

**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): **September 20, 2016**

MOODY NATIONAL REIT II, INC.

(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or other jurisdiction
of incorporation)

333-198305
(Commission File Number)

47-1436295
(I.R.S. Employer Identification No.)

**6363 Woodway Drive, Suite 110
Houston, Texas 77057**
(Address of principal executive offices, including zip code)

(713) 977-7500
(Registrant's telephone number, including area code)

N/A
(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:

- ☐ Written communications pursuant to Rule 425 under the Securities Act
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act

Item 1.01. Entry Into A Material Definitive Agreement.

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

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

As previously disclosed, on January 28, 2016, Moody National Companies L.P. ("Moody LP") assigned to Moody National REIT II, Inc. (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 "SHS Seattle"). 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 ("Moody Holding"), a wholly-owned subsidiary of the Company's operating partnership, Moody National Operating Partnership II, LP (the "Operating Partnership"). On May 24, 2016, Moody Holding acquired fee simple title to the SHS Seattle for an aggregate purchase price of approximately \$74,100,000, excluding acquisition and other costs (the "SHS Acquisition"). The SHS Acquisition was funded in part with the proceeds of a mortgage loan secured by the SHS Seattle with an aggregate initial principal balance of \$56,250,000 (the "Prior Loan") from KeyBank National Association (the "Lender").

On September 20, 2016, Moody Holding borrowed \$45,000,000 from the Lender pursuant to a mortgage loan (the "Refinanced Loan") evidenced by a promissory note issued pursuant to a Loan Agreement (the "Refinanced Loan Agreement"). Proceeds from the Refinanced Loan, among other sources of funds, were used to repay the outstanding balance of the Prior Loan in full.

The entire unpaid principal balance of the Refinanced Loan, all accrued and unpaid interest thereon and all other amounts due under the Refinanced Loan are due and payable in full on October 1, 2026. Interest on the outstanding principal balance of the Refinanced Loan accrues at a fixed per annum rate equal to 4.38%. In the event that, and so long as, any event of default has occurred and is continuing under the Refinanced Loan, the outstanding principal balance of the Refinanced Loan and any unpaid interest thereon will bear interest at a per annum rate equal to the lesser of (1) the highest interest rate permitted by applicable law and (2) 9.38%. In addition, in the event that any principal, interest or any other amount due under the Refinanced Loan is not paid within five days of the date on which it was due, Moody Holding will pay a late charge in an amount equal to the lesser of (1) 5.0% of the amount of the overdue payment and (2) the maximum amount payable pursuant to applicable law. Moody Holding may, upon at least 30 days' prior written notice to the Lender, prepay the outstanding principle balance, plus all accrued interest and other amounts due, in full (but not in part) without payment of any penalty or premium on June 2, 2026 or any business day thereafter.

The performance of the obligations of Moody Holding under the Refinanced Loan are secured by, among other things, a security interest in the SHS Seattle and other collateral granted to Lender pursuant to a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing. Pursuant to a Guaranty Agreement, the Company has agreed to irrevocably and unconditionally guarantee the prompt and unconditional payment to the Lender and its successors and assigns of certain obligations and liabilities of Moody Holding and the Master Tenant (as defined below) for which they may be liable pursuant to the Refinanced 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 SHS Seattle or release of hazardous substances from the SHS Seattle; (2) any activity by the Indemnitors or their respective affiliates or any tenant or occupant of the SHS Seattle in connection with any treatment, storage, release, removal, handling, transfer or transportation to or from the SHS Seattle of any hazardous substances; (3) any non-compliance or violations of any environmental laws or permits in connection with the SHS 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 loan document.

As previously disclosed, Moody Holding leases the SHS 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"). Concurrent with the execution of the Refinanced Loan Agreement, Moody Holding and the Master Tenant executed the First Amendment to the Hotel Lease, which amended certain provisions of the Hotel Lease in order to reflect (i) the satisfaction of Moody Holding's and the Master Tenant's previous obligations under the Prior Loan and (ii) the creation of Moody Holding's and the Master Tenant's current obligations under the Refinanced Loan.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Promissory Note, dated September 20, 2016, by Moody National Yale-Seattle Holding, LLC in favor of KeyBank National Association
10.2	Loan Agreement, dated as of September 20, 2016, between Moody National Yale-Seattle Holding, LLC and KeyBank National Association
10.3	Guaranty Agreement, made as of September 20, 2016, by Moody National REIT II, Inc. in favor of KeyBank National Association
10.4	Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of September 20, 2016, by and among Moody National Yale-Seattle Holdings, LLC, Old Republic Title, Ltd., and KeyBank National Association
10.5	Environmental Indemnity Agreement, made as of September 20, 2016, by and among Moody National Yale-Seattle Holding, LLC, Moody National REIT II, Inc. and KeyBank National Association
10.6	First Amendment to Hotel Lease Agreement, effective as of September 20, 2016, between Moody National Yale-Seattle Holding, LLC and Moody National Yale-Seattle MT, LLC

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: September 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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PROMISSORY NOTE

LOAN TERMS TABLE

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

Loan No.: 10106606

Lender's Address: 11501 Outlook, Suite 300, Overland Park, Kansas 66211

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: September 20, 2016

Original Principal Amount: \$45,000,000.00

Maturity Date: October 1, 2026

Interest Rate: four and 38/100 percent (4.38%)

Initial Interest Payment Per Diem: \$5,475

Monthly Debt Service Payment Amount: (i) on each Payment Date up to and including October 1, 2018, an amount equal to interest only at the Interest Rate on the outstanding principal balance of the Loan for the related Accrual Period, and (ii) on each Payment Date occurring on and after November 1, 2018, a constant monthly payment of \$224,811.10.

Payment Date: November 1, 2016 and on the first day of each successive month thereafter

Permitted Par Prepayment Date: June 2, 2026

Permitted Release Date: the fourth (4th) anniversary of the first Payment Date

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 by multiplying (a) the actual number of days elapsed in the relevant Accrual Period (hereinafter defined) by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance of the Loan. Borrower acknowledges that the calculation method for interest described herein results in a higher effective interest rate than the numeric Interest Rate and Borrower hereby agrees to this calculation method. 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. “**Accrual Period**” means the period commencing on and including the first (1st) day of each calendar month during the term of the Loan and ending on and including the final calendar date of such calendar month; however, the initial Accrual Period shall commence on and include the Closing Date and shall end on and include the final calendar date of the calendar month in which the Closing Date occurs.

2. **Principal and Interest Payments.** Payments of principal and interest shall be made as follows:

(a) On the date of disbursement of the Loan proceeds, an interest payment calculated by multiplying (i) the Initial Interest Payment Per Diem by (ii) the number of days from (and including) the date of the disbursement of the Loan proceeds through the last day of the calendar month in which the disbursement was made;

(b) On each Payment Date until the Maturity Date, a monthly payment equal to the Monthly Debt Service Payment Amount to be applied: (i) to the payment of interest computed at the Interest Rate; and (ii) the balance applied toward the reduction of the Outstanding Principal Balance; and

(c) If not sooner paid, the Outstanding Principal Balance, all unpaid interest thereon, and all other amounts owed to Lender pursuant to this Note or any other Loan Document (as hereinafter defined) or otherwise in connection with the Loan or the security for the Loan shall be due and payable on the Maturity Date.

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 Yield Maintenance Premium and 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 2:00 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. 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 mean a day upon which commercial banks are not authorized or required by law to close in the city designated from time to time as the place for receipt of payments hereunder.

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 rate of five percent (5%) per annum above the Interest Rate (“**Default Rate**”) but in no event greater than the Maximum Legal Rate (as hereinafter defined). Interest shall accrue and be payable at the Default Rate from the occurrence and during the continuance of an Event of Default. Such accrued interest shall be added daily to the Outstanding Principal Balance, and interest shall accrue thereon 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 this Note, interest shall continue to accrue post-judgment at the greater of (a) the Default Rate or (b) the applicable statutory judgment rate. As used herein, the term “**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.

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 no 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.**

(a) Voluntary Prepayments.

(i) Except as otherwise expressly provided in this Section 9, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date.

(ii) Provided no Event of Default has occurred and is continuing, on the Permitted Par Prepayment Date, and on any Business Day thereafter through the Maturity Date, Borrower may, at its option, prepay the Debt in full (but not in part) without payment of any yield maintenance or other premium; provided, however, if for any reason such prepayment is not paid on a regularly scheduled Payment Date, the Debt shall include interest for the full Accrual Period during which the prepayment occurs. Borrower’s right to prepay the principal balance of the Loan in full pursuant to this subsection shall be subject to (I) Borrower’s submission of a notice to Lender setting forth the projected date of prepayment, which date shall be no less than thirty (30) days from the date of such notice, and (II) Borrower’s actual payment to Lender of the full amount of the Debt, including interest for the full Accrual Period during which the prepayment occurs.

(b) Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds (as defined in the Loan Agreement), if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration (as defined in the Loan Agreement) of the Property or any part thereof or otherwise remit such Net Proceeds to Borrower pursuant to Section 6.4 of the Loan 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 (as defined in the Loan Agreement)); 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 Yield Maintenance Premium (hereinafter defined) or other premium shall be due in connection

with any prepayment made pursuant to this Section 9(b). 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 the Yield Maintenance Premium or any other 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 Yield Maintenance Premium (hereinafter defined) or other premium shall be due in connection with any prepayment made pursuant to this Section 9(b).

(c) **Prepayments After Default.** If payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender during the existence of an Event of Default under any circumstances including a prepayment in connection with (A) reinstatement of the Security Instrument provided by statute under foreclosure proceedings or exercise of power of sale, (B) any statutory right of redemption exercised by Borrower or any other party having a statutory right to redeem or prevent foreclosure or power of sale, (C) any sale in foreclosure or under exercise of a power of sale or otherwise (including pursuant to a credit bid made by Lender in connection with such sale), (D) any other collection action by Lender, or (E) exercise by any governmental authority of any civil or criminal forfeiture action with respect to any of the collateral for the Loan, such tender or recovery shall be (I) made on the next occurring Payment Date (or must include the full amount of interest for the then current Accrual Period) together with the Monthly Debt Service Payment Amount and (II) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 9(a)(i) hereof, and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Premium which can be applied by Lender in such order and priority as Lender shall determine in its discretion. The Yield Maintenance Premium shall also become immediately due and owing in the event of any acceleration of the Loan. The Yield Maintenance Premium shall be secured by all security and collateral for the Loan and shall, after it becomes due and payable, be treated as if it were added to the Debt for all purposes including accrual of interest, judgment on the Note, foreclosure (whether through power of sale, judicial proceeding, or otherwise) (“**Foreclosure Sale**”), redemption, and bankruptcy (including pursuant to Section 506 of the United States Bankruptcy Code (“**Bankruptcy Code**”) or any successor provision); without limiting the generality of the foregoing, it is understood and agreed that the Yield Maintenance Premium may be added to Lender’s bid at any Foreclosure Sale. If a Yield Maintenance Premium is due hereunder, Lender shall deliver to Borrower a statement setting forth the amount and determination of the Yield Maintenance Premium, and, provided that Lender shall have in good faith applied the formula described in the definition of “Yield Maintenance Premium,” Borrower shall not have the right to challenge the calculation or the method of calculation set forth in any such statement in the absence of manifest error, which calculation may be made by Lender on any day during the thirty (30) day period preceding the date of such prepayment. Exchange of the Note for a different instrument or modification of the terms of the Note, including classification and treatment of Lender’s claim (other than non-impairment under Section 1124 of the Bankruptcy Code or any successor provision) pursuant to a plan of reorganization in bankruptcy shall also be deemed to be a prepayment following an Event of Default hereunder.

(d) **Prepayment Prior to Permitted Defeasance Date.** Provided no Event of Default shall then exist, Borrower shall have the right at any time during the period, if any, following the occurrence of the Permitted Release Date until the Permitted Defeasance Date (hereinafter defined), to prepay the Debt in whole (but not in part) upon not less than thirty (30) days and not more than ninety (90) days prior written notice to Lender specifying the projected date of prepayment and upon payment of an amount equal to the Yield Maintenance Premium. Upon the occurrence of the Permitted Defeasance Date, Borrower’s right to prepay under this Section 9(d) shall terminate. The “**Yield Maintenance Premium**” shall be an amount equal to the greater of (A) one percent (1%) of the Outstanding Principal Balance to be prepaid or satisfied, or accelerated and then due and owing, and (B) the excess, if any, of (I) the sum of the present values of all then-scheduled payments of principal and interest under the Note assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on the Loan is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of Section 9(a) hereof or, in the case of an acceleration of the Loan, the date of such acceleration (the “**Prepayment Rate Determination Date**”) has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select (the “**Prepayment Rate**”) when compounded semi-annually and deducting from the sum of such

present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (II) the principal amount being prepaid or the entire Outstanding Principal Balance in the case of an acceleration of the Loan. Lender shall notify Borrower of the amount and the basis of determination of the required Yield Maintenance Premium. If any notice of prepayment is given, the Debt shall be due and payable on the projected date of prepayment. Except as otherwise expressly provided for in Section 9(b) hereof, Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the Yield Maintenance Premium due in connection therewith. If for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, interest for the full Accrual Period during which the prepayment occurs. “**Permitted Defeasance Date**” means the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust which holds the portion of the Note last to be securitized.

(e) General.

(i) Borrower acknowledges that: (A) Lender has made the Loan to Borrower in reliance on, and the Loan has been originated for the purpose of selling the Loan in the secondary market to investors who will purchase the Loan or direct or indirect interests therein in reliance on, the actual receipt over time of the stream of payments of principal and interest agreed to by Borrower herein; and (B) Lender or any subsequent investor in the Loan will incur substantial additional costs and expenses in the event of a prepayment of the Loan; and (C) the Yield Maintenance Premium is reasonable and is a bargained for consideration and not a penalty and the terms of the Loan are in various respects more favorable to Borrower than they would have been absent Borrower’s agreement to pay the Yield Maintenance Premium as provided herein. Borrower agrees that Lender shall not, as a condition to receiving the Yield Maintenance Premium, be obligated to actually reinvest the amount prepaid in any treasury obligation or in any other manner whatsoever. Nothing contained herein shall be deemed to be a waiver by Lender of any right it may have to require specific performance of any obligation of Borrower hereunder.

(ii) In addition to the Yield Maintenance Premium, Borrower shall pay all hedging and breakage costs of any kind and in any amount incurred by Lender due to any prepayment (including a prepayment following an Event of Default).

9. **Intentionally omitted.**

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. 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 Yield Maintenance Premium immediately due and payable, 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 DOES HEREBY DESIGNATE AND APPOINT:

Sneed, Vine & Perry, P.C.
900 Congress Avenue, Suite
300
Austin, Texas 78701
Attention: Adam S. Wilk,
Esq.
Facsimile: (512) 476-1825

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH ACTION IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT 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 (I)

SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

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 an other means permitted under this Section, addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:	KeyBank National Association 11501 Outlook, Suite 300 Overland Park, Kansas 66211 Facsimile No.: 877-379-1625 Attention: Loan Servicing
with a copy to:	Katten Muchin Rosenman LLP 550 South Tryon Street, Suite 2900 Charlotte, North Carolina 28202 Attention: Daniel S. Huffenus, Esq.
If to Borrower:	Moody National 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, the Cash Management Agreement and/or the Clearing Account Agreement relating to the establishment of a Clearing Account, a Cash Management Account, and/or the institution of cash management generally;

(xiii) any amendment, modification or termination of the Master Lease without Lender's consent;

(xiv) any amendment or modification of the Franchise Agreement without Lender's consent (to the extent such consent is required under the Loan Documents);

(xv) the termination, surrender or cancellation of the Franchise Agreement by Master Tenant without Lender's prior written consent or the termination or cancellation of the Franchise Agreement by Franchisor (as a result of the action or omission of Borrower or Master Tenant) prior to the expiration date of the Franchise Agreement unless such termination or cancellation is solely the result of Master Tenant's failure to pay the franchise fees and other charges due under the Franchise Agreement and such failure to pay is solely the result of revenue from the Property being insufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property provided that the foregoing shall not apply to the extent that (A) Borrower would otherwise be liable under this subsection (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; and/or

(xvi) 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 (as defined in the Loan 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 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 September 20, 2016

Between

MOODY NATIONAL YALE-SEATTLE HOLDING, LLC,

as Borrower

and

KEYBANK NATIONAL ASSOCIATION,

as Lender

Loan No. 10106606

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LOAN AGREEMENT

THIS LOAN AGREEMENT is made as of September 20, 2016 (this “**Agreement**”), between **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an address at 11501 Outlook, Suite 300, Overland Park, Kansas 66211 (“**Lender**”) and **MOODY NATIONAL 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:

“**Accrual Period**” means the period commencing on and including the first (1st) day of each calendar month during the term of the Loan and ending on and including the final calendar date of such calendar month; however, the initial Accrual Period shall commence on and include the Closing Date and shall end on and include the final calendar date of the calendar month in which the Closing Date occurs.

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

“**Additional Insolvency Opinion**” means any subsequent Insolvency Opinion.

“**Additional Permitted Transfer**” has the meaning set forth in Section 5.2.10(f) hereof.

“**Additional PIP Deposit**” shall mean an amount equal to 110% of the estimated costs to complete the related Additional PIP Requirements, as determined by Lender in its sole discretion (which such cost shall be exclusive of the cost of any Additional PIP Requirements which are duplicative of any approved Replacements for which adequate Replacement Reserve Funds exist hereunder, as reasonably determined by Lender (the “**Duplicative Replacements**”)).

“**Additional PIP Requirements**” shall mean each plan for replacing the Replacements, remodeling, redecorating and modifying the Property required of Borrower and/or Master Tenant (as applicable) by the Franchisor pursuant to the Franchise Agreement (or, as applicable, any Replacement Franchise Agreement) other than the Existing PIP Requirements.

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

“**Additional PIP Reserve Event**” shall mean any notice from Franchisor (or the Qualified Franchisor, as the case may be) to Borrower and/or Master Tenant that imposes any (or modifies any previously-imposed) Additional PIP Requirements that are required by Franchisor under the Franchise Agreement (or otherwise pursuant to any Replacement Franchise Agreement).

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

“**Additional PIP Reserve Monthly Deposit**” shall mean an amount equal to one-twelfth (1/12) of the Additional PIP Deposit.

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or executive officer of such Person or of an Affiliate of such Person.

“**Affiliated Manager**” means any Manager in which Borrower, Master Tenant, Principal, or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

“**Agent**” means KeyBank National Association, or any successor Eligible Institution acting as Agent under the Cash Management Agreement.

“**Annual Budget**” means an operating budget, including all planned Capital Expenditures, for the Property prepared by or on behalf of Borrower in accordance with Section 5.1.11(g) hereof for the applicable Fiscal Year or other period.

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

“Assignment of Management Agreement” means that certain Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof, among Lender, Borrower and Manager, and consented and agreed to by Master Tenant, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Availability Threshold” means \$450,000.00.

“Award” means any compensation paid by any Governmental Authority in connection with a Condemnation.

“Bankruptcy Action” means with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or (f) such Person admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“Borrower” has the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“Borrower’s Excess Cash Flow Subaccount” shall have the meaning set forth in Section 7.5.1 hereof.

“Business Day” means a day upon which commercial banks are not authorized or required by law to close in the city designated from time to time as the place for receipt of payments.

“Capital Expenditures” shall mean, for any period, the amount expended for items capitalized under GAAP and the Uniform System of Accounts (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

“Cash Management Account” has the meaning set forth in Section 2.7.2 hereof.

“Cash Management Agreement” means that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Lender, Master Tenant and Agent, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Cash Sweep Event” means the occurrence of: (a) an Event of Default; (b) any Bankruptcy Action of Borrower, Master Tenant, Principal or Manager; (c) a DSCR Trigger Event; or (d) a Franchise Agreement Trigger Event.

“Cash Sweep Event Cure” means

(a) if the Cash Sweep Event is caused solely by the occurrence of a DSCR Trigger Event, the achievement of a Debt Service Coverage Ratio of 1.25 to 1.00 or greater for two (2) consecutive quarters based upon the trailing three (3) month period immediately preceding the date of determination,

(b) if the Cash Sweep Event is caused solely by an Event of Default, the acceptance by Lender of a cure of such Event of Default (which cure Lender is not obligated to accept and may reject or accept in its discretion),

(c) if the Cash Sweep Event is caused solely by a Bankruptcy Action of Manager, if Borrower replaces the Manager with a Qualified Manager under a Replacement Management Agreement within sixty (60) days of such Bankruptcy Action; or

(d) if the Cash Sweep Event is caused solely by the occurrence of a Franchise Agreement Trigger Event, Borrower or Master Tenant (as applicable) has entered into a Replacement Franchise Agreement in accordance with the terms hereof and for a term reasonably satisfactory to Lender;

provided, however, that, such Cash Sweep Event Cure set forth in this definition shall be subject to the following conditions, (i) no Event of Default shall have occurred and be continuing under this Agreement or any of the other Loan Documents, (ii) a Cash Sweep Event Cure may occur no more than a total of three (3) times in the aggregate during the term

of the Loan, and (iii) Borrower shall have paid all of Lender's reasonable expenses incurred in connection with such Cash Sweep Event Cure including, reasonable attorney's fees and expenses. Notwithstanding any provision in this Agreement to the contrary, in no event shall Borrower have the right to cure any Cash Sweep Event caused by a Bankruptcy Action of Borrower, Master Tenant or Principal.

