shall suspend the collection of such contested Labor and Material Costs from the Property or Borrower or Master Tenant, as the case may be, shall have paid the same (or shall have caused the same to be paid) under protest; and (vii) Borrower shall furnish (or cause to be furnished) such

security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure payment of such Labor and Material Costs, together with all interest and penalties payable in connection therewith. Lender may (x) apply any such security or part thereof, as necessary to pay for such Labor and Material Costs at any time when, in the judgment of Lender, the validity, applicability or non-payment of such Labor and Material Costs is finally established or the Property (or any part thereof or interest therein) shall be in present danger of being sold, forfeited, terminated, cancelled or lost, (y) provided that no Event of Default has occurred and is continuing, 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.

Section 3.7 **Performance of Other Agreements.** Borrower shall observe and perform (subject to any applicable grace or care periods) each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.8 **Change of Name, Identity or Structure.** Borrower shall not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior written consent of Lender. Borrower hereby authorizes Lender to file, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 3.9 **Title.** Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and owns the balance of such Property, free and clear all Liens (as defined in the Loan Agreement) whatsoever except the Permitted Encumbrances (as defined in the Loan Agreement), such other Liens as may be 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 or Borrower's ability to repay the Loan. This 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) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), to the extent that the creation of a security interest in the Leases is subject to the Uniform Commercial Code, as in effect under applicable law), to the extent that a security interest therein can be created under the Uniform Commercial Code as in effect in the State of New York or Washington, as applicable, and can be perfected by the filing of financing statements under the Uniform Commercial Code, 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 past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Security Instrument.

Section 3.10 **Letter of Credit Rights.** If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Security Instrument.

ARTICLE IV OBLIGATIONS AND RELIANCES

Section 4.1 **Relationship of Borrower and Lender.** The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 **No Reliance on Lender.** The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations. (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 Reliance. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

ARTICLE V FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, at Lender's request, shall cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower shall pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, Etc. Borrower shall, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, on demand, shall execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property (including the filing of a financing statement with a generic description such as "all assets"). Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including such rights and remedies available to Lender pursuant to this Section 5.2.

Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws. (a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower shall pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable. No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 5.3(a).

(b) Borrower shall not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable. No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 5.3(b).

(c) If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower shall pay for the same, with interest and penalties thereon, if any.

Section 5.4 **Severing of Security Instrument.** The provisions of Section 8.2(c) of the Loan Agreement are hereby incorporated by reference herein.

Section 5.5 **Replacement Documents.** Upon receipt of Lender's (or Lender's custodian's) then standard form of lost note affidavit and indemnity signed on its behalf by an authorized officer of such Person as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower shall issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE VI DUE ON SALE/ENCUMBRANCE

Section 6.1 **Lender Reliance.** Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners, as applicable, 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.

Section 6.2 **No Sale/Encumbrance.** Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the terms of the Loan Agreement or otherwise with Lender's express prior written consent (which consent may be granted or denied in Lender's sole discretion).

ARTICLE VII RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 **Remedies.** Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for and obtain the appointment, on an *ex parte* basis (any required notice of such appointment or any proceeding to appoint the same being hereby expressly waived) and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor, indemnitor or of any Person liable for the payment of the Debt, of a receiver, trustee, liquidator or conservator of the Property to do all of the actions set forth in subparagraph (h)

below and to, with the consent of Lender, dispose (by lease, sale or otherwise) of some or all of the Property in the course of the proceeding in which such receiver, trustee, liquidator or conservator is appointed;

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating to the Property and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) subject to the provisions of the Loan Agreement relating to application of collateral for the Debt, apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its discretion after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including: (i) the right to take possession of the Fixtures, the Equipment, the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment, the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment, the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment, the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) subject to the provisions of the Loan Agreement, apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; and (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including advances made by Lender pursuant to the terms of this Security Instrument;

(k) upon foreclosure of this Security Instrument, surrender the Policies maintained pursuant to the Loan Agreement, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums;

(l) prohibit Borrower and anyone claiming for or through Borrower from making use of or withdrawing any sums from any lockbox, escrow or similar account related to the Property;

(m) exercise any and all rights, remedies or other privileges of Borrower under the Master Lease Documents;

(n) pursue such other remedies as Lender may have under applicable law; or

(o) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 Application of Proceeds. Subject to the provisions of the Loan Agreement, the purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.5 Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default or Events of Default by Borrower existing at the time such earlier action was commenced.

Section 7.6 Examination of Books and Records. At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 7.7 Other Rights, etc. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or any indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 Violation of Laws. If the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Borrower in connection herewith including monetary reserves or financial equivalents.

Section 7.10 Recourse and Choice of Remedies. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, to the fullest extent permitted by applicable law and the provisions of Section 9.3 of the Loan Agreement, Lender and other Indemnified Parties are entitled to enforce the obligations of Borrower contained in Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower if and to the extent permitted under the terms of Section 9.3 of the Loan Agreement. The provisions of Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Borrower is fully and personally liable for the obligations pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement. The liability of Borrower pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article IX herein.

Section 7.11 Right of Entry. Upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times, subject to the rights of Tenants.

Section 7.12 Rights Pertaining To Sales. The following provisions shall, to the extent permitted by law, apply to any sale or sales of all or any portion of the Property under or by virtue of this Security Instrument, whether under any power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) Trustee (for purposes of this Section 7.12 only, the term “Trustee” shall be interpreted to include any public officer or other person having the responsibility to conduct any sale of all or part of the Property pursuant to this Security Instrument) may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more of such sales as to any part of the Property that has not been sold or by any sale that is not completed or is defective until the Debt has been paid in full.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale, and such sale may be completed at the time and place so announced without further notice.