"Cash Sweep Period" means each period commencing on the occurrence of a Cash Sweep Event and continuing until the earlier of (a) the Payment Date next occurring following the related Cash Sweep Event Cure, or (b) payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents or defeasance of the Loan in accordance with the terms and provisions of the Loan Documents.

"Casualty" has the meaning set forth in Section 6.2 hereof.

"Casualty Consultant" has the meaning set forth in Section 6.4(b)(iii) hereof.

"Casualty Retainage" has the meaning set forth in Section 6.4(b)(iv) hereof.

"Clearing Account" has the meaning set forth in Section 2.7.1 hereof.

"Clearing Account Agreement" means that certain Deposit Account Control Agreement dated the date hereof among Borrower, Lender and Clearing Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to funds deposited in the Clearing Account.

"Clearing Bank" means the clearing bank which establishes, maintains and holds the Clearing Account, which shall be an Eligible Institution acceptable to Lender in its discretion.

"Closing Date" means the date of the funding of the Loan.

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

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

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

"Condemnation Proceeds" has the meaning set forth in Section 6.4(b) hereof.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. "Controlled" and "Controlling" have correlative meanings.

"Credit Card Company" shall have the meaning set forth in the Cash Management Agreement.

"Credit Card Direction Letter" means an instruction letter to Tenants substantially in the form attached hereto as Schedule V.

"Crowdfunding" means, any offer or sale of equity or debt securities of Borrower, Master Tenant, Principal or Guarantor that is (a) conducted or proposed to be conducted via (i) the internet or through the use of other general solicitation or advertising of the investment opportunity to prospective investors by the issuer of such securities or (ii) an online or other funding portal, and (b) in a transaction or series of transactions intended to be exempt from the registration requirements of the Securities Act of 1933, as amended, pursuant to the exemptions provided by Section 4(a)(6) thereof.

"Debt" means the outstanding principal amount of the Loan set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums (including the Defeasance Payment Amount and any Yield Maintenance Premium (as defined in the Note)) due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document.

"Debt Service" means, with respect to any particular period of time, the scheduled principal and interest payments due under this Agreement and the Note.

"Debt Service Coverage Ratio" means a ratio for the applicable period in which:

(a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, without deduction for (i) actual management fees incurred in connection with the operation of the Property, (ii) actual franchise fees incurred in connection with the operation of the Property, or (iii) amounts paid to the Reserve Funds, less (A) management fees equal to the greater of (1) assumed management fees of four percent (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 5.5% of Room Revenues and (2) the actual franchise fees incurred, and (C) annual Replacement Reserve Fund contributions equal to four percent (4.0%) of Gross Income from Operations; and

(b) the denominator is the aggregate amount of Debt Service for such period assuming full payments of principal and interest with amortization based on a 30-year schedule notwithstanding any interest-only period under the Loan.

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

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

“Defeasance Date” has the meaning set forth in Section 2.5.1(a)(i) hereof.

“Defeasance Deposit” means an amount equal to the remaining principal amount of the Note, the Defeasance Payment Amount, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments, any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of Sections 2.4 and 2.5 hereof (including any fees and expenses of accountants, attorneys and the Rating Agencies incurred in connection therewith), and a customary defeasance processing fee in an amount determined by Lender in its discretion.

“Defeasance Event” has the meaning set forth in Section 2.5.1(a) hereof.

“Defeasance Payment Amount” means the amount which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

“Disclosure Documents” means, collectively and as applicable, any offering circular, prospectus, prospectus supplement, private placement memorandum or other offering document, in each case, in connection with a Securitization.

“DSCR Trigger Event” means, that as of the date of determination, the Debt Service Coverage Ratio based on the trailing twelve (12) month period immediately preceding the date of such determination is less than 1.20 to 1.00.

“Duplicative Replacements” shall have the meaning set forth in the definition of Additional PIP Deposit.

“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.

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

“Evidence of Insurance” has the meaning set forth in Section 10.28 hereof.

“Excess Cash Flow” has the meaning set forth in the Cash Management Agreement.

“Excess Cash Flow Reserve Account” has the meaning set forth in Section 7.5 hereof.

“Excess Cash Flow Reserve Fund” has the meaning set forth in Section 7.5 hereof.

“Existing PIP Requirements” shall mean the plan existing as of the Closing Date for replacing the Replacements, remodeling, redecorating and modifying the Property required of Borrower and/or Master Tenant (as applicable) by the Franchisor pursuant to the Franchise Agreement.

“Existing PIP Reserve Account” shall have the meaning set forth in Section 7.8.1 hereof.

“Existing PIP Reserve Fund” shall have the meaning set forth in Section 7.8.1 hereof.

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

“Fiscal Year” means each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“Fitch” means Fitch, Inc.

“Foreclosure Sale” has the meaning set forth in Section 9(c) of the Note.

“Franchise Agreement” shall mean that certain Relicensing Franchise Agreement dated as of May 24, 2016 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 Agreement Trigger Event” means the date that is twelve (12) months prior to the expiration of the Franchise Agreement (or Replacement Franchise Agreement, as applicable).

“Franchise Guaranty” shall mean that certain Guaranty executed by Moody REIT II and Brett C. Moody in favor of Franchisor, dated as of May 24, 2016 (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 in 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; (8) rent payable to Borrower under the Master Lease; (h) the proceeds of any financing; (i) other income or proceeds resulting other than from the use or occupancy of the Property, or any part thereof, or other than from the sale of goods, services or other items sold on or provided from the Property in the ordinary course of business; and (j) any credits or refunds made to customers, guests or patrons in the form of allowances or adjustments to previously recorded revenues.

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

“Guaranty” means that certain Guaranty Agreement, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Hazardous Substances” means any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that, by virtue of the presence thereof or exposure thereto, may have a negative impact on human health or the environment, including but not limited to

petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables, explosives, mold, mycotoxins, microbial matter and airborne pathogens (naturally occurring or otherwise), but excluding substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purpose of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.

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

“Improvements” has the meaning set forth in the granting clause of the Security Instrument.

“Indebtedness” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

“Indemnified Liabilities” has the meaning set forth in Section 10.13(b) hereof.

“Indemnified Parties” means Lender and, its designee (whether or not it is the Lender), any Affiliate of Lender that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of Lender that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co underwriters, co placement agents or co initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act of 1933 as amended or Section 20 of the Security Exchange Act of 1934 as amended, any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by the Security Instrument is or will have been recorded, any Person who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including any successors by merger, consolidation or acquisition of all or a substantial portion of Lender’s assets and business), in each case, in their respective capacities as such.

“Independent Director” means a natural Person who (a) is not at the time of initial appointment, or at any time while serving in such capacity, and is not, and has never been, and shall not while serving as Independent Director be: (i) the owner of any direct or indirect legal or beneficial interest in, or a director (with the exception of serving as the Independent Director of Borrower or Master Tenant, as applicable), officer, employee, partner, member (other than a “special member” or “springing member”), manager, attorney or counsel of, Borrower or Master Tenant, or any Affiliate of Borrower, Master Tenant or Guarantor; (ii) a customer, supplier or other person who derives any of its purchases or revenues from its activities with Borrower, Master Tenant or Guarantor, or any Affiliate of Borrower, Master Tenant or Guarantor; (iii) a Person Controlling or under common Control with any such stockholder, director, officer, employee, partner, member, manager, attorney, counsel, customer, supplier or other Person; or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, manager, attorney, counsel, customer, supplier or other Person and (b) has (i) prior experience as an independent director or independent manager for a corporation, a trust or limited liability company whose charter documents required the unanimous consent of all independent directors or independent managers thereof before such corporation, trust or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy and (ii) at least three (3) years of employment experience with one or more nationally-recognized companies that provides, inter alia, professional independent directors or independent managers in the ordinary course of their respective business to issuers of securitization or structured finance instruments, agreements or securities or lenders originating commercial real estate loans for inclusion in securitization or structured finance instruments, agreements or securities (a **“Professional Independent Director”**) and is at all times during his or her service as an Independent Director of Borrower or Master Tenant (as applicable) an employee of such a company or companies. A natural Person who satisfies the foregoing definition except for being (or having been) the independent director

or independent manager of a “special purpose entity” affiliated with Borrower or Master Tenant (provided such affiliate does not or did not own a direct or indirect equity interest in Borrower or Master Tenant) shall not be disqualified from serving as an Independent Director, provided that such natural Person satisfies all other criteria set forth above and that the fees such individual earns from serving as independent director or independent manager of affiliates of Borrower or in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year. A natural Person who satisfies the foregoing definition other than subparagraph (a)(ii) shall not be disqualified from serving as an Independent Director of Borrower or Master Tenant if such individual is a Professional Independent Director and such individual complies with the requirements of the previous sentence.

“**Initial Interest Payment Per Diem**” has the meaning set forth in the Loan Terms Table of the Note.

“**Initial Management Fees**” shall have the meaning set forth in Section 9.4 hereof.

“**Insolvency Opinion**” means that certain non-consolidation opinion letter dated the date hereof delivered by Gresham Savage Nolan & Tilden, PC in connection with the Loan.

“**Institutional Controls**” means any legal or physical restrictions or limitations on the use of, or access to, the Property to eliminate or minimize potential exposures to any Hazardous Substance, to prevent activities that could interfere with the effectiveness of any Remediation, or to ensure maintenance of a level of risk to human health or the environment from Hazardous Materials, including physical modifications to the Property such as slurry walls, capping, hydraulic controls for ground water, or point of use water treatment, restrictive covenants, environmental protection easements, or property use limitations.

“**Insurance Premiums**” has the meaning set forth in Section 6.1(b) hereof.

“**Insurance Proceeds**” has the meaning set forth in Section 6.4(b) hereof.

“**Interest Rate**” means a rate of four and 38/100 percent (4.38%).

“**Key Principal**” shall mean Brett C. Moody.

“**Land**” has the meaning set forth in the granting clause of the Security Instrument.

“**Lease**” has the meaning set forth in the Security Instrument. Notwithstanding the foregoing, for purposes hereof, neither the Master Lease nor any Hotel Transaction shall constitute a Lease.

“**Legal Requirements**” means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower or Master Tenant, at any time in force affecting Borrower, Master Tenant, the Property or any part thereof, including any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“**Lender**” has the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“**Lien**” means, any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer for security of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“**Loan**” means the loan in the Original Principal Amount made by Lender to Borrower pursuant to this Agreement.

“**Loan Documents**” means, collectively, this Agreement, the Note, the Security Instrument, the Environmental Indemnity, the Assignment of Management Agreement, the Guaranty, the Clearing Account Agreement, the Cash Management Agreement, the Master Lease Subordination Agreement, the Master Lease ALR, and all other documents pursuant to which a Person incurs or assumes an obligation to or for the benefit of Lender that are executed or delivered in connection with the Loan.

“**Loan to Value Ratio**” shall mean, as of the date of its calculation, the ratio of (i) the sum of the outstanding principal amount of the Loan as of the date of such calculation to (ii) the fair market value of the Property, as determined, in Lender’s sole discretion, by any commercially reasonable method permitted to a REMIC Trust.

“Management Agreement” means the management agreement entered into by and between Master Tenant and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, or, if the context requires, a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

“Manager” means Moody National Hospitality Management, LLC, a Texas limited liability company, or, if the context requires, a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

“Master Lease” means that certain Hotel Lease Agreement, dated as of May 24, 2016, as amended by that certain First Amendment to Hotel Lease Agreement executed in connection herewith, 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” means October 1, 2026, or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“Maximum Legal Rate” has the meaning set forth in Section 7 of the Note.

“Memorandum of Subordination Agreement” shall mean that certain Memorandum of Subordination Agreement, dated on or about the date hereof, by and between Master Tenant and Lender.

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

“Monthly Debt Service Payment Amount” means (i) on each Payment Date up to and including October 1, 2018, an amount equal to interest only at the Interest Rate on the outstanding principal balance of the Loan for the related Accrual Period, and (ii) on each Payment Date occurring on and after November 1, 2018, a constant monthly payment of \$224,811.10.

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

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

“Net Cash Flow” means, with respect to the Property for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“Net Operating Income” means the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

“Net Proceeds” has the meaning set forth in Section 6.4(b) hereof.

“Net Proceeds Deficiency” has the meaning set forth in Section 6.4(b)(vi) hereof.

“**Note**” means that certain Promissory Note, dated the date hereof, in the principal amount of \$45,000,000.00, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**OFAC**” has the meaning set forth in Section 10.25 hereof.

“**Officer’s Certificate**” means a certificate delivered to Lender by Borrower, Master Tenant or Guarantor, as applicable, which is signed by an authorized officer of Borrower, Master Tenant or Guarantor, or of the general partner of (1) the sole member of Borrower, or (2) the sole member of Master Tenant, as applicable.

“**Operating Expenses**” shall mean the sum of all costs and expenses of operating, maintaining, directing, managing and supervising the Property (excluding (i) depreciation and amortization, (ii) any Debt Service, (iii) any Capital Expenditures, or (iv) the costs of any other things specified to be done or provided at Borrower’s, Master Tenant’s or Manager’s sole cost and expense), incurred by Borrower, Master Tenant or Manager pursuant to the Management Agreement, or as otherwise specifically provided therein, which are properly attributable to such period under Borrower’s or Master Tenant’s system of accounting, including, without limitation: (a) the cost of all food and beverages sold or consumed and of all necessary chinaware, glassware, linens, flatware, uniforms, utensils and other items of a similar nature, including such items bearing the name or identifying characteristics of the hotel as Borrower, Master Tenant and/or Manager shall reasonably consider appropriate (collectively, the “**Operating Equipment**”) and paper supplies, cleaning materials and similar consumable items (collectively, the “**Operating Supplies**”) placed in use (other than reserve stocks thereof in storerooms). Operating Equipment and Operating Supplies shall be considered to have been placed in use when they are transferred from the storerooms of the Property to the appropriate operating departments; (b) salaries and wages of personnel of the Property, including costs of payroll taxes and employee benefits (which benefits may include, without limitation, a pension plan, medical insurance, life insurance, travel accident insurance and an executive bonus program) and the costs of moving (1) employees of the Property whose primary duties consist of the management of the Property or of a recognized department or division thereof; or (2) personnel (A) who customarily and regularly direct the work of five (5) or more other employees of the Property, (B) who have authority with reference to the hiring, firing and advancement of other employees of the Property, (C) who customarily and regularly exercise discretionary powers, (D) who devote at least ninety five percent (95%) of their work time to activities which are directly and closely related to the performance of the work described in clauses (A) through (C) of clause (2) of this sentence, and (E) who are not compensated on an hourly basis (the “**Executive Hotel Personnel**”), their families and their belongings to the area in which the Property is located at the commencement of their employment at the Property and all other expenses not otherwise specifically referred to in this definition which are referred to as “**Administrative and General Expenses**” in the Uniform System of Accounts. If the Executive Hotel Personnel are on the payroll of Guarantor or any Affiliate of Guarantor, the cost of their salaries, payroll taxes and employee benefits (which benefits, in the case of employees who are not United States citizens or in the case of employees of hotels located outside the continental United States may include, without limitation, in addition to the foregoing benefits, reasonable home leave transportation expenses approved by Lender) shall be billed by said Affiliate to and be reimbursed by Borrower, Master Tenant and/or Manager monthly, and such reimbursement shall be an Operating Expense. Except as otherwise expressly provided under the Management Agreement with respect to employees regularly employed at the Property, the salaries or wages of other employees or executives of Manager, Guarantor or any of their respective Affiliates shall in no event be Operating Expenses, but they shall be entitled to free room and board and the free use of all facilities at such times as they visit the Property exclusively in connection with the management of the Property. Notwithstanding the foregoing, if it becomes necessary for an employee of Guarantor or an employee or executive of any Affiliate of Guarantor to temporarily perform services at the Property of a nature normally performed by personnel of the Property, his or her salary (including payroll taxes and employee benefits) as well as his or her traveling expenses will be Operating Expenses and he or she will be entitled to free room, board and use of the facilities as aforesaid, while performing such services; (c) the cost of all other goods and services obtained by Borrower, Master Tenant or Manager in connection with its operation of the Property, including, without limitation, heat and utilities, office supplies and all services performed by third parties, including leasing expenses in connection with telephone and data processing equipment, and all existing and any future installations necessary for the operation of the Improvements for hotel purposes (including, without limitation, heating, lighting, sanitary equipment, air conditioning, laundry, refrigerating, built-in kitchen equipment, telephone equipment, communications systems, computer equipment and elevators), Operating Equipment and existing and any future furniture, furnishings, wall coverings, fixtures and hotel equipment necessary for the operation of the Property for hotel purposes which shall include all equipment required for the operation of kitchens, bars, laundries (if any), and dry cleaning facilities (if any), office equipment, cleaning and engineering equipment and vehicles; (d) the cost of repairs to and maintenance of the Property other than of a capital nature; (e) Insurance Premiums for general liability insurance, workers’ compensation insurance or insurance required by similar employee benefits acts and such business or rental interruption or other insurance as may be provided for protection against claims, liabilities and losses arising from the operation of the Property (as distinguished from any property damage insurance on the Property or its contents) and losses incurred on any self-insured risks of the foregoing types, provided that (1) Lender has specifically approved in advance such self-insurance or (2) insurance is unavailable to cover such risks. Premiums on policies will be pro rated over the period of insurance and premiums under blanket policies will be allocated among properties covered; (f) all Taxes and Other Charges (other than federal, state or local income taxes and franchise taxes or the equivalent) payable by or assessed against Borrower, Master Tenant or Manager with respect to the operation of the Property; (g) legal fees and fees of any

firm of independent certified public accounts designated from time to time by Borrower and/or Master Tenant (the “**Independent CPA**”) for services directly related to the operation of the Property; (h) [omitted]; (i) all expenses for advertising the Property and all expenses of sales promotion and public relations activities; (j) all out-of-pocket expenses and disbursements determined by the Independent CPA to have been reasonably, properly and specifically incurred by Borrower, Master Tenant, Manager, Guarantor or any of their respective Affiliates pursuant to, in the course of and directly related to, the management and operation of the Property under the Management Agreement. Without limiting the generality of the foregoing, such charges may include all reasonable travel, telephone, telegram, radiogram, cablegram, air express and other incidental expenses, but, excluding costs relating to the offices maintained by Borrower, Master Tenant, Manager, Guarantor, or any of their respective Affiliates other than the offices maintained at the Property for the management of the Property and excluding transportation costs of Borrower, Master Tenant or Manager related to meetings between Borrower and/or Master Tenant and Manager with respect to administration of the Management Agreement, as applicable, or of the Property involving travel away from such party’s principal offices; (k) the cost of any reservations system, any accounting services or other group benefits, programs or services from time to time made available to properties in the Borrower’s and/or Master Tenant’s system; (l) the cost associated with any commercial Leases; (m) any management fees, basic and incentive fees or other fees and reimbursables paid or payable to Manager under the Management Agreement; (n) any franchise fees or other fees and reimbursables paid or payable to Franchisor under the Franchise Agreement; and (o) all costs and expenses of owning, maintaining, conducting, directing, managing and supervising the operation of the Property to the extent such costs and expenses are not included above.

“**Original Principal Amount**” means \$45,000,000.00.

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

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

“**Outstanding Principal Balance**” or “**OPB**” means the portion of the Original Principal Amount that remains outstanding from time to time

“**Owner Agreement**” shall mean that certain Owner Agreement, dated on or about May 24, 2016, by and among Franchisor, Master Tenant and Borrower.

“**Payment Date**” means the first (1st) day of each calendar month during the term of the Loan.

“**Permitted Defeasance Date**” means the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust which holds the portion of the Note last to be securitized.

“**Permitted Encumbrances**” means, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority or for other Charges not yet delinquent or that are being contested in accordance with the Loan Documents, (d) mechanics’, materialmen’s, and other similar Liens on the Property that are not yet delinquent or that are being contested, or are otherwise discharged or bonded, in accordance with the Loan Documents; (e) Leases entered into in accordance with the Loan Documents, and (f) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances individually or in the aggregate do not materially adversely affect the value or use or operation of the Property or the security intended to be provided by the Security Instrument or with the current ability of the Property to generate Net Cash Flow sufficient to service the Loan or Borrower’s ability to pay its obligations under the Loan Documents when they become due.

“**Permitted Indebtedness**” has the meaning set forth in clause (xxiii) of the definition of Special Purpose Entity.