(c) Lender is hereby appointed the true and lawful attorney-in-fact of Borrower, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Borrower’s name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold, and for that purpose Lender may execute all necessary instruments to accomplish the same, and may substitute one or more persons with like power, and Borrower hereby ratifies and confirms all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Borrower, if requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or such purchaser or purchasers, as applicable, all such instruments as may be advisable, in Lender’s judgment, for the purposes designated in such request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in Section 7.12(c) given by Lender concerning nonpayment of the Debt, occurrence of any Event of Default, any declaration by Lender that all or any of the Debt is due and payable, any request to sell, any representation that notice of time, place and terms of sale and property or rights to be sold was duly given, or that any other act or thing was duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited.

(e) The receipt by Trustee of the purchase money paid at any such sale, or the receipt of any other person authorized to give the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Security Instrument or, in any manner whatsoever, be answerable for any loss, misapplication or non-application of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar

both at law and in equity against Borrower and any and all persons claiming or who may claim the same, or any part thereof, by, through or under Borrower to the fullest extent permitted by applicable law.

(g) Upon any such sale or sales, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Debt the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums that Lender is authorized to charge to Borrower under the terms of the Note, this Security Instrument, or any other Loan Document to the extent necessary to satisfy such bid.

(h) If Borrower, or any person claiming by, through or under Borrower, shall transfer or refuse or fail to surrender possession of the Property after any sale thereof, then Borrower or such person shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of unlawful detainer proceedings or other appropriate proceedings, and to any other right or remedy available hereunder or under applicable law.

(i) Upon any such sale, it shall not be necessary for Trustee, Lender or any public officer acting under execution or order of court to have present or constructively in its possession any or all of the Property.

(j) In the event of any sale referred to in this Section 7.12, the entire Debt, if not previously due and payable, immediately thereupon shall, notwithstanding anything to the contrary in the Note, this Security Instrument or any other Loan Document, become due and payable.

(k) This instrument shall be effective as a mortgage. If a sale hereunder shall be commenced by Trustee, Lender may, at any time before the sale of the Property, direct the Trustee to abandon the sale, and may institute suit for the collection of the Debt or part thereof and for the foreclosure of this Security Instrument. If Lender shall institute suit for the collection of the Debt or part thereof, and for the foreclosure of this Security Instrument, Lender may at any time before the entry of final judgment in said suit dismiss the same (or part thereof) and direct the Trustee to sell the Property in accordance with the provisions of this Security Instrument. Lender may pursue its rights and remedies against any guarantor or other party liable for any of the obligations in such a suit for foreclosure or by separate suit, whether or not the Trustee is also pursuing a sale under the terms hereof.

ARTICLE VIII PREPAYMENT

Section 8.1 **Prepayment.** The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement and the Note.

ARTICLE IX INDEMNIFICATION

Section 9.1 **General Indemnification.** Excluding any of the following to the extent arising out of the gross negligence or willful misconduct of Lender, Borrower shall, at its sole cost and expense, protect (with legal counsel reasonably acceptable to Lender), defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including attorneys' fees and other costs of defense) (collectively, the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or any indemnitor Person or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) intentionally deleted; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article IX; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) any and all claims (including lender liability

claims) or demands by Borrower or any third parties, including any guarantor or indemnitor; (m) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (n) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

Section 9.2 **Mortgage or Intangible Tax.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes or taxes on Lender's capital. Borrower hereby agrees that, in the event that it is determined that any documentary stamp taxes or intangible personal property taxes are due hereon or on any mortgage or promissory note executed in connection herewith (including the Note), Borrower shall indemnify and hold harmless the Indemnified Parties for all such documentary stamp or intangible taxes, including all penalties and interest assessed or charged in connection therewith.

Section 9.3 **ERISA Indemnification.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's discretion) that Lender may incur, directly or indirectly, as a result of a breach of any of the representations made under Section 4.1.9 of the Loan Agreement or a breach of any negative covenants contained in Section 5.2.9 of the Loan Agreement.

Section 9.4 **Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (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, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it or other Indemnified Parties that are different from or additional to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 9.5 **Environmental Indemnity.** Simultaneously with this Security Instrument, Borrower and Guarantor have executed that certain Environmental Indemnity. The obligations of Borrower and Guarantor under the Environmental Indemnity are not part of the Debt and are not secured by this Security Instrument.

ARTICLE X WAIVERS

Section 10.1 **Waiver of Counterclaim.** To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 10.2 **Marshalling and Other Matters.** To the extent permitted by applicable law, Borrower hereby waives the benefit of all homestead, appraisalment, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law, and hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

Section 10.3 **Waiver of Notice.** To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or another Loan Document specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or another Loan Document does not specifically and expressly provide for the giving of notice by Lender to Borrower or that, under applicable law, cannot be waived.

Section 10.4 Waiver of Statute of Limitations. To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 10.5 Survival. The indemnifications made pursuant to Sections 9.1, 9.2 and 9.3 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's lien on, and security interests in, the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

Section 10.6 Trial by Jury. **TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, BORROWER 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 BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.**

ARTICLE XI EXCULPATION

The provisions of Section 9.3 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE XII NOTICES

All notices or other written communications hereunder shall be delivered in accordance with terms and provisions of Section 10.6 of the Loan Agreement.

ARTICLE XIII APPLICABLE LAW

Section 13.1 Governing Law. This Security Instrument shall be governed in accordance with the governing law and related terms and provisions of Section 10.3 of the Loan Agreement.

Section 13.2 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 13.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE XIV DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "individually and collectively, jointly and severally, each Borrower (if more than one) and any subsequent owner or owners of the fee interest in the

Property or any part thereof or any interest therein,” the word “**Lender**” shall mean “Lender and any subsequent holder of the Note,” the word “**Note**” shall mean “the Note and any other evidence of indebtedness secured by this Security Instrument,” the word “**Property**” shall include any portion of the Property and any interest therein, and the phrases “**attorneys’ fees**,” “**legal fees**” and “**counsel fees**” shall include any and all attorneys’, paralegal and law clerk fees and disbursements, including fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE XV MISCELLANEOUS PROVISIONS

Section 15.1 No Oral Change. This Security Instrument, and any provisions hereof, including the provisions of this Section, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, 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, 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 Security Instrument; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Security Instrument; 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 Security Instrument.

Section 15.2 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 15.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 15.4 Headings, Etc. The headings and captions of various Sections of this Security Instrument 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.

Section 15.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.6 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower’s obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 15.7 Entire Agreement. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 15.8 Limitation on Lender’s Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a “mortgagee in possession.”

Section 15.9 Rules of Construction. The following rules of construction shall be applicable for all purposes of this Security Instrument and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

- (a) The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to”;

(b) The term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”;

(c) The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Security Instrument refer to this Security Instrument as a whole and not to any particular provision or section of this Security Instrument;

(d) an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by Lender;

(e) 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;

(f) The cover page (if any) of, all recitals set forth in, and all Exhibits to, this Security Instrument are hereby incorporated herein; and

(g) Wherever Lender’s judgment, consent, approval or discretion is required under this Security Instrument or any other Loan Document for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms and conditions of this Security Instrument, 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 unless otherwise expressly stated to be reasonably exercised. Such Decision Power and each other power granted to Lender upon this Security Instrument 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 Borrower hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent. Without limiting the generality of the foregoing, any authorized agent of Lender (including any servicer or attorney-in-fact) is hereby specifically authorized to remove a trustee and select and appoint a successor trustee.

Section 15.10 Counterparts. This Security Instrument 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 Security Instrument.

Section 15.11 Lender’s Right to Subordinate. Lender may, at its election, subordinate the lien of this Security Instrument and any or all of Lender’s rights, titles or interests hereunder to any lien, leasehold interest, easement, plat, covenant, restriction, dedication, encumbrance or other matter affecting the Property or any part thereof by recording a written declaration of such subordination in the office of the register or recorder of deeds or similar filing officer for the county in which the Land is located. If foreclosure sale occurs hereunder after the recording of any such declaration, the title received by the purchaser at such sale shall be subject to the matters specified in such declaration, but such declaration shall not otherwise affect the validity or terms of this Security Instrument or any other Loan Document or the priority of any lien or security interest created hereunder or under any other Loan Document. Without limitation of the foregoing, Lender shall have the right to unilaterally modify any Loan Document to release any lien on any portion of the Property

ARTICLE XVI DEED OF TRUST PROVISIONS

Section 16.1 Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee’s reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days’ notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 16.2 Trustee’s Fees. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee’s agents and counsel in connection with the performance by Trustee of Trustee’s duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 16.3 Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (a) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Loan

Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (c) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith and (d) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 16.4 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 16.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded or filed by Borrower.

Section 16.6 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

ARTICLE XVII STATE-SPECIFIC PROVISIONS

Section 17.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article XVII and any other terms and conditions of this Security Instrument, the terms and conditions of this Article XVII shall control and be binding.

Section 17.2 Substitution of Trustee. Pursuant to RCW 61.24.010(2), the powers of Trustee may be exercised by any successor Trustee with the same effect as if exercised by Trustee. Borrower hereby grants to Lender, in its sole discretion, the right and power to appoint a substitute trustee or trustees for any reason whatsoever. Such substitution shall be made by an instrument duly executed and acknowledged and recorded where this Security Instrument is recorded.

Section 17.3 Performance of Duties; Liability. Trustee shall perform and fulfill faithfully its obligations hereunder, but it shall be under no duty to act until it receives notice of the occurrence of an Event of Default from Lender and arrangements have been made which are satisfactory to it for the indemnification to which it is entitled, the payment of its compensation and the reimbursement of any expenses it may incur in the performance of its duties. It shall have no liability for its acts unless it is guilty of willful misconduct or gross negligence.

Section 17.4 Trustee's Fees. Borrower shall pay Trustee reasonable compensation for any and all services performed and all its reasonable expenses, charges, attorneys' fees and other obligations incurred in the administration and execution of the trusts hereby created and the performance of its duties and powers hereunder, which compensation, expenses, fees and disbursements shall constitute a part of the Debt secured hereby.

Section 17.5 Reconveyance. Trustee shall reconvey all or any part of the Property covered by this Security Instrument to the person entitled thereto, upon written request of Lender and Borrower, or upon full satisfaction of the Debt secured hereby and written request of Lender or the person entitled thereto.

Section 17.6 Procedure of Trustee's Power of Sale. Except as otherwise prescribed by applicable law, the procedure for exercise of the Trustee's power of sale under this Security Instrument shall be as follows:

Upon written request therefor by Lender specifying the nature of the Event of Default, or the nature of the several Events of Default, and the amount or amounts due and owing, Trustee shall execute a written notice of breach and of its election to cause the Property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to law.

Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, Trustee, without demand on Borrower, shall sell the Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Borrower agrees that such sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Property which may be personal property, Trustee shall have and exercise, at Lender's sole election, all the rights and remedies of a secured party under the Uniform Commercial Code (the "UCC"). Whatever notice is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Property, and from time to time thereafter may postpone such sale, as provided by statute. Trustee shall deliver to the purchaser its deed and bill of sale conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person other than Trustee, including Borrower or any one or more Lender, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee, and of this Security Instrument, including the cost of evidence of title search and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof not then repaid, with accrued interest at the Default Rate of interest specified in the Loan Documents; all other sums then secured hereby; and the remainder, if any, to the clerk of the superior court of the county in which the sale took place, as provided in RCW 61.24.080.