“**Permitted Investments**” means any one or more of the following obligations or securities acquired at a purchase price of not greater than par, including those issued by Servicer, the trustee under any Securitization or any of their respective Affiliates, payable on demand or having a maturity date not later than the Business Day immediately prior to the first Payment Date following the date of acquiring such investment and meeting one of the appropriate standards set forth below:

(i) obligations of, or obligations fully guaranteed as to payment of principal and interest by, the United States or any agency or instrumentality thereof provided such obligations are backed by the full faith and credit of the United States of America including obligations of: the U.S. Treasury (all direct or fully guaranteed obligations), the Farmers Home Administration (certificates of beneficial ownership), the General Services Administration (participation certificates), the U.S. Maritime Administration (guaranteed Title XI financing), the Small Business Administration (guaranteed participation certificates and guaranteed pool certificates), the U.S. Department of Housing and Urban Development (local authority bonds) and the Washington Metropolitan Area Transit Authority (guaranteed transit bonds); provided, however, that the investments described in this clause must (A) have a

predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(ii) Federal Housing Administration debentures;

(iii) obligations of the following United States government sponsored agencies: Federal Home Loan Mortgage Corp. (debt obligations), the Farm Credit System (consolidated systemwide bonds and notes), the Federal Home Loan Banks (consolidated debt obligations), the Federal National Mortgage Association (debt obligations), the Financing Corp. (debt obligations), and the Resolution Funding Corp. (debt obligations); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(iv) federal funds, unsecured certificates of deposit, time deposits, bankers’ acceptances and repurchase agreements with maturities of not more than 365 days of any bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(v) fully Federal Deposit Insurance Corporation-insured demand and time deposits in, or certificates of deposit of, or bankers’ acceptances issued by, any bank or trust company, savings and loan association or savings bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities); provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(vi) debt obligations with maturities of not more than 365 days and at all times rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) in its highest long-term unsecured rating category; provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(vii) commercial paper (including both non interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) with maturities of not more than 365 days and that at all times is rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) in its highest short-term unsecured debt rating; provided, however, that the investments described in this clause must (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (D) such investments must not be subject to liquidation prior to their maturity;

(viii) units of taxable money market funds, which funds are regulated investment companies, seek to maintain a constant net asset value per share and invest solely in obligations backed by the full faith and credit of the United States, which funds have the highest rating available from each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) for money market funds; and

(ix) any other security, obligation or investment which has been approved as a Permitted Investment in writing by (a) Lender and (b) each Rating Agency, as evidenced by a written confirmation that the designation of such security, obligation or investment as a Permitted Investment will not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities by such Rating Agency;

provided, however, that no obligation or security shall be a Permitted Investment if (A) such obligation or security evidences a right to receive only interest payments or (B) the right to receive principal and interest payments on such obligation or security are derived from an underlying investment that provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment.

“Permitted Par Prepayment Date” means June 2, 2026.

“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 the Existing PIP Requirement and/or the Additional PIP Requirements, as applicable.

“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.

“Prohibited Entity/Ownership Structure” means any direct or indirect ownership of either the Property, Borrower, Master Tenant, or Guarantor by (a) a statutory trust organized under 12 Del.C. § 3801 et seq., or any successor statute thereto, or under any similar other state or federal law, (b) any one or more Persons as tenants in common or any similar ownership structure, or (c) any one or more Persons as a result of any Crowdfunding.

“Property” means the parcel of real property, the Improvements thereon and all personal property owned by Borrower and encumbered by the Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Security Instrument and referred to therein as the **“Property.”**

“Provided Information” means any and all financial and other information provided at any time prepared by, or on behalf of, Borrower, Principal, Master Tenant, Guarantor and/or Manager.

“Qualified Franchisor” shall mean (i) Franchisor or (ii) a reputable and experienced franchisor which, in the reasonable judgment of Lender, possesses experience in flagging hotel properties similar in location, size, class, use, operation and value as the Property; provided, that, if required by Lender, Borrower shall have obtained (i) a Rating Agency Confirmation from the applicable Rating Agencies that franchising of the Property by such Person will not cause a downgrade, withdrawal

or qualification of the then current ratings of the Securities or any class thereof. Lender or Servicer shall make any required request for written confirmation directly to the Rating Agencies and (ii) if such entity is an Affiliate of Borrower, an Additional Insolvency Opinion.

“Qualified Manager” means either (a) Manager; or (b) in the reasonable judgment of Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower or Master Tenant) possessing experience in managing properties similar in size, scope, use and value as the Property, provided, that, if required by Lender, Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that management of the Property by such entity will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof.

“Rating Agencies” means each of S&P, Moody’s, Fitch, and Morningstar Credit Ratings, LLC, or any other nationally recognized statistical rating agency which has been approved by Lender and designated by Lender to assign a rating to the Securities.

“Related Entities” has the meaning set forth in Section 5.2.10(e) hereof.

“Release” shall mean any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

“Remediation” includes any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances.

“REMIC Requirements” shall mean any applicable legal requirements relating to any REMIC Trust (including, without limitation, those relating to the continued treatment of the Loan (or the applicable portion thereof or interest therein) as a “qualified mortgage” held by such REMIC Trust, the continued qualification of such REMIC Trust as such under the Code, the non-imposition of any tax on such REMIC Trust under the Code (including, without limitation, taxes on “prohibited transactions” and “contributions”) and any other constraints, rules or other regulations or requirements relating to the servicing, modification or other similar matters with respect to the Loan (or any portion thereof and/or interest therein) that may now or hereafter exist under applicable legal requirements (including, without limitation under the Code)).

“REMIC Trust” means a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Note or a portion thereof.

“Rents” shall have the meaning set forth in the Security Instrument.

“Replacement Franchise Agreement” shall mean, collectively, (i)(a) a franchise, trademark and license agreement with a Qualified Franchisor substantially in the same form and substance as the Franchise Agreement, or (b) a franchise, trademark and license agreement with a Qualified Franchisor, which franchise, trademark and license agreement shall be reasonably acceptable to Lender in form and substance; provided that, with respect to this clause (b) Lender, at its option, may require that Borrower shall have obtained, prior written confirmation from the applicable Rating Agencies that such franchise, trademark and license agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof, and (ii) a comfort letter or tri-party agreement reasonably acceptable to Lender, executed and delivered to Lender by Borrower (or, as applicable, Master Tenant) and such Qualified Franchisor. Lender or Servicer shall make any required request for written confirmation directly to the Rating Agencies.

“Replacement Management Agreement” means, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, provided, with respect to this subclause (ii), Lender, at its option, may require that Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or of such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager at Borrower’s expense.

“Replacements Payment” means an amount equal to the greater of one-twelfth (1/12) of four percent (4.0%) of (1) gross revenues from the Property for the preceding calendar year, and (2) projected forward twelve (12) month Replacements expenditures based on the Annual Budget. For the avoidance of doubt, Lender shall calculate the Replacements Payment on an annual basis at such time as Lender reviews and approves the Annual Budget.

“Replacement Reserve Account” has the meaning set forth in Section 7.3.1 hereof.

“Replacement Reserve Fund” has the meaning set forth in Section 7.3.1 hereof.

“Replacement Reserve Monthly Deposit” means (i) for each Payment Date during the calendar year 2016, an amount equal to \$43,156.00, and (ii) for each Payment Date thereafter, an amount determined by Lender in its sole discretion in January of each year, commencing in 2017, 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.

“Reserve Funds” means, collectively, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, the Existing PIP Reserve Fund, the Additional PIP Reserve Fund, the Seasonality 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.

“Revised Management Fees” shall have the meaning set forth in Section 9.4 hereof.

“Room Revenue” shall mean that portion of Gross Income from Operations attributable to the rental of hotel rooms, upon which Franchisor calculates franchise fees.

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

“Sale or Pledge” means a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

“Scheduled Defeasance Payments” has the meaning set forth in Section 2.5.1(b) hereof.

“Seasonality Reserve Account” shall have the meaning set forth in Section 7.7.1 hereof.

“Seasonality Reserve Annual Cap” shall mean the amount determined by Lender in its sole discretion in April of each year, commencing in 2017, of the aggregate shortfall for the months of December, January and February that are immediately prior to date on which such calculation is made, which, if added to Net Cash Flow for such three month period (for the avoidance of doubt which Net Cash Flow shall not include any disbursements from the Seasonality Reserve Account), would cause the Debt Service Coverage Ratio during the immediately preceding Seasonality Reserve Disbursement Period to equal 1.10 to 1.00.

“Seasonality Reserve Disbursement Period” shall have the meaning set forth in Section 7.7.2 hereof.

“Seasonality Reserve Fund” shall have the meaning set forth in Section 7.7.1 hereof.

“Seasonality Reserve Monthly Deposit” shall mean an amount equal to one-sixth (1/6) of the amount of the applicable Seasonality Reserve Annual Cap (less any then-existing balance in the Seasonality Reserve Account, as determined by Lender in its sole discretion).

“Seasonality Reserve Monthly Deposit Shortfall” shall have the meaning set forth in Section 7.7.1 hereof.

“Seasonality Reserve Monthly Deposit Shortfall Month” shall have the meaning set forth in Section 7.7.1 hereof.

“Seasonality Reserve Payment Period” shall have the meaning set forth in Section 7.7.1 hereof.

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

“Securitization” has the meaning set forth in Section 9.1 hereof.

“Security Agreement” has the meaning set forth in Section 2.5.1(a)(v) hereof.

“Security Instrument” means, that certain first priority Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated the date hereof, executed and delivered by Borrower to Lender as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Servicer” has the meaning set forth in Section 9.5 hereof.

“Severed Loan Documents” has the meaning set forth in Section 8.2(c) hereof.

“Special Purpose Entity” means a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof while the Loan is outstanding and undefeased, unless such Person no longer owns any interest in the Property, has complied with and shall at all times comply with the following requirements unless it has received either prior consent to do otherwise from Lender or a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof:

(i) is and shall be organized solely for the purpose of (A) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, financing, managing, operating and disposing of the Property, entering into and performing its obligations under the Loan Documents with Lender, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; (B) in the case of Master Tenant, leasing, subleasing, operating, managing, maintaining, developing, and improving the Property, entering into and performing its obligations under the Master Lease Documents with Borrower, Hotel Transactions, the Franchise Agreement, and subleases, operating agreements, or management agreements with third-party operators or managers for the management and operation of the Property, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (C) in the case of a Principal, acting as a general partner of the limited partnership that is the Borrower or Master Tenant, as applicable, or as member of the limited liability company that is the Borrower or Master Tenant, as applicable, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, leasing, management or operation of the Property (including, in the case of Master Tenant, entering into the Master Lease Documents, Hotel Transactions and subleases, operating agreements or management agreements with third-party operators or managers for the management and operation of the Property), or (B) in the case of a Principal, acting as general partner of the limited partnership that is the Borrower or Master Tenant, as applicable, or acting as a member of the limited liability company that is the Borrower or Master Tenant, as applicable;

(iii) has not owned and shall not own any real property other than (A) in the case of Borrower, the Property; or (B) in the case of Master Tenant, the leasehold interest in the Master Lease;

(iv) does not have, shall not have and at no time had any assets other than (A) in the case of Borrower, the Property and personal property necessary or incidental to its ownership and operation of the Property; (B) in the case of Master Tenant, the leasehold interest under the Master Lease and personal property necessary or incidental to ownership of its leasehold interest in and operation of the Property; or (C) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that is the Borrower or Master Tenant, as applicable, and personal property necessary or incidental to its ownership of such interests;

(v) has not engaged in, sought, consented to or permitted and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests in Borrower;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company, (B) holds a direct interest as general partner in the limited partnership of not less than one percent (1.0%); and (C) has at least one (1) Independent Director;

(viii) if such entity is a corporation, has and shall have at least one (1) Independent Director, and 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 Master Tenant (as applicable) or any action requiring the unanimous affirmative vote of

one hundred percent (100%) of the members of its board of directors, one hundred percent (100%) of the members of its board of directors and each Independent Director 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 and that has at least one (1) Independent Director;

(x) if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) has and shall have at least one (1) Independent Director serving as manager of such company, (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 and at least one (1) Independent Director then serving as manager 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 each Independent Director and one hundred percent (100%) of its members, partners or shareholders, as applicable, of itself or the consent of a Principal that is a member or general partner in it take any Material Action;

(xii) to the extent revenues of the Property are available to it and are sufficient therefor (or Borrower’s lack of access thereto is due to the exercise of rights or remedies by Lender), (A) has at all times been and shall at all times remain solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and (B) has maintained and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xiii) holds itself out as a legal entity, separate and apart from any other person or entity, has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain (subject to clause (xvi) below) its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is a disregarded entity or otherwise is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) except as required by the Loan Documents, has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) except as required by the Loan Documents, has held and shall hold its assets in its own name;

(xviii) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or (except in the case of Borrower) of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of such Person;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required (or, if such entity is disregarded for tax purposes, permitted) by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose

Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity;

(xx) to the extent that revenues of the Property are available to it and are sufficient therefor (or Borrower's lack of access thereto is due to the exercise of rights or remedies by Lender), has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) shall have no Indebtedness (including loans (whether or not such loans are evidenced by a written agreement) between such Person and any Affiliates of such Person) other than (A) in the case of the Borrower, the Loan, (B) in the case of Master Tenant, its obligations under the Master Lease, and (C) in the case of Borrower and Master Tenant, unsecured trade payables and operational debt incurred in the ordinary course of business relating to the ownership of its interest in and operation of the Property and the routine administration of Master Tenant and Borrower, which liabilities are (i) paid when due and in any event not more than sixty (60) days past the later of the date incurred or invoiced (unless disputed in accordance with applicable law or unless revenues of the Property, net of all other amounts payable by Master Tenant under the Master Lease or the Loan Documents, are insufficient to pay such sums, or, to the extent they are sufficient and Lender is then sweeping Excess Cash Flow under the Loan Documents, Lender has not released such funds to Master Tenant), (ii) not evidenced by a note, (iii) normal and reasonable under the circumstances, and (iv) do not exceed 2% of the original principal balance of the Loan (unless such maximum amount is breached solely as a result of non-payment of the liability under the circumstances described in sub-clause (i) above), and (D) in the case of Borrower and Master Tenant, such other liabilities as are permitted pursuant to this Agreement (the Indebtedness described in the foregoing clauses (A) through (D) is referred to herein, collectively, as "**Permitted Indebtedness**"). Except pursuant to the Master Lease Documents or another Loan Document to which Master Tenant is a party, no Indebtedness other than the Debt may be secured (subordinate or *pari passu*) by the Property;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except as permitted pursuant to this Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate; provided that no Master Lease Document shall be deemed to violate this provision;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing, including paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property or, in the case of Master Tenant, pursuant to the Master Lease Documents, and no such pledge remains outstanding except to Lender to secure the Loan and Borrower to secure Master Tenant's obligations under the Master Lease Documents;

(xxix) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) other than the Master Lease Documents and the Management Agreement, capital contributions, and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxxiv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it if its cash flow is insufficient to pay the Debt;

(xxxv) if such entity is a corporation, has considered and shall consider, to the extent permitted under applicable law, the interests of its creditors in connection with all corporate actions;

(xxxvi) has not had and shall not have any of its obligations guaranteed by any Affiliate except pursuant to the Franchise Guaranty, the Owner Agreement or as otherwise provided by the Loan Documents;

(xxxvii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower or Master Tenant;

(xxxviii) has complied and shall comply with all of the terms and provisions contained in its organizational documents relating to separateness;

(xxxix) intentionally omitted;

(xl) except pursuant to the Loan Documents, has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xli) is, has always been and, to the extent that revenues of the Property are available to it and sufficient therefor, shall continue to be, duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is required to be qualified to do business; and

(xlii) has no material contingent or actual obligations not related to the Property.

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

"Successor Borrower" has the meaning set forth in Section 2.5.3 hereof.

"Survey" means a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

"Tax and Insurance Escrow Fund" has the meaning set forth in Section 7.2 hereof.

"Taxes" means all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

"Tenant" means the lessee of all or a portion of the Property under a Lease (other than Master Tenant).

"Tenant Direction Letter" means an instruction letter to Tenants substantially in the form attached hereto as Schedule IV.

"Threshold Amount" has the meaning set forth in Section 5.1.21 hereof.

"Title Insurance Policy" means the mortgagee title insurance policy issued with respect to the Property and insuring the lien of the Security Instrument.

"Transfer" has the meaning set forth in Section 5.2.10(b) hereof.

"Transferee" has the meaning set forth in Section 5.2.10(e) hereof.

"Transferee's Principals" means collectively, (A) Transferee's managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee.

“TRIPRA” shall have the meaning set forth in Section 6.1(a)(ix) hereof.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect in the State in which the Property is located.

“Uniform System of Accounts” shall mean the most recent edition of the Uniform System of Accounts for Hotels, as adopted by the American Hotel and Motel Association.

“U.S. Obligations” means non redeemable, non prepayable, non callable securities evidencing an obligation to timely pay principal or interest in a full and timely manner that constitute “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended, and are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Rating Agencies, other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

Section 1.2 Principles of Construction. The following rules of construction shall be applicable for all purposes of this Agreement and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

- (a) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (b) the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”;
- (c) an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by Lender;
- (d) no inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document;
- (e) the cover page (if any) of, all recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated herein;
- (f) all references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified;
- (g) all uses of the words “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to” unless the context shall indicate otherwise;
- (h) unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and
- (i) unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

2.1.1. Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2. Single Disbursement to Borrower. Borrower may request and receive only one (1) borrowing hereunder in respect of the Loan and any amount borrowed and repaid or defeased hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3. The Note, Security Instrument and Loan Documents. The Loan shall be evidenced by the Note and secured or supported, as the case may be, by the Security Instrument and the other Loan Documents.

2.1.4. Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) acquire the Property or repay and discharge any existing loans relating to the Property, (b) pay all past due basic carrying costs, if any, with respect to the Property, (c) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, (d) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (e) fund any working capital requirements of the Property and (f) distribute the balance, if any, to Borrower.

Section 2.2 Interest Rate.

2.2.1. Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue at the Interest Rate or as otherwise set forth in this Agreement or in the Note from (and including) the Closing Date to but excluding the Maturity Date.

2.2.2. Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the relevant Accrual Period by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance of the Loan. Borrower acknowledges that the calculation method for interest described herein results in a higher effective interest rate than the numeric Interest Rate and Borrower hereby agrees to this calculation method.

2.2.3. Default Rate. Upon the occurrence of an Event of Default (including the failure of Borrower to make full payment on the Maturity Date), Lender shall be entitled to receive and Borrower shall pay interest on the Outstanding Principal Balance at the Default Rate. Interest shall accrue and be payable at the Default Rate from the occurrence of an Event of Default until all Events of Default have been waived in writing by Lender in its discretion. Such accrued interest shall be added to the Outstanding Principal Balance, and interest shall accrue thereon on a daily basis at the Default Rate until fully paid. Such accrued interest shall be secured by the Security Instrument and other Loan Documents. Borrower agrees that Lender's right to collect interest at the Default Rate is given for the purpose of compensating Lender at reasonable amounts for Lender's added costs and expenses that occur as a result of Borrower's default and that are difficult to predict in amount, such as increased general overhead, concentration of management resources on problem loans, and increased cost of funds. Lender and Borrower agree that Lender's collection of interest at the Default Rate is not a fine or penalty, but is intended to be and shall be deemed to be reasonable compensation to Lender for increased costs and expenses that Lender will incur if there occurs an Event of Default hereunder. Collection of interest at the Default Rate shall not be construed as an agreement or privilege to extend the Maturity Date or to limit or impair any rights and remedies of Lender under any Loan Documents. If judgment is entered on the Note, interest shall continue to accrue post-judgment at the greater of (a) the Default Rate or (b) the applicable statutory judgment rate.

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

Section 2.3 Loan Payment. Payments of principal, interest, and Late Charges (as defined in the Note) shall be made as provided in the Note.

Section 2.4 Prepayments. Except as otherwise provided in Section 9 of the Note, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date.

Section 2.5 Defeasance.

2.5.1. Voluntary Defeasance. (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Permitted Defeasance Date and prior to the Permitted Par Prepayment Date to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "**Defeasance Event**"):

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "**Defeasance Date**") on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the next Payment Date, provided, however, if the Defeasance Deposit shall include (or if the U.S. Obligations purchased with such Defeasance Deposit shall provide for payment of) all principal and interest computed from the Payment Date prior to the Defeasance Date through the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Security Instrument and the other Loan Documents;

(iv) Borrower shall pay to Lender the required Defeasance Deposit for the Defeasance Event and complies with and satisfies the requirements of Section 2.5.1(b) below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the “**Security Agreement**”);

(vi) Borrower shall deliver one or more opinions from counsel reasonably satisfactory to Lender that are standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the U.S. Obligations purchased with the Defeasance Deposit and that the Security Agreement is enforceable against Borrower in accordance with its terms, and (b) the defeasance or any other transaction that occurs pursuant to the provisions of this Section 2.5.1(a) will not cause the failure of any REMIC Trust or any other entity that holds the Note to maintain its tax status;

(vii) If required by pursuant to the applicable pooling and servicing agreement, Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower from counsel satisfactory to Lender in form and substance satisfactory to Lender and the applicable Rating Agencies;(viii) Borrower shall deliver an Officer’s Certificate certifying that the requirements set forth in this Section 2.5.1(a) (except for such, if any, as have been specifically waived in writing in connection with the Defeasance Event) have been satisfied;

(ix) Borrower shall deliver a certificate of a certified public accountant reasonably acceptable to Lender (which may be an employee of Borrower or its Affiliates) certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Security Instrument as provided in Section 2.6 hereof, (B) reasonable attorneys’ fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the assumption of the Note by the Successor Borrower, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys’ fees and expenses.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit, or cause it to be used, to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to or more than the scheduled payments due on such Payment Dates under this Agreement and the Note (including scheduled payments of principal, interest, and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is repaid in full on the Maturity Date (the “**Scheduled Defeasance Payments**”). Notwithstanding the foregoing, at Lender’s option, Lender, acting on Borrower’s behalf as Borrower’s agent and attorney-in-fact, shall use the Defeasance Deposit to purchase, or cause to be purchased, the above-referenced U.S. Obligations that Borrower is required to purchase pursuant to this Section 2.5.1(b). By depositing the Defeasance Deposit with Lender, Borrower shall thereby appoint Lender or Lender’s servicer or other agent as Borrower’s agent and attorney-in-fact, with full power of substitution, for the purpose of purchasing the U.S. Obligations with the Defeasance Deposit and delivering the U.S. Obligations to Lender. Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy Borrower’s other obligations under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

(c) If any notice of defeasance is given pursuant to Section 2.5.1(a)(i), Borrower shall be required to defease the Loan on the Defeasance Date (unless such notice is revoked by Borrower prior to the Defeasance Date in which event Borrower shall immediately reimburse Lender for any and all reasonable costs and expenses incurred by Lender in connection with Borrower's giving of such notice and revocation).