Section 17.7 Commercial Loan. Borrower warrants that the proceeds of the Loan are for commercial purposes only and not for personal, family or household purposes pursuant to RCW 19.52.080.

Section 17.8 Non-Agricultural Use. The Property is not presently, and will not during the term of this Security Instrument be, used principally or at all for agricultural or farming purposes.

Section 17.9 Washington Statute of Frauds Notice. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Section 17.10 Waiver of Immunity Under RCW Title 51. With respect to any contractual matters that Borrower establishes in any action within the scope of RCW Section 4.24.115, Borrower expressly (1) waives Borrower's immunity under RCW tit. 51 and acknowledges that such waiver was mutually negotiated by the parties; and (2) agrees to indemnify Lender. The scope of this indemnity shall be limited with regard to damages for bodily injury to persons or damage to property resulting from the concurrent negligence of Borrower or Borrower's agents or employees and of Lender or Lender's agents or employees, as to which Borrower agrees to indemnify Lender to the extent of the negligence of Borrower or Borrower's agents or employees. Nothing herein shall be deemed to require Borrower to indemnify Lender against the sole or concurrent negligence of Lender or Lender's agents or employees if such indemnity would be prohibited under RCW Section 4.24.115. The parties intend that under indemnity provisions herein, unless otherwise expressly limited herein, Borrower shall indemnify Lender to the fullest extent not prohibited by law, including, without limitation, in the event of the sole or concurrent negligence of Lender or of any other person or entity.

Section 17.11 Excluded Obligations. Any provision of Sections 2.1 through 2.3 hereof or any other provision of this Security Instrument or any other Loan Document to the contrary notwithstanding, this Security Instrument does not secure (collectively, the "**Excluded Obligations**"): (i) any guaranty of the obligations of Borrower under the Note or the Loan Agreement; (ii) any environmental indemnification agreement executed by Borrower or any other party in connection with the Loan secured hereby; or (iii) any provision of this Security Instrument, the Loan Agreement or any other Loan Document that would, under RCW Ch. 61.24, be considered the "substantial equivalent" of an environmental indemnification agreement described in (ii) above.

Section 17.12 Assignment of Rents. The assignment of Rents under this Security Instrument is intended to be specific, perfected and choate upon recording of this Security Instrument as provided in RCW 7.28.230.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

BORROWER:

**MOODY NATIONAL YALE-SEATTLE
HOLDING, LLC**, a Delaware limited liability
company

By: /s/ Brett C. Moody
Brett C. Moody
President

STATE OF TEXAS

)
)
) SS:
)
)

COUNTY OF HARRIS

On _____, 2016, before me, _____, a Notary Public, personally appeared BRETT C. MOODY, President, and as Authorized Party of Moody National Yale-Seattle 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)

Notary Public in and for _____ County

Print Name:

EXHIBIT A

LEGAL DESCRIPTION

PARCEL A:

Lots 1, 2 and 3, Block 60, SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL (DECEASED), (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S SECOND ADDITION TO THE CITY OF SEATTLE), according to the plat thereof recorded in Volume 1 of Plats, page 121, records of King County, Washington, more particularly described as follows:

Beginning at the most Southerly corner of Lot 1, Block 60, SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL (DECEASED), (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S SECOND ADDITION TO THE CITY OF SEATTLE), according to the plat thereof recorded in Volume 1 of Plats, page 121, records of King County, Washington;

THENCE North 42°22'49" East along the Southeasterly line of said Lot 1, a distance of 120.07 feet to the most Easterly corner of said Lot 1;

THENCE North 47°42'19" West along the Northeasterly line of Lots 1, 2 and 3 of said Block 60, a distance of 180.06 feet to the most Northerly corner of said Lot 3;

THENCE South 42°22'49" West along the Northwesterly line of said Lot 3, a distance of 120.06 feet to the most Westerly corner of said Lot 3;

THENCE South 47°42'11" East along the Southwesterly line of said Lots 1, 2 and 3, a distance of 180.06 feet to the most Southerly corner of said Lot 1 and the point of beginning.

PARCEL B:

An easement for the purpose of inserting tie-back rods and anchors, pins, and concrete and installation of settlement plates for construction on the premises described in Parcel "A" above, as more particularly set out in that Easement Agreement recorded May 16, 2000, under Recording No. 20000516000769.

PARCEL C:

License for use of parking stalls located within the "Parking Facilities" as described in, and upon the terms and provisions of, Parking License Agreement, dated November 4, 1999, recorded November 4, 1999 under Recording No. 19991104001409.

SITUATE in the County of King, State of Washington

ABBREVIATED LEGAL

Lots 1, 2 and 3, Block 60, SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL (DECEASED), (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S SECOND ADDITION TO THE CITY OF SEATTLE)

Tax Account Nos. 066000-2685-09 and 066000-2680-04

NOTE: Parcel C is a Parking License Agreement and any interest or rights are subject to the terms and conditions set forth therein.

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this “**Agreement**”) is made as of May 24, 2016, by **MOODY NATIONAL YALE-SEATTLE 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**”), **MOODY NATIONAL OPERATING PARTNERSHIP II, LP**, a Delaware limited partnership, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**LP 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 and LP 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 127 Public Square, Cleveland, Ohio 44114 (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 \$56,250,000.00 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.** 1) Indemnitor hereby waives (i) any right or claim of right to cause a marshaling of Indemnitor's assets or to cause Indemnitee 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 Indemnitee 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 Indemnitee 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.

(b) 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.

[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 YALE-SEATTLE 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

MOODY NATIONAL OPERATING PARTNERSHIP II, LP,
a Delaware limited partnership

By: Moody National REIT II, Inc., a Maryland corporation, its
General Partner

By: /s/ Brett C. Moody
Brett C. Moody
Chief Executive Officer

/s/ Brett C. Moody
BRETT C. MOODY

SIGNATURE PAGE TO ENVIRONMENTAL INDEMNITY AGREEMENT



**SPRINGHILL SUITES BY MARRIOTT
RELICENSING FRANCHISE AGREEMENT**

FRANCHISOR:

MARRIOTT INTERNATIONAL, INC.

FRANCHISEE:

MOODY NATIONAL YALE-SEATTLE MT, LLC

LOCATION:

1800 YALE AVENUE, SEATTLE, WA 98101

DATE: MAY 24, 2016

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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 or its 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 any 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 sustinment 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 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 (if the transferee is an entity), 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; or

G. Franchisee or Owner is in breach of or default under the lease described in Item 17 of Exhibit A.

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 representations, warranties and information in the application and provided for this Agreement were true as of the time made and are true as of the Effective Date, regardless of whether such representations, warranties and information 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 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 & Franchise Services

FRANCHISEE:

MOODY NATIONAL YALE-SEATTLE MT, LLC

By: /s/ Brett C. Moody (SEAL)

Name: Brett C. Moody

Title: President

EXHIBIT A
KEY TERMS

1. **Trade Name(s):** SpringHill Suites by Marriott
2. **Approved Location:** 1800 Yale Avenue, Seattle, WA 98101
3. **Effective Date:** May 24, 2016
4. **Term:** Begins on Effective Date and ends on November 2, 2026

If Franchisee has completed all of the requirements by the dates set forth in the Property Improvement Plan attached as Attachment One to Exhibit C to the satisfaction of Franchisor, Franchisor and Franchisee will enter into an amendment to this Agreement such that the Term will expire 15 years from the Effective Date (May 24, 2031).
5. **Franchisor:** Marriott International, Inc., a Delaware corporation
6. **Franchisee:** Moody National Yale-Seattle MT, LLC, a Delaware limited liability company
7. **Number of Guestrooms:** 234
8. **Entity that will Operate the Hotel:** Moody National Hospitality Management, LLC
- 9.. **Restricted Territory (SpringHill Suites only):** Not Applicable
10. **Application Fee:** \$100,000
11. **Franchise Fees:** 5.5% of Gross Room Sales
- 12.A **Marketing Fund Contribution:** 2.5% of Gross Room Sales
- 12.B **Marketing Fund Contribution Cap:** The total Marketing Fund Contribution will not exceed 3.5% of Gross Room Sales for each month.
13. **Construction Start Deadline:** Not Applicable
14. **Opening Deadline:** Not Applicable
15. **Franchisor Notice Address:** Marriott International, Inc.
10400 Fernwood Road
Bethesda, MD 20817
Attn: Law Department 52/923.27
16. **Franchisee Notice Address:** Moody National Yale-Seattle MT, LLC
6363 Woodway Dr., Suite 110
Houston, TX 77057
Attn: David Gould
Email: Marriott@moodynational.com
17. **Lease Provisions:** 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 Yale-Seattle Holding, LLC, a Delaware limited liability company.

- | | | |
|-----|-------------------------------------|------------------|
| 18. | System Hotel-specific terms: | Not Applicable |
| 19. | PIP Walk-through Date: | October 27, 2014 |
| 20. | Additional Terms: | Not Applicable |

**ATTACHMENT TWO
TO EXHIBIT A**

OWNERSHIP INTEREST IN FRANCHISEE

Name of Owner	Address	% Interest
OWNERSHIP OF MOODY NATIONAL YALE-SEATTLE MT, LLC		
MN Lancaster-Austin MT, Inc.	6363 Woodway, Suite 110 Houston, TX 77057	100% Sole Member
OWNERSHIP OF MN LANCASTER-AUSTIN MT, INC.		
Moody National Operating Partnership II, LP	6363 Woodway, Suite 110 Houston, TX 77057	100% Sole Shareholder
OWNERSHIP OF MOODY NATIONAL OPERATING PARTNERSHIP II, LP		
Moody National REIT II, Inc.	6363 Woodway, Suite 110 Houston, TX 77057	99.99578185% General Partner
Moody OP Holdings II, LLC	6363 Woodway, Suite 110 Houston, TX 77057	0.004241815% Limited Partner
Moody National LPOP II, LLC	6363 Woodway, Suite 110 Houston, TX 77057	Special Unit Holder
Contributing Limited Partners*		
OWNERSHIP OF MOODY NATIONAL REIT II, INC.**		
Shareholders	—	100%
OWNERSHIP OF MOODY OP HOLDINGS II, LLC		
Moody National REIT II, Inc.	6363 Woodway, Suite 110 Houston, TX 77057	100% Sole Member
OWNERSHIP OF MOODY NATIONAL LPOP II, LLC		
Brett C. Moody	6363 Woodway, Suite 110 Houston, TX 77057	100% Sole Member

*Contributing limited partners, if any, will receive a limited partnership interest in Moody National Operating Partnership II, LP, in exchange for a contribution of property.