2.5.2. Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book entry transfers and pledges through the book entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3. Successor Borrower. In connection with any Defeasance Event, Borrower shall establish or designate a successor entity (the "Successor Borrower") acceptable to Lender in its reasonable discretion, which shall be a special purpose entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents, and each of Guarantor and Master Tenant shall be released from its obligations under the other Loan Documents, except with respect to matters occurring prior to such release. Borrower shall pay \$1,000 to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Section 2.5.3, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 Release of Property. Except as set forth in this Section 2.6 or upon repayment of the Loan in full on or after the Maturity Date, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Security Instrument on all or any portion of the Property and any other Loan Document pursuant to which a Lien thereon exists.

2.6.1. Release of Property. (a) If Borrower has the right to and has elected to prepay in full or defease the Loan in accordance with this Agreement and the Note, upon satisfaction of the requirements of Section 2.4 and Section 9 of the Note (in the case of a prepayment, if then permitted under this Agreement and the Note) or Section 2.5 (in the case of a full defeasance, if then permitted under this Agreement and the Note), as applicable, and this Section 2.6, all of the Property shall be released from the Liens of the Loan Documents.

(b) In connection with the release of the Security Instrument in connection with a Defeasance Event, Borrower shall submit to Lender, not less than thirty (30) days (or such shorter time period as Lender may agree to in its sole discretion) prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement. Borrower shall reimburse Lender and Servicer for any costs and expenses Lender and Servicer incur arising from such release (including reasonable attorneys' fees and expenses) and Borrower shall pay, in connection with such release, (i) all recording charges, filing fees, taxes or other expenses payable in connection therewith, and (ii) the lesser of the current fee then generally being assessed by such Servicer to effect such release and the maximum amount permitted under applicable law to be assessed as a fee therefor. Upon the release of the Property in accordance with this Section 2.6.1 following a defeasance, Borrower shall have no further right to prepay the Note.

Section 2.7 Clearing Account/Cash Management.

2.7.1. Clearing Account. (a) Upon the occurrence of a Cash Sweep Event, Borrower shall establish and maintain an Eligible Account (the "Clearing Account") with Clearing Bank for the benefit of Lender, which Clearing Account shall be under the sole dominion and control of Lender. The Clearing Account shall be entitled in the name of Master Tenant for the benefit of Lender. Master Tenant shall grant to Borrower, as security for Master Tenant's obligations under the Master Lease, a first-priority security interest in the Clearing Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Borrower and of Lender, as Borrower's assignee, a perfected first priority security interest in the Clearing Account, including, without limitation, authorizing the filing UCC-1 Financing Statements and continuations thereof. Borrower hereby grants to Lender a first-priority security interest in all of Borrower's right, title and interest in and to the Clearing Account and all deposits at any time contained therein and the proceeds thereof

and shall take all actions deemed necessary or desirable by Lender to maintain in favor of Lender a perfected first priority security interest in the Clearing Account, including authorizing the filing of UCC-1 Financing Statements and continuations thereof. All costs and expenses for establishing and maintaining the Clearing Account shall be paid by Borrower or Master Tenant. All monies now or hereafter deposited into the Clearing Account shall be deemed additional security for Master Tenant's obligations under the Master Lease, and, to the extent of Borrower's interest therein, additional security for the Debt. All funds in the Clearing Account, less the reasonable fees of the Clearing Bank and any minimum balance required to be maintained therein, shall be wire transferred each Business Day (i) during the existence of a Cash Sweep Period, to the Cash Management Account and (ii) if a Cash Sweep Period does not then exist, to Master Tenant's operating account specified pursuant to the Clearing Agreement. Upon the occurrence of a Cash Sweep Event, the Clearing Account Agreement and Clearing Account shall remain in effect until the Loan has been repaid or defeased in full.

(b) On or before the Closing Date, Borrower shall, or shall cause Master Tenant to (or cause Manager to), execute and deliver to Lender (i) Credit Card Direction Letters to each of the Credit Card Companies to deliver all receipts payable with respect to the Property directly to the Clearing Account, and (ii) with respect to commercial Leases in existence on the date hereof (if any), execute and deliver Tenant Direction Letters to all Tenants under such commercial Leases to deliver all Rents payable under their respective Leases directly to the Clearing Account, and deposit all Rents payable under the Master Lease directly to the Clearing Account. In connection with each commercial Lease executed after the date hereof, Borrower shall simultaneously deliver to Lender an executed Tenant Direction Letter. Lender shall hold the Credit Card Direction Letters and the Tenant Direction Letters in escrow and shall not complete and deliver them to Credit Card Companies or Tenants unless (i) a Cash Sweep Event occurs and (ii) Borrower shall have failed promptly thereafter to provide satisfactory written evidence to Lender that Borrower has delivered, or has caused Master Tenant and/or Manager to deliver, completed Credit Card Direction Letters to Credit Card Companies and Tenant Direction Letters to Tenants. Without the prior written consent of Lender, neither Borrower, Master Tenant nor Manager shall (i) terminate, amend, revoke or modify any Credit Card Direction Letter or any Tenant Direction Letter in any manner or (ii) direct or cause any Credit Card Company, Tenant or Master Tenant to pay any amount in any manner other than as provided in the Credit Card Direction Letter or Tenant Direction Letter, as applicable. After the occurrence of a Cash Sweep Event, Borrower shall, and shall cause Master Tenant to or to cause Manager to, deposit all amounts received by Borrower, Master Tenant or Manager constituting Rents (other than operating cash, not in excess of \$5,000, retained for the purpose of the day-to-day operations of the Property) into the Clearing Account within two (2) Business Days after receipt thereof. Until so deposited, all Rents received by Borrower or Manager shall be held in trust for the benefit of Lender and shall not be commingled with any other funds or property of Borrower or Manager.

(c) Master Tenant shall obtain from Clearing Bank its agreement to transfer on each Business Day all amounts on deposit in the Clearing Account (i) during the existence of a Cash Sweep Period, to the Cash Management Account and (ii) if a Cash Sweep Period does not then exist, to Master Tenant's operating account specified pursuant to the Clearing Account Agreement.

(d) If Lender has accelerated the Loan as a result of an Event of Default or any Bankruptcy Action of Borrower, Master Tenant, Principal or Manager, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Clearing Account to the payment of the Debt in any order in its sole discretion. If Lender has not accelerated the Loan notwithstanding the existence of an Event of Default or any Bankruptcy Action of Borrower, Master Tenant, Principal or Manager, Lender shall have the continuing exclusive control of, and right to withdraw and apply, the funds in the Clearing Account that would constitute rent under the Master Lease to payment of any and all debts, liabilities and obligations of Borrower to Lender pursuant to or in connection with this Agreement and the other Loan Documents, in such order, proportion and priority as Lender may determine in its sole discretion. Notwithstanding anything to the contrary contained in this Section 2.7.1(d), Lender shall make any Collected Taxes available for payment to the relevant tax authorities to the extent such Collected Taxes are required to be so remitted.

(e) The Clearing Account shall not be commingled with other monies held by Borrower, Master Tenant, Manager or Clearing Bank and shall be an Eligible Account.

(f) Neither Borrower nor Master Tenant shall further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or authorize any UCC-1 Financing Statements, except those naming Lender as the secured party and Borrower as Lender's assignor, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the Clearing Account or the Clearing Account Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Clearing Account was established.

(h) Upon (i) Clearing Bank ceasing to be an Eligible Institution, (ii) the Clearing Account ceasing to be an Eligible Account, (iii) any resignation by Clearing Bank or termination of the Clearing Account Agreement by Clearing Bank or Lender or (iv) the occurrence and continuance of an Event of Default, Borrower and/or Master Tenant, as applicable, shall, within fifteen (15) days of Lender's written request, (A) terminate the existing Clearing Account Agreement, (B) appoint a new Clearing Bank (which such Clearing Bank shall (I) be an Eligible Institution, (II) other than during the continuance of an Event of Default, be selected by Borrower and approved by Lender and (III) during the continuance of an Event of Default, be selected by Lender), (C) cause such Clearing Bank to open a new Clearing Account (which such account shall be an Eligible Account) and enter into a new Clearing Account Agreement with Lender on substantially the same terms and conditions as the previous Clearing Account Agreement and (D) provide new Tenant Direction Notices and Credit Card Direction Letters and the other notices required pursuant to the terms hereof relating to such new Clearing Account Agreement and Clearing Account. Each of Borrower and Master Tenant constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake any action required of Borrower and/or Master Tenant under this Section 2.7.1 in the name of Borrower and/or Master Tenant (as applicable) in the event Borrower and/or Master Tenant fails to do the same. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

2.7.2. Cash Management Account. (a) Upon the occurrence of a Cash Sweep Event, Borrower shall cause Master Tenant to establish and maintain a segregated Eligible Account (the "**Cash Management Account**") to be held by Agent in trust and for the benefit of Borrower and Lender and to which, during a Cash Sweep Period, all amounts that otherwise would have been wired to Master Tenant pursuant to the Clearing Account Agreement shall be transferred instead, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled in the name of Master Tenant for the benefit of Lender. Master Tenant shall grant to Borrower a first-priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions deemed necessary or desirable by Lender to maintain in favor of Borrower and of Lender, as Borrower's assignee, a perfected first priority security interest in the Cash Management Account, including, without limitation, authorizing the filing of UCC-1 Financing Statements and continuations thereof. Borrower hereby grants to Lender a first priority security interest in all of Borrower's right, title and interest in and to the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and shall take all actions deemed necessary or desirable by Lender to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, authorizing the filing of UCC-1 Financing Statements and continuations thereof. Borrower will not, and will not permit Master Tenant to, in any way alter or modify the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account, and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower or Master Tenant.

(b) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(c) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default or any Bankruptcy Action of Borrower or Manager and the acceleration of the Loan by Lender may be applied by Lender in such order and priority as Lender shall determine. If Lender has not accelerated the Loan notwithstanding the existence of an Event of Default or any Bankruptcy Action of Borrower, Master Tenant, Principal or Manager, Lender shall have the continuing exclusive control of, and right to withdraw and apply, funds in the Cash Management Account that would constitute rent under the Master Lease and all of Borrower's Excess Cash Flow (excluding, for the avoidance of doubt, Master Tenant's Excess Cash Flow) to payment of any and all debts, liabilities and obligations of Borrower to Lender pursuant to or in connection with this Agreement and the other Loan Documents, in such order, proportion and priority as Lender may determine in its sole discretion. Notwithstanding anything to the contrary contained in this Section 2.7.2(c), Lender shall make any Collected Taxes available for payment to the relevant tax authorities to the extent such Collected Taxes are required to be so remitted.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Lender shall provide notice thereof to Borrower.

2.7.3. Payments Received under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to this Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

ARTICLE III CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent to Closing. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of all of the conditions precedent to closing set forth in the application or term sheet for the Loan delivered by Borrower to Lender and the commitment or commitment rider, if any, to the application or term sheet for the Loan issued by Lender.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. Borrower represents and warrants as of the date hereof that:

4.1.1. Organization. Borrower and Master Tenant have been duly organized and are validly existing and in good standing in their respective jurisdictions of organization with requisite power and authority to own or lease the Property as the case may be and to transact the businesses in which it is now engaged. Each of Borrower and Master Tenant is duly qualified to do business and is in good standing in the State in which the Property is located, and each of Borrower and Master Tenant possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own the interest in the Property and to transact the businesses in which it is now engaged, and the sole business each of Borrower and Master Tenant is as set forth with respect to it in the definition of “Special Purpose Entity.” The ownership interests in Borrower and Master Tenant are as set forth on the organizational chart attached hereto as Schedule III, and the direct and indirect ownership interests in Borrower, Master Tenant, Guarantor or the Property do not include any Prohibited Entity/Ownership Structure.

4.1.2. Proceedings. Each of Borrower, Master Tenant and Guarantor has each taken all necessary action to authorize the execution, delivery and performance, as applicable, of this Agreement and/or the other Loan Documents to which it is a party. This Agreement and such other Loan Documents to which Borrower is a party have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency, fraudulent transfer, reorganization or other similar laws affecting the enforcement of creditors’ rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3. No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents to which Borrower and/or Master Tenant is a party by Borrower and/or Master Tenant, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents and the Master Lease Documents) upon any of the property or assets of Borrower and/or Master Tenant pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower and/or Master Tenant is a party or by which any of the Property, Borrower’s or Master Tenant’s assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or Master Tenant or any of Borrower’s or Master Tenant’s properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or Master Tenant of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4. Litigation. There are no actions, suits or proceedings at law or in equity, arbitrations, or governmental investigations by or before any Governmental Authority or other agency now pending, filed, or, to Borrower’s knowledge, threatened against or affecting Borrower, Guarantor, Master Tenant, Principal or the Property, which actions, suits or proceedings, or governmental investigations, if determined against Borrower, Guarantor, Master Tenant, Principal or the Property, could reasonably be expected to materially adversely affect (a) title to the Property; (b) the validity or enforceability of the Security Instrument; (c) Borrower’s ability to perform under the Loan; (d) Guarantor’s ability to perform under the Guaranty; (e) Master Tenant’s ability to perform under the Master Lease and/or the Loan Documents to which Master Tenant is a party, (f) the use, operation or value of the Property; (g) the principal benefit of the security intended to be provided by the Loan Documents; (h) the current ability of the Property to generate Net Cash Flow sufficient to service the Loan; or (i) the current principal use of the Property.

4.1.5. Agreements. Neither Borrower nor Master Tenant is a party to any agreement or instrument or subject to any restriction (to Borrower’s knowledge, with respect to any Permitted Encumbrance reflected in the Title Insurance Policy) which could reasonably be expected to materially and adversely affect Borrower, Master Tenant, or the Property, or Borrower’s or Master Tenant’s business, properties or assets, operations or condition, financial or otherwise. Neither Borrower nor Master Tenant is in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower, Master Tenant or the Property is bound. Neither Borrower nor Master Tenant has any material financial obligation under any indenture, mortgage,

deed of trust, loan agreement or other agreement or instrument to which Borrower or Master Tenant is a party or by which Borrower, Master Tenant or the Property is otherwise bound, other than (a) Permitted Indebtedness and (b) obligations under the Loan Documents, the Master Lease Documents, the Franchise Agreement, and the Management Agreement.

4.1.6. Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and owns the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are expressly permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower's ability to repay the Loan. The Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on that portion of the Property constituting an interest in real property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) to the extent that a security interest therein may be created under the Uniform Commercial Code and perfected by the filing of a financing statement under the Uniform Commercial Code, as enacted in the State of Delaware, perfected security interests in all personalty (including, to the extent that they constitute an interest in personal property subject to the Uniform Commercial Code the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7. Solvency. Borrower has (a) not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. Giving effect to the Loan and the transactions contemplated by the Master Lease Documents, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan and the transactions contemplated by the Master Lease Documents, exceed Borrower's total liabilities, including subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan and the transactions contemplated by the Master Lease Documents, be greater than Borrower's probable liabilities, including the probably maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Neither Borrower nor Master Tenant intends to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower or Master Tenant, respectively, and the amounts to be payable on or in respect of obligations of Borrower or Master Tenant, respectively, and the anticipated need to refinance the Loan in order to repay it on the Maturity Date). No petition in bankruptcy has been filed against Borrower, Master Tenant or any constituent Person of Borrower or Master Tenant in the last seven (7) years, and neither Borrower, Master Tenant nor any constituent Person in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower, Master Tenant nor any of its constituent Persons are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's or Master Tenant's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or Master Tenant, and the transactions contemplated by the Master Lease Documents or such constituent Persons.

4.1.8. Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. With the exception of risk factors applicable generally to the ownership and operation of hotels such as the Property located in the same geographic region as the Property, there is no material fact presently known to Borrower which has not been disclosed to Lender, which materially adversely affects, nor as far as Borrower can foresee, could reasonably be expected to materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9. No Plan Assets. Neither Borrower nor Master Tenant sponsors, is obligated to contribute to, and is itself an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower or Master Tenant constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) neither Borrower nor Master Tenant is a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower or Master Tenant are not subject to any state or other statute, regulation or other restriction regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement, including the exercise by Lender of any of its rights under the Loan Documents.

4.1.10. Compliance. Except as disclosed in the zoning report delivered to Lender in connection with the origination of the Loan, the Borrower, Master Tenant and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including building and zoning ordinances and codes. Neither Borrower nor Master Tenant is in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower, Master Tenant or, to Borrower's knowledge, any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents or the transactions contemplated by the Master Lease Documents. On the Closing Date, the Improvements at the Property were in material compliance with applicable law.

4.1.11. Financial Information. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Borrower, Master Tenant and the Property, as applicable, as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP and the Uniform System of Accounts throughout the periods covered, except as disclosed therein; provided, however, that if any financial data is delivered to Lender by any Person other than Borrower, Guarantor, Master Tenant or any Affiliate of Borrower, Guarantor or Master Tenant, or if such financial data has been prepared by or at the direction of any Person other than Borrower, Guarantor, Master Tenant or any Affiliate of Borrower, Master Tenant or Guarantor, then the foregoing representations with respect to such financial data shall be to the best of Borrower's knowledge, after due inquiry. Except for Permitted Encumbrances, neither Borrower nor Master Tenant has any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower or Master Tenant and reasonably likely to have a material adverse effect on the Property or the current operation thereof, except as referred to or reflected in said financial statements. Since the date of such financial statements delivered with respect to Borrower and Master Tenant, there has been no material adverse change in the financial condition, operations or business of Borrower or Master Tenant from that set forth in said financial statements.

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

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

4.1.14. Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right of way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

4.1.15. Not a Foreign Person. Neither Borrower nor Master Tenant is a "foreign person" within the meaning of §1445(f)(3) of the Code.

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

4.1.17. Assessments. There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.18. Enforceability. The Loan Documents are enforceable by Lender (or any subsequent holder thereof) in accordance with their respective terms, subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations. To the best of Borrower's knowledge, the Loan Documents are not subject to any right of rescission, set off, counterclaim or defense by Borrower, Master Tenant or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder in accordance with applicable law, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and

neither Borrower, Master Tenant nor Guarantor has asserted any right of rescission, set off, counterclaim or defense with respect thereto.

4.1.19. No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which, upon the funding of the Loan and the application of the proceeds thereof in accordance with this Agreement, will be outstanding, other than from the Master Tenant to Borrower and from Borrower to Lender.

4.1.20. Insurance. 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/ No Prohibited Entity/Ownership Structure. (a) Borrower hereby represents and warrants and until the Debt has been paid or defeased in full, covenants that (i) Borrower is, shall be and shall continue to be a Special Purpose Entity, (ii) so long as the Master Lease is in effect, Master Tenant is, shall be and shall continue to be a Special Purpose Entity, (iii) (if applicable) Principal is, shall be and shall continue to be a Special Purpose Entity, and (iv) no direct or indirect ownership interests in Borrower, Master Tenant, Guarantor or the Property shall include any Prohibited Entity/Ownership Structure. 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) and Section 4.1.30(c) shall survive until the Loan is defeased or until no amount remains payable to Lender under this Agreement or any other Loan Document (other than with respect to surviving indemnity obligations as to which no claim is then pending).

(c) Borrower hereby represents and warrants to Lender that:

(i) Borrower is and always has been duly formed and validly existing in the state in which it was formed and in any other jurisdictions where it is qualified to do business;

(ii) Except as disclosed to Lender in writing, has no judgments or existing liens (other than taxes not yet due and payable and liens in favor of Lender in connection with the Loan);

(iii) To the best of Borrower's knowledge is and, prior to the amendment and restatement of Borrower's organizational documents, was in compliance with all applicable laws;

(iv) Except as disclosed to Lender in writing, has no pending or, to the best of Borrower's knowledge, threatened litigation involving Borrower that, if determined against Borrower, might materially adversely affect the condition or business of Borrower;

(v) Except as disclosed to Lender in writing, Borrower is current on all taxes and is not aware of any dispute with any taxing authority;

(vi) Borrower has never owned any property other than the Property and has never engaged in any business except the ownership and operation of the Property;

(vii) Borrower has provided Lender with financial information that is, to the best of Borrower's knowledge, true, correct and complete in all material respects;

(viii) At all times since its formation, Borrower has complied with the separateness covenants of a Special Purpose Entity; and

(ix) Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted pursuant to clause (xxiii) of the definition of “Special Purpose Entity” set forth in Section 1.1 of the Loan Agreement and (b) obligations under the Loan Documents or otherwise addressed by the Loan Agreement.