** 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 merely due to ownership of voting stock of such 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” is defined 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 October 15, 2001.
 - 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.
 - A. *Property Improvement Plan.* Based on an inspection of the Hotel, the property improvement plan prepared by Franchisor attached to this Exhibit C as Attachment One outlines the renovation requirements for the Hotel to continue to operate as a System Hotel (the “PIP”). All renovations, furniture, fixtures and equipment will conform to the then-current System specifications at the time such work is completed. Completion of the PIP does not satisfy Franchisee’s obligation to renovate the Hotel under Section 4.3.
 - B. *Material Change Review.* If any material changes to the Hotel occur after the date stated in Item 19 of Exhibit A, then Franchisor may re-inspect the Hotel (“Material Change Review”) and modify the PIP to address such material changes. Franchisee will complete the modified PIP, including any additional requirements, to Franchisor’s satisfaction. Franchisee and its contractors will cooperate fully with any inspections Franchisor conducts under a Material Change Review.
 - C. *PIP Deadlines.* Franchisee will perform each item in the PIP by the date stated in the PIP with respect to such item. Time is of the essence, but the deadlines for completion of items in the PIP will be equitably extended for any delay caused by acts of nature, terrorism, strikes, war, governmental restrictions or other causes beyond Franchisee’s control (excluding for the avoidance of doubt, unavailability of financing). If Franchisee wishes to extend such deadlines, Franchisee will make a written request giving the reasons for the delay. Franchisor may, in its sole discretion, extend such deadlines, but no extension will be granted for more than six months. For any extension, Franchisor may require Franchisee to pay its then-current extension fee. The extension fee will be paid to Franchisor with the request for the extension and is nonrefundable unless Franchisor declines to grant the requested extension.
 - D. *Permits and Certifications.* Franchisee will obtain all permits and certifications required for lawful renovation and operation of the Hotel, including zoning, access, sign, building permits and fire requirements, and if requested, will certify that it has obtained all such permits and certifications.
 - E. *Compliance.* Franchisee will ensure that the Hotel complies with Applicable Law, the Standards and Design Criteria, including the Fire Protection and Life Safety Standards (even if such Standards exceed local code requirements).
 - F. *Franchisee’s Responsibilities.* Franchisee is responsible for the entire cost of renovating, equipping, supplying and furnishing the Hotel as a System Hotel.
 - G. *Site Visits.* During renovation, Franchisor’s representatives may visit the job site at any time to observe the work, and Franchisee, its contractors and subcontractors will cooperate fully with any such site visits. Upon request, Franchisee will submit photos showing the progress of renovation to Franchisor. Franchisor may submit any deficiencies or discrepancies to

Franchisee, and Franchisee will promptly correct such items. If any site visits and inspections are necessary to ensure the Hotel complies with the PIP, Franchisor may charge its then-current fee for the time spent inspecting the Hotel plus Travel Costs.

H. *Accessibility Certification.* Franchisee will not be deemed to have satisfied the requirements of the PIP until Franchisee delivers a certification from its architect, licensed professional engineer, or recognized expert consultant on Accessibility Requirements in the form attached to this Exhibit C as Attachment Two.

I. *Fire Protection and Life Safety Certification.* Franchisee will not be deemed to have satisfied the requirements of the PIP until Franchisee has (i) delivered a certification in the form attached to this Exhibit C as Attachment Three that verifies the Hotel complies with Franchisor's fire protection and life safety Standards and the fire protection and life safety systems of the Hotel are operational, or (ii) retained Franchisor and paid Franchisor the then-current testing and inspection fee to test and inspect the fire protection and life safety systems of the Hotel, and such testing and inspection verifies the Hotel complies with Franchisor's fire protection and life safety Standards and the fire protection and life safety systems of the Hotel are operational. Any such certification must be issued by a third party licensed fire protection engineer, engineer, or recognized expert consultant on fire and life safety requirements that has been approved by Franchisor. Franchisor may require that such certification be issued by a party that has not participated in the design of the fire protection and life safety systems of the Hotel.

J. *Completion.* Franchisee will not be deemed to have satisfied the requirements of the PIP until Franchisor has confirmed completion.

**ATTACHMENT ONE
TO EXHIBIT C**

PROPERTY IMPROVEMENT PLAN

All items must be completed within twelve (12) months after the Effective Date, unless otherwise noted with respect to a particular item.

1.0 ADA

1.1 ADA CERTIFICATION REQUIREMENT

- .1 As required in the Agreement, the attached ADA Certification (see Attachment A) must be completed and submitted to Franchisor by the Property Improvement Plan (PIP) completion date.

2.0 TECHNOLOGY

- .1 Marriott's Guestroom Entertainment Platform: All hotels with expiring television contracts must install this new platform by November 30, 2016. If your television contract expires within the timeframe of your PIP, you must install the new Guestroom Entertainment platform to be compliant. For information on how to install, visit Guestroom Entertainment on MGS or email guestroomentertainment@marriott.com.
- .2 Install approved RFID/BLE locks on all doors including, but not limited to, guestrooms, exterior entrances, fitness, pool, back of house and guest laundry. Age of lock will determine retrofit strategy or full replacement. Conduct a hotel site survey with lock vendor to determine if any additional hardware (upgraded/new on Property Lock PC, handheld lock programmer/lock interrogator, etc.) is needed to create and deliver Mobile Key. Install (1) Mobile Key Station (formerly known as KEYosk or Key Printer) near each elevator bank on lobby level. 0-6 yrs. old: Retrofit required. 6-10 yrs. old: Recommended replacement, minimum retrofit required. 10+ yrs. old: Required replacement, minimum retrofit required. – due by 12/31/2017

3.0 SITE / BUILDING EXTERIOR

3.1 BUILDING EXTERIOR

- .1 Repair exterior building finishes to a “like-new” condition.
- .2 Replace trash receptacles with decorative trash receptacles to be compatible with main building interior.
- .3 Verify the condition of all exterior windows, doors, frames, sills, and seal, and repair/replace as necessary to prevent wind, rain and noise from leaking into building.
- .4 Replace all exterior graphics and signage (i.e., monument, building, directional signs, and parking lot graphics) with current SpringHill Suites by Marriott brand standard.
- .5 Reimage exterior and paint exterior (must have approval from Franchisor before work begins) – due by 12/31/2018.