(d) Any and all of the stated facts and assumptions made in any Insolvency Opinion, including any exhibits attached thereto, will have been and shall be true and correct in all respects, and Borrower and Master Tenant will have complied and will comply with all of the stated facts and assumptions made with respect to it in any Insolvency Opinion. Each entity other than Borrower and Master Tenant with respect to which an assumption is made or a fact stated in any Insolvency Opinion will have complied and shall comply with all of the assumptions made and facts stated with respect to it in any such Insolvency Opinion. Borrower covenants that in connection with any Additional Insolvency Opinion delivered in connection with this Agreement it shall provide an updated certification regarding compliance with the facts and assumptions made therein.

(e) Borrower covenants and agrees that Borrower shall provide Lender with thirty (30) days’ prior written notice prior to the removal of an Independent Director of either of Borrower or Master Tenant.

4.1.31. Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

4.1.32. Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.33. No Change in Facts or Circumstances; Disclosure. All information submitted by and on behalf of Borrower or Master Tenant to Lender and in all financial statements, rent rolls (including the rent roll attached hereto as Schedule I), reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are true, complete and correct in all material respects, provided, however, that if such information was provided to Borrower or Master Tenant by non-affiliated third parties, Borrower represents that such information is, to the best of its knowledge after due inquiry, true, complete and correct in all material respects. To Borrower’s knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or could reasonably be expected to materially and adversely affect the use, operation or value of the Property or the business operations or the financial condition of Borrower or Master Tenant. Borrower has disclosed to Lender all material facts known to it and has not failed to disclose any material fact known to it that could cause any Provided Information or representation or warranty made herein to be materially misleading.

4.1.34. Investment Company Act. Neither Borrower nor Master Tenant is (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.35. Embargoed Person. To the best of Borrower’s knowledge, as of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Master Tenant and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Master Tenant or Guarantor, as applicable, with the result that the investment in Borrower, Master Tenant or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Master Tenant or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, Master Tenant or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Notwithstanding the foregoing, to the extent that an Embargoed Person acquires a non-controlling interest in Borrower or Master Tenant, either (1) without the knowledge of Borrower, Master Tenant, Key Principal or Guarantor, through a transaction brokered by a FINRA licensed broker dealer not affiliated with Guarantor, provided such broker dealer has executed a dealer agreement or selling agreement with Guarantor or an affiliate of Guarantor in which it covenants to, among other things, comply with The USA PATRIOT Act (or any successor legislation), or (2) without the knowledge of Borrower, Master Tenant, Key Principal or Guarantor, after the initial sale or offering of such interests in Borrower, the resulting breach of the foregoing representations shall be deemed to be unintentional and not willful or grossly negligent for purposes of Section 9.3 hereof.

4.1.36. Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower's state of organization is as set forth in the introductory paragraph of this Agreement.

4.1.37. Environmental Representations and Warranties. Except as otherwise disclosed by that certain Phase I environmental report (or Phase II environmental report, if required) delivered to Lender by Borrower in connection with the origination of the Loan (such report is referred to as the "**Environmental Report**"), (a) to Borrower's knowledge, there are no Hazardous Substances or underground storage tanks in, on, or under the Property and no Hazardous Substances have been handled, manufactured, generated, stored, processed, or disposed of on or released or discharged from the Property, except those that are (i) in compliance with Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required under Environmental Law), and (ii) commercially reasonable amounts necessary to operate and maintain the Property for the purposes set forth in this Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under (if required to be so permitted under) and used in compliance with Environmental Law; (b) to Borrower's knowledge, there are no past, present or threatened Releases of Hazardous Substances in, on, under or from the Property which has not been fully remediated in accordance with Environmental Law; (c) to Borrower's knowledge, there is no threat of any Release of Hazardous Substances migrating to the Property; (d) to Borrower's knowledge, there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property which has not been fully remediated in accordance with Environmental Law; (e) Borrower does not know of, and has not received, any written notice or other written communication from any Person (including a Governmental Authority) relating to Hazardous Substances or Remediation thereof with respect to the Property, of possible liability of any Person with respect to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; (f) Borrower has truthfully and fully disclosed to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property that is known to Borrower and has provided to Lender all information that is contained in Borrower's and/or Master Tenant's files and records, including any reports relating to Hazardous Substances in, on, under or from the Property or to the environmental condition of the Property; and (g) there are no Institutional Controls on or affecting the Property.

4.1.38. Cash Management Account. Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code) in, once established, Borrower's interest in each of the Clearing Account and the Cash Management Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, neither Borrower nor Master Tenant has sold, pledged, transferred or otherwise conveyed any interest in the Clearing Account or Cash Management Account (and shall not take any of the foregoing actions);

(b) Once established, each of the Clearing Account and Cash Management Account shall constitute a "deposit account" or "securities account" within the meaning of the Uniform Commercial Code);

(c) Pursuant and subject to the terms hereof and the other applicable Loan Documents or Master Lease Documents, the Clearing Bank and Agent have agreed to comply with all instructions originated by Lender, without further consent by Borrower or Master Tenant, directing disposition of the Clearing Account and Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities;

(d) The Clearing Account and Cash Management Account shall not be in the name of any Person other than Master Tenant, as pledgor, or Lender, as pledgee. Neither Borrower nor Master Tenant has consented to the Clearing Bank and Agent complying with instructions with respect to the Clearing Account and Cash Management Account from any Person other than Lender, except that, unless a Cash Sweep Period is in effect, the Clearing Bank is instructed to remit funds to Master Tenant's operating account as set forth in Section 2.7.1; and

(e) The Property is not subject to any cash management system (other than pursuant to the Loan Documents), and any and all existing tenant instruction letters issued in connection with any previous financing have been duly terminated prior to the date hereof.

4.1.39. Franchise Agreement. The Franchise Agreement is in full force and effect and there is no default thereunder by Master Tenant or, to Borrower's knowledge, Franchisor, and no event has occurred that, with the passage of time and/or giving of notice, would constitute a default thereunder (to Borrower's knowledge, as to the obligations of Franchisor).

4.1.40. Hotel Personal Property. The Property includes all personal property necessary to operate the Property as a hotel in a manner consistent with operations at the Property on the date hereof.

4.1.41. Labor Matters. There are no collective bargaining agreements or similar agreement to which Borrower is a party or which affect or relate to the Property.

4.1.42. Leases. There are no Leases with respect to residential space or guest rooms at the Property with terms of more than thirty (30) days.

4.1.43. PIP Requirements. Other than the Existing PIP Requirements, there currently are no PIP Requirements or other similar requirements currently due or pending pursuant to the Franchise Agreement.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as the Loan has not been defeased in full and any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower (other than surviving indemnity obligations as to which no claim is then pending). All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents, other than surviving indemnity obligations as to which no claim is then pending, or the earlier release of the Lien of the Security Instrument encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

5.1.1. Existence; Compliance with Legal Requirements. Each of Borrower and Master Tenant shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect Borrower's and Master Tenant's existence, rights, licenses, permits, authorizations and franchises, respectively, to the extent necessary to the ownership and/or operation of the Property, as the case may be, and comply in all material respects with all Legal Requirements applicable to Borrower, Master Tenant and the Property, including all regulations, building and zoning codes and certificates of occupancy. There shall never be committed by Borrower or Master Tenant, and Borrower shall never knowingly and intentionally permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, or knowingly to permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall, or shall cause Master Tenant to, at all times maintain, (x) preserve and protect all franchises and trade names used in the operation of the Property and preserve all the remainder of its property used or useful in the conduct of its business and (y) keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Loan Documents. Borrower shall, or shall cause Master Tenant to, keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. Borrower shall from time to time, upon Lender's request, provide Lender (or cause to be provided to Lender) with evidence reasonably satisfactory to Lender that the Property complies with all Legal Requirements or is exempt from compliance with Legal Requirements. Borrower shall give prompt notice to Lender of the receipt by Borrower, Master Tenant and/or Manager of any notice related to a violation of any Legal Requirements and of the commencement of any proceedings or investigations which relate to compliance with Legal Requirements. After prior written notice to Lender, Borrower or Master Tenant, at Borrower's or Master Tenant's own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or Master Tenant or the Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower or Master Tenant is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iii) neither the Property nor any part thereof or interest therein will be in impending danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall, and shall cause Master Tenant to, promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower, Master Tenant and/or the Property, as applicable; and (vi) Borrower shall furnish, or shall cause Master Tenant to furnish, such security as may be required in the proceeding, or (if no security is required in the proceeding) as may be requested by Lender, to insure compliance

with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender (x) may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost, (y) shall make such security available to Borrower or Master Tenant, as the case may be, to satisfy any obligation that may be payable by it in connection with the matter so contested, and (z) provided that no Event of Default has occurred and is continuing, shall release any balance of such security to Borrower or Master Tenant, as the case may be.

5.1.2. Taxes and Other Charges. Borrower shall, or shall cause Master Tenant to, pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 7.2 hereof. Borrower shall deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent prior to the date on which the Taxes or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish or cause Master Tenant to furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes if such Taxes have been paid by Lender pursuant to Section 7.2 hereof and Lender has received receipts from the relevant taxing authority). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay or cause Master Tenant to pay for all utility services provided to the Property. After prior written notice to Lender, Borrower or Master Tenant, at Borrower's or Master Tenant's own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower and/or Master Tenant is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iii) neither the Property nor any part thereof or interest therein will be in impending danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower or Master Tenant shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or (if no security is required in the proceeding) as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender (x) may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien, (y) shall make such security available to Borrower or Master Tenant, as the case may be, to satisfy any obligation that may be payable by it in connection with the matter so contested, and (z) provided that no Event of Default has occurred and is continuing, shall release any balance of such security to Borrower or Master Tenant, as the case may be.

5.1.3. Litigation. Borrower shall, after becoming aware thereof, give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower, Master Tenant and/or Guarantor which could reasonably be expected to materially adversely affect Borrower's, Master Tenant's or Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4. Access to Property. Borrower shall, and shall cause Master Tenant to, permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

5.1.5. Notice of Default. Upon becoming aware thereof, Borrower shall promptly advise Lender of the occurrence of any Default or Event of Default.

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

5.1.7. Intentionally Omitted.

5.1.8. Award and Insurance Benefits. Borrower shall, and shall cause Master Tenant to, cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any reasonable expenses incurred in connection therewith (including reasonably attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) out of such Insurance Proceeds.

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

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

(b) execute and deliver (or cause to be executed and delivered) to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower and/or Master Tenant under the Loan Documents, as Lender may reasonably require including, without limitation, the execution and delivery of all such writings necessary to transfer any liquor licenses with respect to the Property into the name of Lender or its designee upon acceleration of the Loan or the commencement of any action by Lender to foreclose the Lien of the Security Instrument or for the appointment of a receiver for the Property; and

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

5.1.10. Principal Place of Business, State of Organization. Neither Borrower nor Master Tenant shall cause or permit any change to be made in Borrower's or Master Tenant's name, identity (including its trade name or names), place of organization or formation (as set forth in Section 4.1.36 hereof) or Borrower's or Master Tenant's corporate or partnership or other structure unless Borrower or Master Tenant, as applicable, shall have first notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement, and the other Loan Documents and, in the case of a change in Borrower's or Master Tenant's structure, without first obtaining the prior written consent of Lender, which consent may be given or denied in Lender's discretion. Upon Lender's request, Borrower shall (or shall cause Master Tenant to), at Borrower's sole cost and expense, execute and deliver additional security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of any such change of principal place of business or place of organization. Each of Borrower's and Master Tenant's principal place of business and chief executive office, and the place where Borrower or Master Tenant keeps its respective books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower and Master Tenant) and will continue to be (i) in the case of Borrower, the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change), and (ii) in the case of Master Tenant, as set forth in the Master Lease Documents. Borrower shall promptly notify Lender of any change in its or Master Tenant's organizational identification number. If Borrower or Master Tenant does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

5.1.11. Financial Reporting. (a) Borrower shall keep and maintain or shall cause to be kept and maintained on a Fiscal Year basis, in accordance with the requirements for a Special Purpose Entity set forth herein the Uniform System of Accounts and reconciled in accordance with GAAP (or such other accounting basis acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and Master Tenant and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuation of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's and Master Tenant's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower shall furnish (or shall cause Master Tenant to furnish) to Lender annually, within ninety (90) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's and Master Tenant's annual financial statements prepared by a certified public accountant acceptable to Lender (which may be an employee of Borrower or its Affiliates) in accordance with the Uniform System of Accounts and reconciled in accordance with GAAP (or such other accounting basis acceptable to Lender) covering the Property for such Fiscal Year and containing statements of profit and loss for Borrower, Master Tenant and the Property, an annual rent roll and a balance sheet for Borrower and Master Tenant, which statements shall be accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete in all material respects and fairly present the financial condition and results of the operations of Borrower, Master Tenant and the Property. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include amounts representing annual net operating income, Net Cash Flow, gross income, and operating expenses.

(c) Borrower shall furnish, or cause to be furnished, to Lender on or before forty five (45) days after the end of each calendar quarter the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete in all material respects and fairly present the financial condition and results of the operations of Borrower, Master Tenant and the Property (subject to normal year-end adjustments) as applicable: (i) an occupancy report (including an average daily rate) and a rent roll for the subject quarter; (ii) quarterly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar quarter, noting net operating income, gross income, and operating expenses (not including any contributions to the Replacement Reserve Fund and the Seasonality Reserve Fund), and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses; (iii) provided in each case that Borrower has owned the Property for sufficiently long to permit such calculation to be made, a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding three (3), six (6), and twelve (12) month periods as of the last day of such quarter, and (iv) occupancy statistic for the Property. In addition, such certificate shall also be accompanied by an Officer's Certificate stating that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate. On or before thirty (30) days after the end of each calendar month, Borrower also will furnish, or cause to be furnished, to Lender (x) the most current Smith Travel Research Reports then available to Borrower reflecting market penetration and relevant hotel properties competing with the Property, and (y) if not contained in the quarterly financial statements referred to above, the monthly operating statement for the immediately preceding calendar month, for the purposes of determining the Replacement Reserve Monthly Deposit.

(d) Until the earlier of Securitization or twelve (12) months after the date of this Agreement, Borrower shall furnish, or cause to be furnished, to Lender on or before twenty (20) days after the end of each calendar month, all of the following items with respect to the previous calendar month, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete in all material respects and fairly present the financial condition and results of the operations of Borrower, Master Tenant and the Property (subject to normal year-end adjustments) as applicable: (A) a rent roll for the subject month; (B) monthly operating statement(s) of the Property; and (C) year-to-date operating statement(s) of the Property.

(e) Intentionally omitted.

(f) Intentionally omitted.

(g) The operating budget for the Property for the partial year period commencing on the date hereof, as delivered to Lender in connection with Lender's underwriting of the Loan, shall constitute the initial Annual Budget hereunder. For each Fiscal Year thereafter, Borrower shall (or shall cause Master Tenant to) submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval, not to be unreasonably withheld, conditioned or delayed unless an Event of Default then exists (each such Annual Budget, an "**Approved Annual Budget**"). If Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower and Master Tenant of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Borrower's and/or Master Tenant's written request therefor shall be delivered together with such materials reasonably requested by Lender in order to evaluate such request (it being acknowledged and agreed that no request for consent shall be effective unless and until such materials have been delivered to Lender) and shall conspicuously state, in large bold type, that "**PURSUANT TO SECTION 5.1.11(g) OF THE LOAN AGREEMENT, THIS IS A REQUEST FOR LENDER'S CONSENT. LENDER'S RESPONSE IS REQUESTED WITHIN FIFTEEN (15) DAYS. LENDER'S FAILURE TO RESPOND WITHIN SUCH TIME PERIOD WILL ENABLE BORROWER TO DELIVER A SECOND NOTICE REQUESTING LENDER'S CONSENT**". In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. In the event that Lender fails to approve or disapprove the foregoing written request within such fifteen (15) day period, then Borrower shall be entitled to deliver a second notice. Such notice shall conspicuously state, in large bold type, that "**PURSUANT TO SECTION 5.1.11(g) OF THE LOAN AGREEMENT, THIS IS A REQUEST FOR LENDER'S CONSENT. THE PROPOSED ANNUAL BUDGET SHALL BE DEEMED APPROVED IF LENDER DOES NOT RESPOND TO THE CONTRARY WITHIN FIFTEEN (15) DAYS' OF LENDER'S RECEIPT OF THIS WRITTEN NOTICE**". Unless an Event of Default shall then exist, in the event that Lender fails to approve or disapprove the second written request within such fifteen (15) day period, then Lender's consent shall be deemed to have been granted. Lender shall advise Borrower of any objections to such revised Annual Budget within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise and resubmit the same to Lender until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget (or such proposed Annual Budget is deemed approved pursuant to this Section 5.1.11(g)), the most recently Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges and for increases in occupancy.

(h) If Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an “**Extraordinary Expense**”), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender’s approval, which approval shall not be unreasonably withheld, conditioned or delayed unless an Event of Default then exists.

(i) Borrower shall furnish, or cause to be furnished, to Lender, within ten (10) Business Days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower and/or Master Tenant as may be reasonably requested by Lender.

(j) Borrower shall furnish, or cause to be furnished, to Lender, within ten (10) Business Days after Lender’s request (or as soon thereafter as may be reasonably possible), financial and sales information from any commercial Tenant designated by Lender (to the extent such financial and sales information is required to be provided under the applicable Lease and same is received by Borrower or Master Tenant after request therefor).

(k) Borrower shall cause Guarantor to furnish to Lender annually, within ninety (90) days following the end of each Fiscal Year of Guarantor, 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.

(l) If requested by Lender, Borrower shall use commercially reasonable efforts to provide, or cause to be provided to, Lender, as soon after Lender’s request as practicable, with any financial statements, or financial, statistical or operating information, as Lender shall determine to be required pursuant to Regulation AB under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), or any amendment, modification or replacement thereto or other legal requirements in connection with any private placement memorandum, prospectus or other disclosure documents or any filing pursuant to the Exchange Act in connection with the Securitization or as shall otherwise be reasonably requested by Lender.

(m) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in electronic format (if, within the capabilities of Guarantor’s or Borrower’s data systems, as applicable, without change or modification thereto, prepared using Microsoft Word for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files)), and (ii) if requested by Lender, in paper form and/or on a diskette. Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12. Business and Operations. Borrower shall continue, and shall cause Master Tenant to continue, to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower shall, and shall cause Master Tenant to, qualify to do business and to remain in good standing under the laws of the jurisdiction of its formation as and to the extent the same are required for the ownership, maintenance, management and operation of the Property. Borrower or Master Tenant shall, at all times during the term of the Loan, continue to own all of Equipment, Fixtures and Personal Property which are necessary to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

5.1.13. Title to the Property. Borrower shall warrant and defend (a) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Security Instrument on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys’ fees and expenses) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14. Costs of Enforcement. In the event (a) that the Security Instrument encumbering the Property is foreclosed in whole or in part or that the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering the Property prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, Master Tenant or any of their respective constituent Persons or an assignment by Borrower, Master Tenant or any of their respective constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys’ fees and expenses, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes.

5.1.15. Estoppel Statement. (a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the terms of payment and Maturity Date, (v) the date installments of interest or principal were last paid, (vi) that, except as provided in such statement, there are no Defaults or Events of Default under this Agreement or any of the other Loan Documents, (vii) that the Loan Documents are valid, legal and binding

obligations and have not been modified, or if any of them has been modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases and the Master Lease are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if any of them has been modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases and the Master Lease, (xi) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases or the Master Tenant under the Master Lease are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower or Master Tenant (as applicable) under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or the Security Instrument.

(b) Borrower shall cause Master Tenant to use commercially reasonable efforts to obtain and deliver, or caused to be delivered, to Lender, upon request, tenant estoppel certificates from each commercial Tenant leasing space at the Property in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to request that Master Tenant obtain such certificates more frequently than two (2) times in any calendar year, unless an Event of Default then exists.

(c) Borrower shall, upon request by Lender, direct Master Tenant to use best efforts to cause Franchisor to replace and/or re-issue any comfort letter or tri-party agreement delivered in connection with the Loan.

(d) Borrower shall, promptly upon request of Lender deliver an estoppel certificate from the Master Tenant stating that (i) the Master Lease is in full force and effect and has not been modified, amended or assigned (or listing the modifications, amendments or assignments, if any), (ii) no Event of Default (as defined in the Master Lease) by Master Tenant exists under the Master Lease (or describing in reasonable detail any Event of Default that does exist), (iii) neither Master Tenant nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Master Lease and (iv) all sums due and payable under the Master Lease have been paid in full (or describing in reasonable detail any amounts then remaining due and unpaid).

5.1.16. Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 hereof.

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

5.1.18. Confirmation of Representations. If requested by Lender, Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of (or specifying any inaccuracy in) all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower, Principal, Master Tenant and Guarantor as of the date of the Securitization.