3.2 LANDSCAPING

- .1 Replace all landscaping and submit comprehensive landscaping plan to Franchisor – due by 12/31/2018.

3.3 BUILDING INTERIOR

- .1 Complete all requirements of an 18 year renovation per Springhill Suites Renovation Requirements and product specifications. Due in connection with the next renovation and update required pursuant to Section 11.1.B. of the Agreement – due by 12/2018.

MUST ORDER FFE BY: 6/1/2018

MUST BEGIN CONSTRUCTION BY: 10/1/2018

- .2 Must implement the current SpringHill Suites by Marriott décor package or submit a custom décor package for Franchisor review and approval prior to installation.
- .3 Expand Exercise Room to include additional equipment (all equipment must meet SpringHill Suites by Marriott

brand standard requirements). This may require encroaching on adjacent room(s), expanding exterior wall, or relocating space to a new area of the Hotel. Plans must be submitted to Franchisor for approval prior to beginning work. Expanded Fitness Rooms is now a standard in New Build prototypes. SpringHill Suites by Marriott brand standards are under review by Franchisor for existing hotels. An expansion is required in order to keep hotels competitive in their market – due by 12/31/2018.

3.4 GUESTROOMS

- .1** Modify existing divider wall between living and sleeping areas, by creating a short wall and adding an acrylic accent panel (due in conjunction with next renovation - December 2018).
- .2** Convert existing Double Double rooms to Queen Queen rooms – due by 12/31/2018.

3.5 GUESTROOM BATH

- .1** Convert tubs to showers in 100% of King and 50% of Double/Double room types (due in conjunction with next renovation - December 2018).

4.0 FIRE PROTECTION AND LIFE SAFETY

4.1 GENERAL

- .1** Provide documentation that the fire alarm system has been inspected, tested, and approved within 6 months of the Effective Date.
- .2** Provide documentation that the sprinkler system has been inspected, tested, and approved within 6 months of the Effective Date.
- .3** Provide documentation that the fire alarm system is monitored by a 3rd party central station that receives signals transmitted from the fire panel within 6 months of the Effective Date.
- .4** If the property has an emergency generator on site, provide documentation that it has been recertified within 18 months of the Effective Date.
- .5** Replace any carbon monoxide detector older than 6 years in age or beyond the manufacturer's recommended age within 6 months of the Effective Date.

**ATTACHMENT TWO
TO EXHIBIT C**

ADA CERTIFICATION

(to be completed by Franchisee's architect, engineer, or ADA consultant)

In connection with the SpringHill Suites Seattle Downtown/South Lake Union, WA (the "Hotel"), I hereby certify to Moody National Yale-Seattle MT, LLC and to Marriott International, Inc. that:

I have used professionally reasonable efforts to ensure that the Hotel complies with the requirements of the Americans with Disabilities Act ("ADA"), and all other related or similar state and local laws, regulations, and other requirements governing public accommodations for persons with disabilities in effect at the time that this certification is made; and

In my professional judgment, the Hotel does in fact comply with such requirements.

By: _____

Print Name: _____

Firm: _____

Date: _____

**ATTACHMENT THREE
TO EXHIBIT C**

FIRE & LIFE SAFETY CERTIFICATION

(to be completed by Franchisee's third-party licensed fire protection engineer, engineer or fire and life safety consultant)

In connection with the SpringHill Suites Seattle Downtown/South Lake Union, WA (the "Hotel"), I hereby certify to Moody National Yale-Seattle MT, LLC and to Marriott International, Inc. that:

I have used professionally reasonable efforts to ensure that the Hotel complies with Marriott International, Inc.'s Fire Protection and Life Safety Standards in effect as of the [EFFECTIVE DATE OF AGREEMENT] ; and

In my professional judgment, the Hotel does in fact comply with such standards.

By: _____

Print Name: _____

Firm: _____

Date: _____

**AMENDMENT TO FRANCHISE AGREEMENT
REQUIRED BY THE STATE OF WASHINGTON**

Franchisor and Franchisee, parties to the attached Franchise Agreement (the "Agreement"), agree to amend the Agreement (the "Amendment") as follows:

1. The Director of the Washington Department of Financial Institutions requires that certain provisions contained in franchise documents be amended to be consistent with Washington law, including the Washington Franchise Investment Protection Act, RCW 19.100.010 to 19.100.940 (the "Act"), which provides certain rights to franchisees. In recognition of the Act, the parties agree that:

a. The provisions of the Act may supersede the provisions in the Agreement relating to Franchisee's relationship with Franchisor, including provisions relating to renewal, termination and transfer of the franchise. If the Agreement contains a provision that is inconsistent with the Act, the Act will control.

b. The Act provides that, if there is a conflict between the Act and a state law of another state designated as governing in the franchise agreement, the provisions of the Act will control.

c. The Act contains limitations as to releases or waivers of a franchisee's rights under the Act; except that the Act provides that these limitations do not apply when a release or waiver is executed pursuant to a negotiated settlement after the franchise agreement is in effect and where the parties are represented by independent counsel. If there are provisions in the Agreement that unreasonably restrict or limit rights or remedies under the Act, those provisions may not be enforceable.

2. Each provision of this to the Agreement will be effective only to the extent that the jurisdictional requirements of the Washington law applicable to the provision are met independently of this Amendment to the Agreement. This Amendment to the Agreement will have no force or effect if such jurisdictional requirements are not met.

3. Franchisor reserves the right to challenge the applicability of any law that declares provisions in the Agreement void or unenforceable.

{Signatures appear on the following page}

IN WITNESS WHEREOF, Franchisor and Franchisee have caused this Amendment to the Agreement to be executed, under seal, as of the Effective Date of the Agreement.