5.1.19. Environmental Covenants. (a) Borrower covenants and agrees that: (i) all uses and operations on or of the Property, whether by Borrower, Master Tenant or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (ii) there shall be no Releases of Hazardous Substances in, on, under or from the Property; (iii) there shall be no Hazardous Substances in, on, or under the Property, except those that are (A) in compliance with all Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required by Environmental Law), and (B) commercially reasonable amounts necessary to operate and maintain the Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under (if required to be so permitted) and used in compliance with Environmental Law; (iv) Borrower shall, and shall cause Master Tenant to, keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower, Master Tenant or any other Person (the "**Environmental Liens**"), provided that Borrower and/or Master Tenant may contest any Environmental Law in accordance with the provisions of Section 5.1.1 applicable to contests of Legal Requirements; (v) Borrower shall, and shall cause Master Tenant to, at its or Master Tenant's sole cost and expense, fully and expeditiously cooperate in all activities pursuant to subsection (b) below, including providing all relevant information and making knowledgeable persons available for interviews; (vi) Borrower shall, and shall cause Master Tenant to, at its or Master Tenant's sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender made if Lender has reason to believe that an environmental hazard exists on the Property (including sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (vii) Borrower shall, and shall cause Master Tenant to, at its or Master Tenant's sole cost and

expense, comply with all reasonable written requests of Lender made if Lender has reason to believe that an environmental hazard exists on the Property (A) reasonably effectuate Remediation of any condition (including a Release of a Hazardous Substance) in, on, under or from the Property; (B) comply with any Environmental Law; (C) comply with any directive from any Governmental Authority; and (D) take any other reasonable action necessary or appropriate for protection of human health (from exposure to Hazardous Substances) or the environment; (viii) Borrower shall not do or allow Master Tenant or any Tenant or other user of the Property to do any act with respect to Hazardous Substances that (A) materially increases the dangers to human health (from exposure to Hazardous Substances) or the environment, (B) poses an unreasonable risk of harm from exposure to Hazardous Substances to any Person (whether on or off the Property), or (C) due to the presence of Hazardous Substances or any Release thereof, (1) impairs or could reasonably be expected to impair the value of the Property, (2) is contrary to any requirement of any insurer, with respect to Hazardous Substances, (3) constitutes a public or private nuisance, (4) constitutes waste, or (5) violates any covenant, condition, agreement or easement applicable to the Property; and (ix) Borrower shall immediately notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards (and reasonably likely to affect) the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written notice or other written communication of which Borrower becomes aware from any source whatsoever (including a Governmental Authority) relating in any way to the release or potential release of Hazardous Substances on, under, or above the Property or Remediation thereof, likely to result in liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Section; (x) Borrower shall not install, use, generate, manufacture, store, treat, release or dispose of, nor permit the installation, use, generation, storage, treatment, release or disposal of, any Hazardous Substances (except commercially reasonable amounts necessary to operate and maintain the Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted (if required to be so permitted) under and used in compliance with Environmental Law) on, under or about the Property, and all uses and operations on or of the Property, whether by Borrower or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (xi) Borrower shall not make any change in the use or condition of the Property which (A) could reasonably be expected to lead to the presence on, under or about the Property of any Hazardous Substances which is not in accordance with any applicable Environmental Law, or (B) would require, under any applicable Environmental Law, notice be given to or approval be obtained from any governmental agency in the event of a transfer of ownership or control of the Property, in each case without the prior written consent of Lender; (xii) Borrower shall not allow any Institutional Control on or to affect the Property; and (xiii) Borrower shall take all acts necessary to preserve its status, if applicable, as an "innocent landowner," "contiguous property owner," or "prospective purchaser" as to the Property and as those terms are defined in CERCLA; provided, however, that this covenant does not limit or modify any of Borrower's other duties or obligations under this Agreement.

(b) If Lender has reason to believe that an environmental hazard exists on the Property that could reasonably be expected, in Lender's discretion, to endanger any Tenants or other occupants of the Property or their guests or the general public or may materially and adversely affect the value of the Property, upon reasonable notice from Lender, Borrower shall, at Borrower's expense, promptly cause an engineer or consultant satisfactory to Lender to conduct an environmental assessment or audit (the scope of which shall be determined in Lender's discretion) and take any samples of soil, groundwater or other water, air, or building materials or any other invasive testing requested by Lender and promptly deliver the results of any such assessment, audit, sampling or other testing; provided, however, if such results are not delivered to Lender within a reasonable period or if Lender has reason to believe that an environmental hazard exists on the Property that, in Lender's sole judgment, endangers any Tenant or other occupant of the Property or their guests or the general public or could reasonably be expected to materially and adversely affect the value of the Property, upon reasonable notice to Borrower, Lender and any other Person designated by Lender, including any receiver, any representative of a Governmental Authority, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including conducting any environmental assessment or audit (the scope of which shall be determined in Lender's discretion) and taking samples of soil, groundwater or other water, air, or building materials, and reasonably conducting other invasive testing. Borrower shall, and shall cause Master Tenant to, cooperate with and provide Lender and any such Person designated by Lender with access to the Property.

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) Borrower shall promptly perform, or cause to be performed, all necessary remedial work in response to the presence of any Hazardous Substances on the Property, any violation of any Environmental Laws, or any claims or requirements made by any governmental agency or authority. All such work shall be conducted by licensed and reputable contractors pursuant to written plans approved by the agency or authority in question (if applicable), under proper permits and licenses (if applicable) with such insurance coverage as is customarily maintained by prudent property owners in similar situations. If the

cost of the work exceeds \$100,000, then Lender shall have the right of prior approval over the environmental contractor and plans, which shall not be unreasonably withheld or delayed. All costs and expenses of the remedial work shall be promptly paid by Borrower or Master Tenant, as applicable, in accordance with the provisions of the Master Lease. In the event Borrower fails to undertake (or cause to be undertaken) the remedial work, or fails to complete (or cause the completion of) the same within a reasonable time period after the same is undertaken, and if Lender is of the good faith opinion that Lender's security in the Property is jeopardized thereby, then Lender shall have the right to undertake or complete the remedial work itself. In such event all costs of Lender in doing so, including all fees and expenses of environmental consultants, engineers, attorneys, accountants and other professional advisors, shall become a part of the Loan and shall be due and payable from Borrower upon demand. Such amount shall be secured by the Loan Documents, and failure to pay the same shall be an Event of Default under the Loan Documents. In the event any Hazardous Substances are removed from the Property, by any of Borrower, Master Tenant or Lender, the number assigned by the United States Environmental Protection Agency to such Hazardous Substances shall be solely in the name of Borrower, and Borrower shall have any and all liability for such removed Hazardous Substances.

5.1.20. Leasing Matters. All commercial Leases with respect to the Property written after the date hereof shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed. Upon request, Borrower shall furnish Lender with executed copies of all commercial Leases. All renewals of commercial Leases and all proposed commercial Leases shall provide for rental rates comparable to existing local market rates. All proposed commercial Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Lender's rights under the Loan Documents. All commercial Leases executed after the date hereof shall provide that they are subordinate to the Security Instrument and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower shall, or shall cause Master Tenant to, (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved except that no termination by Borrower or Master Tenant, as the case may be, or acceptance of surrender by a Tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of any commercial Lease in a manner inconsistent with the provisions of the Loan Documents; and (vi) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, (i) neither Borrower nor Master Tenant shall enter into a lease of all or substantially all of the Property without Lender's prior written consent, which may be granted or withheld in Lender's sole discretion, and (ii) all new Leases and all amendments, modifications, extensions, and renewals of existing Leases with Tenants that are Affiliates of Borrower and/or Master Tenant shall be subject to the prior written consent of Lender, which may be granted in Lender's sole discretion.

5.1.21. Alterations. Borrower shall obtain, and shall require Master Tenant to obtain, Lender's prior written consent to any alterations to any Improvements (it being understood that Replacements do not constitute "alterations" subject to this Section 5.1.21), which consent shall not be unreasonably withheld or delayed except with respect to alterations that could reasonably be expected to have a material adverse effect on Borrower's financial condition, the value of the Property or the Property's Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any alterations that (a) are required to comply with the Franchise Agreement, unless the aggregate cost of such alterations is reasonably anticipated to exceed five percent (5%) of the original principal amount of the Debt or (b) will not have a material adverse effect on Borrower's financial condition, the value of the Property or the Property's Net Operating Income and (i) are made in connection with (a) tenant improvement work performed pursuant to the terms of any Lease executed on or before the date hereof, (b) tenant improvement work performed pursuant to the terms and provisions of a Lease and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (c) are alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement; or (ii) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated not to exceed \$1,000,000.00 (the "Threshold Amount"). If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) shall at any time exceed the Threshold Amount, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that, at Lender's option, the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization or (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by a financial institution having a rating by S&P of not less than "A-1+" if the term of such bond or letter of credit is no longer than three (3) months or, if such term is in excess of three (3) months, issued by a financial institution having a rating that is acceptable to Lender and that, at Lender's

option, the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or class thereof in connection with any Securitization. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Threshold Amount and Lender shall make such security available to pay, or to reimburse Borrower or Master Tenant for, the costs of such alteration, in accordance with the disbursement procedures applicable to disbursements from the Replacement Reserve Fund; and, upon presentation by Borrower or Master Tenant of satisfactory completion of such alteration, Lender shall release any remaining portion of such security to Borrower or Master Tenant, as either of them may direct, provided that no Event of Default has occurred and is continuing.

5.1.22. Operation of Property. (a) Borrower shall, and shall cause Master Tenant to, cause the Property to be operated in all material respects, in accordance with the Management Agreement (or Replacement Management Agreement) and the Franchise Agreement (or Replacement Franchise Agreement) as applicable. In the event that the Management Agreement or Franchise Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement or Franchise Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly cause Master Tenant to enter into a Replacement Management Agreement with Manager or another Qualified Manager, or a Replacement Franchise Agreement with Franchisor or another Qualified Franchisor, as applicable.

(b) Borrower shall, and shall cause Master Tenant to: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement and the Franchise Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement or the Franchise Agreement of which it is aware; (iii) upon request by Lender, promptly deliver to Lender a copy of each of the following received by Borrower or Master Tenant, as applicable, under the Management Agreement: (A) completed financial statement, business plan, capital expenditures plan or report required to be delivered to Borrower by Manager pursuant to the Management Agreement, (B) notice of default, or (C) estimate delivered to Borrower for its approval with respect to the contemplated expenditure of an amount in excess of \$25,000; and (iv) enforce, in a commercially reasonable manner, the performance and observance, of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement and Franchisor under the Franchise Agreement.

5.1.23. Embargoed Person. Borrower has performed and shall perform (or shall cause Master Tenant to perform) reasonable due diligence to insure that to the best of Borrower's knowledge at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Master Tenant, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Master Tenant, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Master Tenant, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Master Tenant, Principal or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, Master Tenant, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure. Notwithstanding the foregoing, to the extent that an Embargoed Person acquires a non-controlling interest in Borrower or Master Tenant, either (1) without the knowledge of Borrower, Master Tenant, Key Principal or Guarantor, through a transaction brokered by a FINRA licensed broker dealer not affiliated with Guarantor, provided such broker dealer has executed a dealer agreement or selling agreement with Guarantor or an affiliate of Guarantor in which it covenants to, among other things, comply with The USA PATRIOT Act (or any successor legislation), or (2) provided Borrower performs reasonable due diligence, without the knowledge of Borrower, Master Tenant, Key Principal or Guarantor, after the initial sale or offering of such interests in Borrower, the resulting breach of the foregoing representations shall be deemed to be unintentional and not willful or grossly negligent for purposes of Section 9.3 hereof.

5.1.24. Default under Franchise Agreement. If Borrower or Master Tenant shall be in default under the Franchise Agreement, then, without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Franchise Agreement on the part of Borrower or Master Tenant to be performed or observed. Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If the Franchisor shall deliver to Lender a copy of any notice sent to Borrower, Master Tenant and/or Manager concerning a default under the Franchise Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon. Any sums expended by Lender pursuant to this Section 5.1.24 shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Lender, shall be deemed to constitute a portion of the Debt, shall be secured by the Lien of the Security Instrument and the other Loan Documents, and shall be immediately due and payable upon demand by Lender therefore.

5.1.25. PIP Requirements. (a) Borrower shall provide (or shall cause Master Tenant to provide) Lender with written notice of any modifications to the Existing PIP Requirements (including, without limitation, any renewal, extension or replacement thereof). Promptly upon the occurrence of an Additional PIP Reserve Event, Borrower shall provide (or shall cause Master Tenant to provide) Lender with written notice of any Additional PIP Requirements required in connection with the Franchise Agreement (including, without limitation, any renewal, extension or replacement thereof).

(b) Borrower shall complete and pay (or shall cause Master Tenant to complete and pay) in full any PIP Requirements in a good, workmanlike and lien free manner within the time-frame set forth in the PIP Requirements (as such time-frames may be modified by Franchisor from time to time). Lender shall disburse available Existing PIP Reserve Funds or Additional PIP Reserve Funds (or, as applicable and to the extent set forth in Section 7.3.6 hereof, available Replacement Reserve Funds), as applicable, to Borrower or Master Tenant, as the case may be, for such purpose pursuant to the terms and conditions of Section 7.4 or Section 7.8 hereof, as applicable. To the extent that Borrower or Master Tenant fails to perform any obligation under the Franchise Agreement (including, without limitation, any obligation to perform any PIP Requirements) beyond any applicable cure period thereunder, Lender shall have the right, as each of Borrower's and Master Tenant's attorney-in-fact (which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest), to perform any such obligation and, if required, to enter the Property in order to perform the same. The aforesaid right of Lender shall be exercisable by Lender at Lender's option and in Lender's sole discretion.

5.1.26. Master Lease Documents. Borrower shall (a) promptly perform and/or observe in all material respects all of the covenants, agreements and obligations required to be performed and observed by Borrower under the Master Lease Documents and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (b) promptly notify Lender of any material default under the Master Lease Documents; (c) upon written request from Lender, promptly deliver to lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by Borrower under the Master Lease; (d) promptly enforce, in a commercially reasonable manner, the performance and observance of all of the covenants and agreements required to be performed and/or observed by Master Tenant under the Master Lease Documents; and (e) cause Master Tenant to deposit or cause to be deposited all Rents into the Clearing Account in accordance with the provisions of the Loan Documents.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of all obligations of Borrower (other than surviving indemnity obligations as to which no claim is then pending) under the Loan Documents or the earlier release of the Lien of the Security Instrument and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it shall not do, directly or indirectly, any of the following:

5.2.1. Operation of Property. (a) Borrower shall not (and shall cause Master Tenant to not), without Lender's prior written consent (which consent shall not be unreasonably withheld unless an Event of Default then exists): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower or Master Tenant may, without Lender's consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) surrender, terminate, cancel, amend or modify the Franchise Agreement; (iii) reduce or consent to the reduction of the term of the Management Agreement or Franchise Agreement; (iv) increase or consent to the increase of the amount of any charges under the Management Agreement or Franchise Agreement, or (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement or Franchise Agreement in any material respect; provided, however, that Borrower and/or Master Tenant, as applicable, may modify, supplement or amend the Franchise Agreement so long as such modification, supplement, or amendment (A) does not materially increase the obligations (or materially decrease the rights) of Borrower and/or Master Tenant thereunder, (B) add any additional restrictions on Borrower, Master Tenant or the Property, (C) materially increase the rights (or materially decrease the obligations) of Franchisor thereunder, or (D) include or modify any restriction on Lender's ability to sell the Loan (provided that customary releases of claims that might exist against the Franchisor required in connection with a waiver, consent,

forbearance or other modification entered into for the benefit of Borrower or Master Tenant shall not be deemed to violate the foregoing limitations). Any such surrender of the Management Agreement and/or the Franchise Agreement or termination, cancellation, modification, change, supplement, alteration or amendment of the Management Agreement and/or the Franchise Agreement without the prior consent of Lender (to the extent such consent is required) shall be void and of no force and effect.

(b) Following the occurrence and during the continuance of an Event of Default, if so instructed by Lender, Borrower shall not cause or permit Master Tenant to exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement or Franchise Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's discretion.

(c) If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower shall not cause or permit the nonconforming use or Improvement to be discontinued or abandoned without the express written consent of Lender.

5.2.2. Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances.

5.2.3. Dissolution. Borrower shall not (and shall cause Master Tenant to not) (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership (with respect to Borrower only) and operation of the Property, or (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower or Master Tenant except to the extent permitted by the Loan Documents.

5.2.4. Change In Business. Neither Borrower nor Master Tenant shall enter into any line of business other than the ownership (with respect to Borrower only) and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business. Nothing contained in this Section 5.2.4 is intended to expand the rights of Borrower contained in Section 5.2.10(d) hereof.

5.2.5. Debt Cancellation. Neither Borrower nor Master Tenant shall cancel or otherwise forgive or release any material claim or debt (other than termination of Leases in accordance herewith) owed to Borrower or Master Tenant by any Person, except for adequate consideration and in the ordinary course of Borrower's or Master Tenant's business, and except that (if applicable) cancellation, forgiveness or releases in respect of Hotel Transactions may be effected in Borrower's reasonable business judgment.

5.2.6. Zoning. Borrower shall not, and shall cause Master Tenant to not, initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior written consent of Lender.

5.2.7. No Joint Assessment. Borrower shall not, and shall cause Master Tenant to not, suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property, and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.2.8. Intentionally Omitted.

5.2.9. ERISA. (a) Borrower shall not, and shall cause Master Tenant to not, engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its discretion, that (A) Borrower and Master Tenant are not and do not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Borrower and Master Tenant are not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower and Master Tenant are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower and Master Tenant are held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(iii) Borrower and Master Tenant qualify as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.2.10. Transfers. (a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower, Master Tenant and its and Master Tenant’s stockholders, general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower’s ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit Master Tenant or any Restricted Party to do any of the following (collectively, a “Transfer”): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Section 5.1.20, (B) Hotel Transactions, and (C) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower or Master Tenant agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space Tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation’s stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non managing membership interests or the creation or issuance of new non managing membership interests; or (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests.

(d) Notwithstanding anything to the contrary contained in the Loan Documents.

(i) Lender’s consent shall not be required in connection with one (1) or a series of Transfers of up to forty-nine percent (49%) in the aggregate of the direct or indirect ownership interests in any Restricted Party provided that (a) no Event of Default shall have occurred and remain uncured or would occur as a result of such Transfer, (b) such Transfer shall not (i) cause the transferee (together with its Affiliates) to acquire Control of any Restricted Party unless such transferee is Guarantor, (ii) result in any Restricted Party that is as of the Closing Date controlled by Guarantor no longer being controlled by Guarantor, or (iii) cause the transferee (together with its Affiliates) to increase its direct or indirect interest in any Restricted Party to an amount which exceeds forty-nine percent (49%) in the aggregate, unless such transferee owned more than forty-nine percent (49%) of the direct or indirect ownership interests in such Restricted Party on the Closing Date or as a result of a Transfer previously made in accordance with the terms and provisions of this Agreement, (c) the Property shall continue to be managed by Manager or a Qualified Manager, (d) after giving effect to such Transfer, Guarantor shall continue to own, directly or indirectly, at least fifty-one percent (51%) of all legal, beneficial and economic interests in each of Borrower and Master Tenant, (e) if, immediately following such Transfer, the transferee owns ten percent (10%) or more of the direct or indirect ownership interests in Borrower or Master Tenant then, to the extent such transferee did not own ten percent (10%) or more of the direct or indirect ownership interests in Borrower or Master Tenant on the Closing Date, Borrower shall deliver, or cause to be delivered, at Borrower’s sole cost and expense, such searches (including credit, negative news, OFAC, litigation, judgment, lien and bankruptcy searches) as Lender may reasonably require with respect to such transferee and its Controlling Persons, the results of which must be reasonably acceptable to Lender (unless such transferee and Controlling Persons were previously the subject of searches by Lender which were reasonably acceptable to Lender, in which case Borrower’s obligation to deliver or cause the delivery of such searches under this Section 5.2.10(d) shall be satisfied to the extent reasonably acceptable updates to such searches are delivered to Lender), and such transferee,

its Borrowers and controlling Persons shall otherwise satisfy Lender's then current applicable underwriting criteria and requirements, (f) Borrower shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer (or final drafts thereof with signed copies to follow upon the effect date of such transfer) and the organizational documents of the transferee and its constituent parties reasonably required by Lender not less than ten (10) days prior to the date of such Transfer), and (g) the legal and financial structure of Borrower, Master Tenant and their respective stockholders, members or partners, as applicable, and the single purpose nature and bankruptcy remoteness of Borrower, Master Tenant and their respective stockholders, members or partners, as applicable, after such Transfer, shall satisfy Lender's then current applicable underwriting criteria and requirements. Notwithstanding anything in this Section 5.2.10(d) to the contrary, and without limiting any of the foregoing requirements of this Section 5.2.10(d), if after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect ownership interests in any Restricted Party are owned by any Person (together with its Affiliates) that owned less than forty-nine percent (49%) of the direct or indirect ownership interests in such Restricted Party as of the Closing Date or as a result of a Transfer previously made in accordance with the terms and provisions of this Agreement, then Borrower shall, prior to the effective date of any such Transfer, deliver (or cause to be delivered) to Lender (x) a written confirmation from the applicable Rating Agencies that such change in ownership will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (y) an Additional Insolvency Opinion acceptable to Lender and the Rating Agencies; and

(ii) The sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering of all or any portion of the direct or indirect ownership interests in Moody REIT II (each a "Permitted REIT Transfer") shall be permitted at any and all times without (1) Lender's consent, (2) notice to Lender, or (3) the payment of any fee, premium, penalty or other payment to Lender other than payment of Lender's actual out-of-pocket expenses, if any, provided, however, that upon completion of such Permitted REIT Transfer (a) except with the Lender's prior written consent, Moody REIT II is a Reporting Company, (b) there is no change of Control of Borrower, Master Tenant, Principal or Moody REIT II, (c) no Person together with such Person's Affiliates, other than the Key Principal and his Affiliates, owns more than forty-nine percent (49%) of the direct or indirect ownership interests in Moody REIT II, (d) Moody REIT II continues to own, directly or indirectly, at least seventy-five percent (75%) of the ownership interests in MNOP II and MNOP II continues to own, directly or indirectly, one hundred percent (100%) of the ownership interests in Borrower and Master Tenant, and (e) if the Franchise Agreement will be terminated as a result of any such Permitted REIT Transfer, the Property shall be operated in accordance with a Replacement Franchise Agreement.

(e) No Transfer of the Property and assumption of the Loan shall occur during the period that is sixty (60) days prior to and sixty (60) days after a Securitization. Otherwise, Lender's consent to a one (1) time Transfer of the Property and assumption of the Loan shall not be unreasonably withheld provided that Lender receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied:

(i) Borrower shall pay Lender a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan at the time of such transfer;

(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);

(iii) The proposed transferee (the "Transferee") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Property, which expertise shall be reasonably determined by Lender;

(iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(v) Transferee, Transferee's Principals, and any other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("Related Entities"), either (I) shall not have (x) been party to any bankruptcy proceedings, voluntary or involuntary, (y) made an assignment for the benefit of creditors, or (z) taken advantage of any insolvency act, or any act for the benefit of debtors, in each case within seven (7) years prior to the date of the proposed Transfer or (y) shall be acceptable to Lender in its sole discretion;

(vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(viii) Neither Transferee, nor Transferee's Principals nor Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.1.30, 4.1.35, 5.1.23 and 5.2.9 of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements, covenants and legal opinions reasonably required by Lender;

(x) If required by Lender, Transferee shall be approved by the Rating Agencies selected by Lender, which approval, if required by Lender, shall take the form of a confirmation in writing from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty and Environmental Indemnity executed by Guarantor or executed a replacement guaranty and environmental indemnity satisfactory to Lender;

(xii) Borrower shall deliver, or cause to be delivered, at Borrower's or Transferee's sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the Title Insurance Policy issued on the date hereof and the Permitted Encumbrances;

(xiii) The Property shall be managed by Manager pursuant to the Management Agreement or by a Qualified Manager pursuant to a Replacement Management Agreement;

(xiv) If the Franchise Agreement will be terminated as a result of such Transfer, the Property shall be operated in accordance with a Replacement Franchise Agreement; and

(xv) Borrower or Transferee, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Lender.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Security Instrument and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

(f) The merger of Moody REIT II and Moody REIT I shall not be considered a "Transfer" for purposes hereof so long as: (i) Moody REIT II is the surviving entity following such merger and shall remain a Reporting Company; (ii) the net worth of Moody REIT II shall equal or exceed the net worth of Moody REIT II immediately prior to such merger, (iii) there is no change of Control of Borrower, Master Tenant, or Principal, (iv) following such merger, (x) Brett Moody shall remain the chief executive officer of Moody REIT II, having at least the same power and authority to direct and/or cause the direction of the management, policies and/or activities of Moody REIT II as of the date hereof, and (y) at least two-thirds (2/3) of the members of the board of directors of Moody REIT II shall remain in place, (v) 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, (vi) 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, (vii) if, immediately following such merger, any shareholder would own ten percent (10%) or more of the direct or indirect ownership interests in Borrower or Master Tenant then, unless such shareholder owned ten percent (10%) or more of the direct or indirect ownership interests in Borrower or Master Tenant on the Closing Date or as a result of a Transfer previously made in accordance with the terms and provisions of this Agreement, 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(f) shall be satisfied to the extent reasonably acceptable updates to such searches are delivered to Lender), and such transferee and its Controlling Persons shall otherwise satisfy Lender's then current applicable underwriting criteria and requirements, (viii) Borrower, at its own expense, shall have delivered to Lender an Additional Insolvency Opinion reflecting such merger acceptable to Lender

and the Rating Agencies, (ix) if the Franchise Agreement will be terminated as a result of such merger, the Property shall be operated in accordance with a Replacement Franchise Agreement, and (x) Borrower shall pay any and all reasonable out-of-pocket costs incurred by Lender in connection with such merger.

(g) 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.

(h) Without Lender's prior written consent thereto, in its sole discretion, any Transfer, Permitted Transfer, or Permitted REIT Transfer resulting in any direct or indirect ownership interests in Borrower, Master Tenant, Guarantor or the Property being held in any Prohibited Entity/Ownership Structure is prohibited, even if the same would be otherwise allowed pursuant to this Section 5.2.10, the definition of a Permitted Transfer or any other provision of any Loan Document.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

5.2.11. Master Lease Documents. Without Lender's prior written consent, Borrower shall not (and shall cause Master Tenant to not) (i) surrender, assign any interest in, terminate or cancel the Master Lease Documents; (ii) reduce or consent to the reduction of the term of the Master Lease; (iii) if the then-scheduled termination date of the Master Lease falls before the scheduled Maturity Date, fail to exercise, or fail to cause Master Tenant to exercise, any option or right to renew or extend the term of the Master Lease; (iv) surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of the Master Lease Documents; (v) increase or consent to the increase of the amount of any charges to Borrower under the Master Lease Documents; or (vi) in each case, to any material extent, modify, change, supplement, alter or amend the Master Lease or waive or release any of Borrower's rights and remedies under the Master Lease Documents.

ARTICLE VI INSURANCE; CASUALTY; CONDEMNATION

Section 6.1 Insurance. (a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower, Master Tenant and the Property providing at least the following coverages:

(i) comprehensive all risk "special form" insurance including loss caused by any type of windstorm, windstorm related perils, "named storms," or hail on the Improvements and the Personal Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement means actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of 5% of Net Cash Flow of the Property for all such insurance coverage; provided however with respect to windstorm and earthquake coverage, providing for a deductible satisfactory to Lender in its discretion; and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (y) if any material portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, plus excess flood coverage in an amount equal to the "probable maximum loss" for the Improvements, as determined by an engineer satisfactory to Lender, or such greater amount as Lender shall require, and (z) earthquake insurance in amounts and in form and

substance satisfactory to Lender (but in any event, in an amount not less than 150% of the “probable maximum loss”) in the event the Property is located in an area with a high degree of seismic activity and the “probable maximum loss” for the Improvements, as determined by an engineer satisfactory to Lender, is 20% or greater (based on a 475-year return period, an exposure period of 50 years and a 10% probability of exceedance), provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i);

(ii) business income or rental loss insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of (1) not less than twelve (12) months from the date of casualty or loss if the amount of the Loan is less than \$35,000,000, or (2) not less than eighteen (18) months from the date of casualty or loss if the amount of the Loan is \$35,000,000 or more; and (D) if the amount of the Loan is \$50,000,000 or more, containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of 180 days from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income or rental loss insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower’s reasonable estimate of the gross revenues from the Property for the succeeding twelve (12) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner’s contingent or protective liability insurance, otherwise known as Owner Contractor’s Protective Liability, covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy and (B) the insurance provided for in subsection (i) above written in a so-called builder’s risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers, other pressure-fixed vessels, large air conditioning systems, elevators or other large machinery are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) commercial general liability insurance against claims for personal injury, bodily injury, death, contractual damage or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called “occurrence” form with a combined limit of not less than \$2,000,000.00 in the aggregate and \$1,000,000.00 per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an “if any” basis; (3) independent contractors; (4) blanket contractual liability for all written contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Security Instrument to the extent the same is available;

(vi) automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of \$1,000,000.00;

(vii) worker’s compensation and employee’s liability subject to the worker’s compensation laws of the applicable state;

(viii) umbrella and excess liability insurance in an amount not less than: (A) \$5,000,000.00 per occurrence if the amount of the Loan is less than \$35,000,000, or (B) \$25,000,000.00 per occurrence, if the amount of the Loan is \$35,000,000 or more, on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including supplemental coverage for employer liability and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (vi) above;

(ix) the insurance required under this Section 6.1(a) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including

amounts) consistent with those required under Sections 6.1(a) above at all times during the term of the Loan. Notwithstanding the foregoing, if the Terrorism Risk Insurance Program Reauthorization Act of 2007 or a similar or subsequent statute (“**TRIPRA**”) is not in effect, Borrower shall be required to carry terrorism insurance throughout the term of the Loan as required by the preceding sentence, but in such event Borrower shall not be required to spend on terrorism insurance coverage more than two times the amount of the insurance premium that is payable at such time in respect of the property and business interruption/rental loss insurance required hereunder on a stand-alone-basis (without giving effect to the cost of the terrorism component of such casualty and business interruption/rental loss insurance), and if the cost of terrorism insurance exceeds such amount, Borrower shall purchase the maximum amount of terrorism insurance available with funds equal to such amount;

(x) if applicable, insurance against employee dishonesty containing minimum limits in an amount reasonably acceptable to Lender;

(xi) if applicable, liquor liability coverage containing minimum limits per occurrence in an amount reasonably acceptable to Lender; and

(xii) upon sixty (60) days written notice, such other reasonable insurance, including sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) hereof, shall be obtained under valid and enforceable policies (collectively, the “**Policies**” or in the singular, the “**Policy**”), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a rating of (A) if the amount of the Loan is \$35,000,000 or more, “A:VIII” or better in the current Best’s Insurance Reports and a claims paying ability rating of “A-” or better by S&P, and “A3” or better by Moody’s or (B) if the amount of the Loan is less than \$35,000,000, “A:-VIII” or better in the current Best’s Insurance Reports and a claims paying ability rating of “A-” or better by S&P, and “A3” or better by Moody’s. Notwithstanding the foregoing, any required earthquake insurance must satisfy the requirements of subsection (A) hereof regardless of the amount of the Loan. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Lender as loss payee. Borrower shall deliver, or cause to be delivered, to Lender certificates of insurance evidencing the Policies, to be followed by complete copies of the Policies upon issuance (redacted, as necessary, to remove information regarding other properties covered by blanket policies), accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the “Insurance Premiums”). Notwithstanding the foregoing, Borrower shall not be required to provide proof of payment of the Insurance Premiums to the extent such Insurance Premiums are being escrowed. Borrower shall promptly forward to Lender a copy of each written notice received by Borrower of any modification, reduction or cancellation of any of the Policies or of any of the coverages afforded under any of the Policies.

(c) Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 6.1(a) hereof.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof, except for the Policy referenced in Section 6.1(a)(vii) of this Agreement, shall name Borrower as the insured and Lender as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All property Policies shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or Master Tenant, or anyone acting for Borrower or Master Tenant, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, or foreclosure or similar action, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) to the extent that such endorsement is obtainable by the exercise of commercially reasonable efforts, the Policy shall not be canceled without at least thirty (30) days written notice to Lender, except ten (10) days’ notice for non-payment of premium;

(iii) the issuers thereof shall give written notice to Lender if the Policy has not been renewed thirty (30) days prior to its expiration; and

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including the obtaining of such insurance coverage as Lender in its discretion deems appropriate after fifteen (15) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Security Instrument and shall bear interest at the Default Rate.

Section 6.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a “**Casualty**”), estimated by Borrower to cost more than \$50,000 to repair, Borrower shall give prompt written notice of such damage to Lender and shall promptly commence and diligently prosecute (or shall cause the prompt commencements and diligent prosecution of) the completion of the Restoration of the Property pursuant to Section 6.4 hereof as nearly as possible to the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4 hereof. Borrower shall pay or cause to be paid all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than the Availability Threshold and Borrower shall deliver (or shall cause to be delivered) to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property promptly after becoming aware thereof, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings if an Event of Default exists or if the amount of the Award exceeds the Threshold Amount, and Borrower shall from time to time deliver (or cause to be delivered) to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute (or cause the diligent prosecution of) any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt (provided that Awards in respect of any temporary taking of the Property, unless an Event of Default shall have occurred and be continuing, shall be applied as if they constituted Rent). Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any portion of the Property is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute (or shall cause the prompt commencement and diligent prosecution of) the Restoration of the Property pursuant to Section 6.4 hereof and otherwise comply with the provisions of Section 6.4 hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt. Notwithstanding the foregoing provisions of this Section 6.3, and Section 6.4 hereof, if the Loan or any portion thereof is included in a REMIC Trust and, immediately following a release of any portion of the Lien of the Security Instrument in connection with a Condemnation (but taking into account any proposed Restoration on the remaining portion of the Property), the Loan to Value Ratio is greater than 125% (such value to be determined, in Lender’s sole discretion, by any commercially reasonable method permitted to a REMIC Trust), the principal balance of the Loan must be paid down in an amount sufficient to satisfy the REMIC Requirements, unless the Lender receives an opinion of counsel that if such amount is not paid, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the related release of such portion of the Lien of the Security Instrument. In connection with the foregoing, the Net Proceeds shall not be available for Restoration and shall be used to pay down the principal balance of the Loan, without Yield Maintenance Premium or other penalty or perjury, to the extent set forth above.

Section 6.4 Restoration. The following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds shall be less than the Availability Threshold and the costs of completing the Restoration shall be less than the Availability Threshold, the Net Proceeds shall be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) hereof are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than the Availability Threshold or the costs of completing the Restoration are equal to or greater than the Availability Threshold, Lender shall make the Net Proceeds available for the

Restoration in accordance with the provisions of this Section 6.4. The term “**Net Proceeds**” for purposes of this Section 6.4 means: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1(a)(i), (iv), (ix) and (x) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including reasonable counsel fees), if any, in collecting same (“**Insurance Proceeds**”), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including reasonable counsel fees), if any, in collecting same (“**Condemnation Proceeds**”), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:

- (A) no Default or Event of Default shall have occurred and be continuing;
- (B) (1) in the event the Net Proceeds are Insurance Proceeds, less than thirty-five percent (35%) of the total floor area of the Improvements on the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than fifteen percent (15%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is located on such land;
- (C) The Master Lease shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Master Tenant, as applicable under the Master Lease, shall make all necessary repairs and restorations thereto at their sole cost and expense.
- (D) Borrower shall commence (or cause the commencement of) the Restoration as soon as reasonably practicable (but in no event later than the later of (i) one hundred twenty (120) days after such Casualty or Condemnation, whichever the case may be, and (ii) thirty (30) days after receipt of the first installment of insurance proceeds or Award, whichever the case may be) and shall diligently pursue the same to satisfactory completion;
- (E) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(ii) hereof, if applicable, or (3) by other funds of Borrower or Master Tenant;
- (F) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, the Master Lease and the Franchise Agreement or Replacement Franchise Agreement, as applicable, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(ii) hereof;
- (G) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;
- (H) the Restoration will not result in a permanent reduction of guest rooms at the Property and the shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;
- (I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the Improvements;
- (J) the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal to or greater than 1.20 to 1.0;
- (K) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower’s architect or engineer stating the entire cost of completing the Restoration, which budget shall be subject to Lender’s approval, which shall not be unreasonably withheld unless an Event of Default then exists;
- (L) the Net Proceeds (including any undisbursed insurance proceeds that the relevant insurer has agreed to disburse as restoration work progresses), together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender’s discretion to cover the cost of the Restoration; and

(M) the Management Agreement and the Franchise Agreement (or a Replacement Franchise Agreement) shall remain in full force and effect notwithstanding the occurrence of such Casualty or Condemnation.

(ii) The Net Proceeds, as paid out by the relevant insurer, shall be held by Lender in an interest-bearing Eligible Account and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and Other Obligations under the Loan Documents. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement or are subject to a Casualty Retainage) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy.

(iii) All plans and specifications required in connection with a Restoration the cost of which shall exceed the Threshold Amount shall be subject to prior review and acceptance in all respects by Lender and, at Lender's election, by an independent consulting engineer selected by Lender (the "Casualty Consultant"), such review and acceptance not to be unreasonably withheld unless an Event of Default then exists. Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration in respect of any contract pursuant to which they are to receive compensation in excess of \$100,000, as well as the contracts under which they have been engaged, shall be subject to prior review and approval by Lender and the Casualty Consultant, not to be unreasonably withheld. All reasonable costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "**Casualty Retainage**" means an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower and/or Master Tenant from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender shall release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers (or conditional lien waivers) and evidence of payment in full, upon application of the funds so released, of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and, if requested by Lender, Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of

the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and Other Obligations under the Loan Documents.

(vii) Provided no continuing Event of Default shall then exist, after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, the excess, if any, of the Net Proceeds (and the remaining balance, if any, of the Net Proceeds Deficiency) deposited with Lender shall be (1) if a Cash Sweep Period then exists, deposited in the Cash Management Account to be disbursed in accordance with this Agreement, and (2) if no Cash Sweep Period then exists, disbursed to or in accordance with the instructions of Borrower.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii) hereof may be retained and applied by Lender toward the payment of the Debt in accordance with Section 9(b) of the Note, whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper (provided that, other than during the existence of an Event of Default, no prepayment premium shall be payable in connection therewith), or, at the discretion of Lender, the same may be paid, either in whole or in part, to or at the direction of Borrower for such purposes as Lender shall approve, in its discretion.

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

ARTICLE VII RESERVE FUNDS

Section 7.1 Intentionally Omitted.

Section 7.2 Tax and Insurance Escrow Fund. Borrower shall pay to Lender (a) on the Closing Date an initial deposit and (b) on each Payment Date thereafter (i) one-twelfth (1/12) of the Taxes and Other Charges that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes and Other Charges at least thirty (30) days prior to their respective delinquency dates, and (ii) one-twelfth (1/12) of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the “**Tax and Insurance Escrow Fund**”). Provided, however, so long as (x) Borrower provides Lender with satisfactory evidence (as determined by Lender) that Guarantor maintains blanket policies of insurance covering substantially all real property owned directly or indirectly by Guarantor, including, without limitation, the Property and in accordance with Section 6.1 hereof and (x) no monetary Event of Default shall have occurred, the provisions of this Section with regard to Insurance Premiums shall not be applicable, until and unless Lender elects to apply such provisions following (i) the issuance by any insurer or its agent of any notice of cancellation, termination, or lapse of any insurance coverage required under Section 6.1 hereof, (ii) any cancellation, termination, or lapse of any insurance coverage required under Section 6.1 hereof whether or not any notice is issued, (iii) Lender having not received from Borrower evidence of insurance coverages as required by and in accordance with the terms of Section 6.1 hereof, or (iv) during the existence of any Event of Default. Lender shall apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Security Instrument. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to Section 5.1.2 hereof, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the delinquency date of the Taxes and Other Charges or thirty (30) days prior to expiration of the Policies, as the case may be.

Section 7.3 Replacements and Replacement Reserve.

7.3.1. Replacement Reserve Fund. Borrower shall pay to Lender on each Payment Date 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 of a type not typically accounted for as an "FF&E" expense or of inventory consumed in the ordinary course of the operation of the Property.

(b) Lender shall, upon written request from Borrower or Master Tenant and satisfaction of the requirements set forth in this Section 7.3.2, disburse to Borrower or Master Tenant, as the case may be, amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower or Master Tenant therefor, upon completion of such Replacements (or to pay vendors' required deposits as provided under the terms of the contract relating to Borrower's purchase of such Replacements, or upon partial completion, or to pay required installment payments, in the case of Replacements made pursuant to Section 7.3.2(e) hereof) as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Lender and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower, or Master Tenant, shall certify that all Replacements for which such disbursement is requested have been or will be made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the Property (or, in the case of a vendor's required deposit, that such deposit is due and payable). Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided, or for the relevant required vendor's deposit and, if Borrower or Master Tenant is seeking reimbursement rather than payment, evidence satisfactory to Lender of payment of all such amounts. Except as provided in this Section 7.3.2 with respect to required vendor's deposits or in Section 7.3.2(e) hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide, or cause Master Tenant to provide, Lender evidence of completion of the subject Replacement satisfactory to Lender in its reasonable judgment.