FRANCHISOR:

MARRIOTT INTERNATIONAL, INC.

By: _____ (SEAL)

Name:

Title:

FRANCHISEE:

MOODY NATIONAL YALE-SEATTLE MT, LLC

By: _____ (SEAL)

Name:

Title:

GUARANTY

This Guaranty ("Guaranty") is executed as of _____, 2016 ("Effective Date") by Moody National REIT II, Inc. , a Maryland corporation, 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 SpringHill Suites by Marriott Franchise Agreement dated _____, 2016 (as such agreement may be amended, the "Agreement"), between Franchisor and Moody National Yale-Seattle MT, LLC, a Delaware limited liability company ("Franchisee"), for the hotel located at 1800 Yale Avenue, Seattle, WA 98101, 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: _____ (SEAL)

Name:

Title:

(SEAL)

Brett C. Moody, an Individual

ADDRESS FOR NOTICES TO GUARANTOR:

6363 Woodway Drive, Suite 110

Houston, TX 77057

Marriott@moodynational.com

MANAGEMENT COMPANY ACKNOWLEDGMENT

This Management Company Acknowledgment (this "Acknowledgment") is executed on _____, 2016 ("Effective Date") by Marriott International, Inc., a Delaware corporation ("Franchisor"), Moody National Yale-Seattle MT, LLC, a Delaware limited liability company ("Franchisee") and Moody National Hospitality Management, 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 1800 Yale Avenue, Seattle, WA 98101 (the "Hotel"), under the SpringHill Suites by Marriott Franchise Agreement dated _____, 2016 (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: _____ (SEAL)

Name:

Title:

FRANCHISEE:

MOODY NATIONAL YALE-SEATTLE MT, LLC

By: _____ (SEAL)

Name:

Title:

MANAGEMENT COMPANY:

MOODY NATIONAL HOSPITALITY MANAGEMENT,
LLC

By: _____ (SEAL)

Name:

Title:

ADDRESS FOR MANAGEMENT COMPANY:

6363 Woodway Dr., Suite 110
Houston, TX 77057
Marriott@moodynational.com

ELECTRONIC SYSTEMS LICENSE AGREEMENT

This Electronic Systems License Agreement (this “License Agreement”) is executed on _____, 2016 (the “Effective Date”) between Marriott International, Inc. (“Franchisor”) and Moody National Yale-Seattle MT, LLC (“Franchisee”).

RECITALS

A. As of the Effective Date, Franchisor and Franchisee have entered into a SpringHill Suites by Marriott franchise agreement (the “Franchise Agreement”) to operate the Hotel located at 1800 Yale Avenue, Seattle, WA 98101 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: _____ (SEAL)

Name:

Title:

FRANCHISEE:

MOODY NATIONAL YALE-SEATTLE MT, LLC

By: _____ (SEAL)

Name:

Title:

OWNER AGREEMENT

This Owner Agreement (“Agreement”) is executed on _____, 2016 (the “Effective Date”), by Marriott International, Inc., a Delaware corporation (“Franchisor”), Moody National Yale-Seattle MT, LLC, a Delaware limited liability company (“Franchisee”), and Moody National Yale-Seattle Holding, LLC, a Delaware limited liability company (“Owner”).

RECITALS

A. Franchisor and Franchisee are parties to the SpringHill Suites by Marriott Franchise Agreement dated _____, 2016 (the “Franchise Agreement”) relating to the Hotel, a copy of which is attached as Exhibit C.

B. Franchisee and Owner have entered into a 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 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: _____ (SEAL)

Name:

Title:

FRANCHISEE:

MOODY NATIONAL YALE-SEATTLE MT, LLC

By: _____ (SEAL)

Name:

Title:

OWNER:

MOODY NATIONAL YALE-SEATTLE HOLDING,
LLC

By: _____ (SEAL)

Name:

Title:

EXHIBIT A
OWNERSHIP INTERESTS IN OWNER

Name of Owner	Address	% Interest
OWNERSHIP OF MOODY NATIONAL YALE-SEATTLE HOLDING, LLC		
Moody National Operating Partnership II, LP	6363 Woodway, Suite 110 Houston, TX 77057	100% Sole Member
OWNERSHIP OF MOODY NATIONAL OPERATING PARTNERSHIP II, LP		
Moody National REIT II, Inc.	6363 Woodway, Suite 110 Houston, TX 77057	99.99578185% General Partner
Moody OP Holdings II, LLC	6363 Woodway, Suite 110 Houston, TX 77057	0.004241815% Limited Partner
Moody National LPOP II, LLC	6363 Woodway, Suite 110 Houston, TX 77057	Special Unit Holder
Contributing Limited Partners*		
OWNERSHIP OF MOODY NATIONAL REIT II, INC.**		
Shareholders	—	100%
OWNERSHIP OF MOODY OP HOLDINGS II, LLC		
Moody National REIT II, Inc.	6363 Woodway, Suite 110 Houston, TX 77057	100% Sole Member
OWNERSHIP OF MOODY NATIONAL LPOP II, LLC		
Brett C. Moody	6363 Woodway, Suite 110 Houston, TX 77057	100% Sole Member

*Contributing limited partners, if any, will receive a limited partnership interest in Moody National Operating Partnership II, LP, in exchange for a contribution of property.

** 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 Yale-Seattle Holding, LLC
6363 Woodway, Suite 110
Houston, TX 77057
Attn: David Gould
Email: Marriott@moodynational.com

To Franchisee:

MOODY NATIONAL YALE-SEATTLE MT, LLC
6363 Woodway Dr., Suite 110
Houston, TX 77057
Attn: David Gould
Email: Marriott@moodynational.com

EXHIBIT C
FRANCHISE AGREEMENT