(d) Borrower shall pay, or shall cause Master Tenant to pay, all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower or Master Tenant, Lender shall issue checks, payable to Borrower or Master Tenant, as applicable (or, in respect of any requested check in excess of \$25,000, joint checks payable to Borrower or Master Tenant (as applicable) and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Lender may require a conditional waiver of lien from each Person who is to receive payment from such payment prior to Lender's disbursement thereof from the Replacement Reserve Account. In addition, as a condition to any disbursement, Lender may require Borrower to obtain lien waivers, or conditional lien waivers, from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than \$100,000.00 for completion of its work or delivery of its materials. Any lien waiver or conditional lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, if payment to such contractor, supplier, subcontractor, mechanic or materialmen is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (ii) in the case of a Replacement the cost of which exceeds \$100,000.00, Lender has approved in writing in advance (such approval not to be unreasonably withheld, conditioned or delayed) such periodic payments, a request for reimbursement from the Replacement Reserve Account may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of the work or payment of a final installment prior to delivery of the Replacements to which such contract relates, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, or delivery thereof is conditioned upon payment of the requested disbursement, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Lender's reasonable judgment, sufficient to complete such Replacement, and (E) if required by Lender in respect of any Replacement the cost of which exceeds \$100,000 and which involves the performance of work to the

Property by a contractor engaged for such purpose, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than \$5,000.00.

7.3.3. Performance of Replacements. (a) Borrower shall make or cause Master Tenant to make Replacements when required in order to keep the Property in condition and repair consistent with other comparable properties in the same market segment in the metropolitan area in which the Property is located, the brand standards provided in the Franchise Agreement and to keep the Property or any portion thereof from deteriorating. Borrower shall complete or cause Master Tenant to complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender reserves the right, at its option, to approve each contract or work order with any materialman, mechanic, supplier, subcontractor, contractor or other party providing labor or materials in connection with the Replacements the total contracted-for payments to which exceed \$100,000. Upon Lender's request, Borrower shall assign to Lender any such contract or subcontract to which Borrower is a party, or cause Master Tenant to assign to Borrower, and then shall assign to Lender, any such contract or subcontract to which Master Tenant is a party.

(c) In the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner or any Replacement does not comply with brand standards under the Franchise Agreement and such failure continues for more than thirty (30) days after notice from Lender to Borrower, Lender shall have the option (upon five (5) Business Days' notice to Borrower, except in the case of an emergency) to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, without providing any further notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(d) In order to facilitate Lender's completion or making of such Replacements pursuant to Section 7.3.3(c) above, Borrower grants Lender the right, during the existence of an Event of Default or as necessary to respond to emergency conditions, to enter onto the Property and perform any and all work and labor necessary to complete or make such Replacements or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Security Instrument. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney in fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney in fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this Section 7.3.3 shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(f) Borrower shall permit, and shall cause Master Tenant to permit, Lender and Lender's agents and representatives (including Lender's engineer, architect, or inspector) or third parties making Replacements pursuant to this Section 7.3.3 to enter onto the Property during normal business hours (subject to the rights of Tenants under their Leases or Hotel Transactions) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and to complete any Replacements made pursuant to this Section 7.3.3. Borrower shall cause, or shall cause Master Tenant to cause, all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 7.3.3(f) or the completion of Replacements pursuant to this Section 7.3.3.

(g) Lender may require an inspection of the Property at Borrower's expense prior to making a disbursement in excess of \$100,000 from the Replacement Reserve Account in respect of any completed Replacement in order to verify

completion of the Replacements for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amount in excess of \$100,000 from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Lender or otherwise exist in compliance with the Loan Documents).

(i) Before each disbursement from the Replacement Reserve Account, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Property since the date of recordation of the related Security Instrument and that title to the Property is free and clear of all Liens (other than the lien of the related Security Instrument and any other Liens previously approved in writing by Lender, if any).

(j) All Replacements shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements including applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(k) In addition to any insurance required under the Loan Documents, Borrower shall to the extent applicable provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4. Failure to Make Replacements. (a) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this Section 7.3 and such failure is not cured within thirty (30) days after notice from Lender; provided, however, if such failure is not capable of being cured within said thirty (30) day period, then provided that Borrower commences, or causes commencement of, action to complete such cure and thereafter diligently proceeds to complete such cure (or causes it to be so completed), such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower or Master Tenant, in the exercise of due diligence, to cure such failure, but such additional period of time shall not exceed ninety (90) days. Subject to Section 7.6(b) hereof, upon the occurrence and during the continuation of such an Event of Default, Lender may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including completion of the Replacements as provided in Section 7.3.3, or for any other repair or replacement to the Property or toward payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

(b) Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Debt or in any specific order or priority.

7.3.5. Balance in the Replacement Reserve Account. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents and the Franchise Agreement. Notwithstanding anything to the contrary contained herein, unless agreed to in writing by Lender in advance, Replacement Reserve Funds attributable to the Duplicative Replacements shall only be disbursed for work or costs associated with such Duplicative Replacements and not for any other Replacements.

7.3.6. Additional PIP Requirements. Upon Borrower's request, to the extent Lender determines that sufficient Replacement Reserve Funds remain following disbursements for Replacements in accordance with this Section 7.3, Replacement Reserve Funds may be disbursed to Borrower to pay or reimburse Borrower for Existing PIP Requirements or Additional PIP Requirements in accordance with, as applicable, Section 7.4 or Section 7.8 below (and subject to the disbursement provisions contained in Section 7.4 or Section 7.8 below, as applicable) as if such Replacement Reserve Funds had been deposited into the Existing PIP Reserve or the Additional PIP Reserve Account.

Section 7.4 Additional PIP Reserve Fund.

7.4.1. Additional PIP Reserve Fund. Upon the occurrence of an Additional PIP Reserve Event, Borrower shall pay to Lender an amount equal to the Additional PIP Reserve Monthly Deposit in respect of such Additional PIP Requirements on each of the following twelve (12) Payment Dates. Amounts deposited pursuant to this Section 7.4 are referred to herein as the "Additional PIP Reserve Fund" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "Additional PIP Reserve Account." Lender may from time to time reassess its estimate of the amount necessary for

Additional PIP Requirements, and may require Borrower to increase the Additional PIP Reserve Funds by making one or more additional deposits thereto upon thirty (30) days' notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain proper operation of the Property.

7.4.2. Disbursements from the PIP Reserve Account. Lender shall disburse Additional PIP Reserve Funds only for Additional PIP Requirements or upon completion of Additional PIP Requirements. Provided no Event of Default has occurred and is continuing, Lender shall disburse Additional 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 Additional 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 Additional PIP Requirements, (B) stating that all Additional 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 Additional 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 or Master Tenant's purchase of such Additional 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 Additional 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 Additional PIP Requirements have been used to pay the previously identified Additional PIP Requirements, (ii) as to any completed Additional PIP Requirements, a copy of any license, permit or other approval by any Governmental Authority required, if any, in connection with such Additional 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 Additional 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 Additional 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.

7.4.3. Additional PIP Reserve, Generally.

(a) Nothing in this Section 7.4 shall (i) make Lender responsible for making or completing the Additional PIP Requirements; (ii) require Lender to expend funds in addition to the Additional PIP Reserve Funds to complete any Additional PIP Requirements; (iii) obligate Lender to proceed with the Additional PIP Requirements; or (iv) obligate Lender to demand from Borrower additional sums to complete any Additional PIP Requirements.

(b) 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 pursuant to this Section 7.4 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 Additional PIP Requirements and all materials being used in connection therewith and to examine all plans and shop drawings relating to such Additional PIP Requirements which are or may be kept at the Property. 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.

(c) 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 the Additional PIP Requirements. 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.

(d) On the Monthly Payment Date following Lender's receipt of evidence acceptable to Lender confirming that all Additional PIP Requirements have been completed, and provided no Event of Default has occurred and is continuing, Lender shall release remaining Additional PIP Reserve Funds, if any, to or at the direction of Borrower.

Section 7.5 Excess Cash Flow Reserve Fund.

7.5.1. Deposits to Excess Cash Flow Reserve Account. During a Cash Sweep Period Borrower shall deposit with Lender, or shall cause to be deposited with Lender, all Excess Cash Flow in the Cash Management Account, which shall be held by Lender as additional security for the Master Lease (in the case of funds belonging to Master Tenant ("Master Tenant's

Excess Cash Flow”)) or the Loan (in the case of funds belonging to Borrower (“Borrower’s Excess Cash Flow”)), and amounts so held shall be hereinafter referred to as the “Excess Cash Flow Reserve Fund” and the account to which such amounts are held shall hereinafter be referred to as the “Excess Cash Flow Reserve Account”. Lender shall establish sub-accounts within the Excess Cash Flow Reserve Account for Borrower’s Excess Cash Flow (“Borrower’s Excess Cash Flow Subaccount”) and for Master Tenant’s Excess Cash Flow (“Master Tenant’s Excess Cash Flow Subaccount”). Pursuant to the terms of the Cash Management Agreement, Excess Cash Flow shall be allocated between Master Tenant’s Excess Cash Flow and Borrower’s Excess Cash Flow as set forth in written instructions from Master Tenant to Borrower and Lender. All funds in the Borrower’s Excess Cash Flow Subaccount shall be held as additional collateral for the Loan. All funds in the Master Tenant’s Excess Cash Flow Subaccount shall be held as additional collateral for Master Tenant’s obligations under the Master Lease (which has been collaterally assigned by Borrower to Lender).

7.5.2. Release of Excess Cash Flow Reserve Funds. During a Cash Sweep Period caused solely by a DSCR Trigger Event, Lender shall, upon Borrower’s or Master Tenant’s request, make Master Tenant’s Excess Cash Flow available for the payment of payroll, utilities and food services for up to six (6) consecutive months (but in any event, not more than twelve (12) months in the aggregate during the term of the Loan) to the extent that there is insufficient current cash flow from the Property for the payment of same, provided that (a) the total amount disbursed to Borrower or Master Tenant, as applicable, for each such expenditure shall not exceed 110% of the proportionate monthly amount set forth in the Approved Annual Budget and (b) no Event of Default then exists. Upon the occurrence of a Cash Sweep Event Cure, all Excess Cash Flow Reserve Funds shall be deposited into the Cash Management Account to be disbursed in accordance with the Cash Management Agreement. Any Excess Cash Flow Reserve Funds remaining after the Debt has been paid in full or the Loan has been defeased shall be paid to Borrower or Master Tenant, as either of them may direct.

Section 7.6 Reserve Funds, Generally. (a) Borrower grants to Lender a first-priority perfected security interest in all of its right, title and interest in and to each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund (provided that, in the case of the Master Tenant’s Excess Cash Flow or other funds belonging to Master Tenant pursuant to Sections 4.2 and 5.1(a) 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 and/or the Seasonality Reserve Funds) to the payment of the Debt in any order in its sole discretion. To the extent of any outstanding obligations of Master Tenant under the Master Lease, such application shall be deemed to have been paid in respect of such obligations. If an Event of Default then exists but Lender has not accelerated the Loan, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds that would constitute rent under the Master Lease (including, without limitation, any and all Borrower’s Excess Cash Flow) to the payment of the Debt in any order in its sole discretion.

(c) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account in Permitted Investments as directed by Lender or Lender’s Servicer. Unless expressly provided for in this Article VII, all interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. Borrower or Master Tenant, as the case may be, shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to it.

(d) Neither Borrower nor Master Tenant shall, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or authorize any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(e) Lender and Servicer shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds provided that they are invested in Permitted Investments. Borrower shall indemnify Lender and Servicer and hold Lender and Servicer harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys’ fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established, except to the extent due to Lender’s or Servicer’s willful misconduct or gross negligence. At Lender’s request, Borrower shall assign, or shall cause Master Tenant to assign, to Borrower upon which Borrower shall collaterally assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Except as may otherwise be provided in the Cash Management Agreement, the required monthly deposits into the Reserve Funds and the Monthly Debt Service Payment Amount shall be added together and shall be paid, or caused to be paid, as an aggregate sum by Borrower to Lender.

(g) Any amount remaining in the Reserve Funds after the Debt has been paid in full or defeased shall be returned to Borrower or Master Tenant, at the direction of either of them.

Section 7.7 Seasonality Reserve.

7.7.1. Deposits to Seasonality Reserve Funds. Borrower shall pay (or shall cause to be paid) to Lender (i) on the Closing Date an initial deposit of \$234,000.00, and (ii) on the Payment Dates occurring each May through October (inclusive) of each year (the “**Seasonality Reserve Payment Period**”) during the term of the Loan, commencing on the Payment Date in May 2017, the Seasonality Reserve Monthly Deposit. Amounts so deposited shall hereinafter be referred to as the “**Seasonality Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**Seasonality Reserve Account**”. For the avoidance of doubt, Seasonality Reserve Funds shall constitute Master Tenant funds and any deposit made by Master Tenant into the Seasonality Reserve Fund shall be paid (x) from funds that do not constitute rent under the Master Lease and (y) after Master Tenant has paid to Borrower all rent then due under the Master Lease; provided, further, that Master Tenant has transferred, assigned and granted to Borrower a first-priority security interest in all of Master Tenant’s right, title and interest in and to, among other things, its interest in the Seasonality Reserve Funds, which right, title and interest in turn has been collaterally assigned by Borrower in favor of Lender pursuant to, inter alia, the Security Instrument. Notwithstanding anything herein to the contrary, in the event the deposit by (or on behalf of) Borrower to the Seasonality Reserve Fund in any given month during the Seasonality Reserve Payment Period is less than the Seasonality Reserve Monthly Deposit due to an insufficiency in Net Cash Flow (each such shortfall, the “**Seasonality Reserve Monthly Deposit Shortfall**”, and each such month a “**Seasonality Reserve Monthly Deposit Shortfall Month**”), Borrower may increase (or may cause to be increased) the deposit to the Seasonality Reserve Fund in the month immediately following the Seasonality Reserve Monthly Deposit Shortfall Month by the amount of the Seasonality Reserve Monthly Deposit Shortfall for the prior month such that the aggregate amount deposited to the Seasonality Reserve Account shall equal the aggregate amount of the Seasonality Reserve Monthly Deposit required for such months. In the event that on the Payment Date in October of each calendar year the amount of the Seasonality Reserve Funds is less than the applicable Seasonality Reserve Annual Cap, Borrower shall immediately deposit (or shall cause to be immediately deposited) with Lender the amount of the difference between the applicable Seasonality Reserve Annual Cap and the Seasonality Reserve Funds then on deposit, and any failure to make such payment shall be an Event of Default hereunder. If, as of April 1st of each calendar year, funds then on deposit in the Seasonality Reserve Account exceed the Seasonality Reserve Annual Cap for the succeeding Seasonality Reserve Payment Period, then (x) the obligation for Borrower to deposit (or to cause the deposit of) the Seasonality Reserve Monthly Deposits shall be suspended for such Seasonality Reserve Payment Period and (y) provided no Event of Default then exists, Lender shall disburse to (or at the direction of) Master Tenant any such excess funds then on deposit in the Seasonality Reserve Account.

7.7.2. Withdrawal of Seasonality Reserve Funds. Provided no Event of Default then exists, on the Payment Dates occurring each January through March (inclusive) (the “**Seasonality Reserve Disbursement Period**”) during the term of the Loan, Lender shall, upon a written request by Borrower, disburse funds on deposit in the Seasonality Reserve Account in the amount so requested, provided that (i) any such request shall be accompanied by an Officer’s Certificate from Borrower certifying that the amount requested represents the projected shortfall in Net Cash Flow for such month, (ii) any such request shall be made at least ten (10) Business Days prior to the Payment Date of each month during the Seasonality Disbursement Period, and (iii) no such disbursement may exceed 125% of the shortfall for the corresponding month during the preceding year as determined by Lender in connection with its calculation of the applicable Seasonality Reserve Annual Cap.

7.7.3. Seasonality Reporting Requirements. In addition to the financial statements required by Section 5.1.11 hereof, on or before April 1st of each year, commencing on April 1, 2017, Borrower will furnish, or cause to be furnished, to Lender the following items, accompanied by an Officer’s Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower, Master Tenant and the Property (subject to normal year-end adjustments) as applicable: (i) a calculation reflecting the Debt Service Coverage Ratio for the immediately preceding Seasonality Disbursement Period and (ii) monthly and year-to-date operating statements (including Capital Expenditures) prepared for the immediately preceding Seasonality Disbursement Period, noting net operating income, gross income, and operating expenses (not including any contributions to the Replacement Reserve Fund, Existing PIP Reserve or Additional PIP Reserve Fund), and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such Seasonality Disbursement Period, and containing a comparison of budgeted income and expenses and the actual income and expenses during such Seasonality Disbursement Period.

Section 7.8 Existing PIP Reserve.

7.8.1. Existing PIP Reserve Fund. Borrower shall deposit with Lender on the date hereof the amount of \$1,200,000.00 in respect of the Existing PIP Requirements. Amounts deposited pursuant to this Section 7.8 are referred to

herein as the “**Existing PIP Reserve Fund**” and the account in which such amounts are held by Lender shall hereinafter be referred to as the “**Existing PIP Reserve Account**.” Lender may from time to time reassess its estimate of the amount necessary for Existing PIP Requirements, and may require Borrower to increase the Existing PIP Reserve Funds by making one or more additional deposits thereto upon thirty (30) days’ notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain proper operation of the Property.

7.8.2. Disbursements from the Existing PIP Reserve Account. Lender shall disburse Existing PIP Reserve Funds only for Existing PIP Requirements or upon completion of Existing PIP Requirements. Provided no Event of Default has occurred and is continuing, Lender shall disburse Existing 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 Existing 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 Existing PIP Requirements, (B) stating that all Existing 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 Existing 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 or Master Tenant’s purchase of such Existing 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 Existing 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 Existing PIP Requirements have been used to pay the previously identified Existing PIP Requirements, (ii) as to any completed Existing PIP Requirements, a copy of any license, permit or other approval by any Governmental Authority required, if any, in connection with such Existing 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 Existing 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 Existing 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.

7.8.3. Existing PIP Reserve, Generally.

(a) Nothing in this Section 7.8 shall (i) make Lender responsible for making or completing the Existing PIP Requirements; (ii) require Lender to expend funds in addition to the Existing PIP Reserve Funds to complete any Existing PIP Requirements; (iii) obligate Lender to proceed with the Existing PIP Requirements; or (iv) obligate Lender to demand from Borrower additional sums to complete any Existing PIP Requirements.

(b) 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 pursuant to this Section 7.4 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 Existing PIP Requirements and all materials being used in connection therewith and to examine all plans and shop drawings relating to such Existing PIP Requirements which are or may be kept at the Property. 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.

(c) 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 the Existing PIP Requirements. 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.

(d) On the Monthly Payment Date following Lender’s receipt of evidence acceptable to Lender confirming that all Existing PIP Requirements have been completed, and provided no Event of Default has occurred and is continuing, Lender shall release remaining Existing PIP Reserve Funds, if any, to or at the direction of Borrower.

ARTICLE VIII DEFAULTS

Section 8.1 Event of Default. (a) Each of the following events shall constitute an event of default hereunder (an “Event of Default”):

(i) if (A) any scheduled payment of principal or interest (including all amounts due on the Maturity Date) or any payment to a Reserve Fund is not paid when due or (B) any other payment of any portion of the Debt is not paid within five (5) days after notice to Borrower;

(ii) if any of the Taxes or Other Charges, unless being contested in accordance with the Loan Documents, are not paid prior to delinquency;

(iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies (or other evidence of coverage satisfactory to Lender and as may be expressly permitted hereunder) are not delivered to Lender upon request within the applicable time periods as provided herein, provided, that Borrower shall have the right to cure such failure to deliver the certified copies (or other evidence reasonably satisfactory to Lender) of the Policies to Lender, within five (5) Business Days of receipt of notice from Lender;

(iv) if, except with Lender’s prior written consent, a Transfer occurs in violation of the provisions of this Agreement and Article 6 of the Security Instrument;

(v) if (subject to Section 8.1(a)(ix)) any representation or warranty made by Borrower or Master Tenant herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, Master Tenant or Principal shall make an assignment for the benefit of creditors;

(vii) if (A) Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor under any guarantee issued in connection with the Loan shall commence any case, proceeding or other action (I) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (II) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor shall make a general assignment for the benefit of its creditors; or (B) there shall be commenced against Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor any case, proceeding or other action of a nature referred to in clause (A) above that is not dismissed within sixty (60) days of filing; or (C) there shall be commenced against the Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets; or (D) the Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (A), (B), or (C) above; or (E) the Borrower, Principal, Master Tenant, Guarantor or any other guarantor or indemnitor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if (1) any of the representations contained in Section 4.1.30 were breached, violated and/or false when made, or (2) Borrower or Master Tenant breaches (A) any covenant contained in Section 4.1.30 hereof (provided that (a) if such event was inadvertent or unintentional, (b) does not impair the status of Borrower, Master Tenant or Principal as a single purpose, bankruptcy remote entity, and (c) is not likely to increase the risk of substantive consolidation of the assets and liability of Borrower, Master Tenant or Principal with any other Person as evidenced in a substantive non-consolidation opinion in form and substance satisfactory to Lender, then such event or breach shall not constitute an Event of Default if Borrower shall cure (or shall cause to be cured) the same within ten (10) Business Days of Borrower, Master Tenant and/or Principal becoming aware of such breach or violation (via written notice or otherwise)) or (B) there occurs any breach of any negative covenant contained in Section 5.2 hereof;

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and as a result of which default the Manager thereunder gives notice of termination or cancellation of the Management Agreement or if the Management Agreement is canceled, terminated or surrendered or expires pursuant to its terms, unless in such case Borrower and/or Master Tenant, as applicable, shall enter into a new management agreement with a Qualified Manager in accordance with the applicable terms and provisions hereof;

(xiii) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of Section 9.1 hereof (provided that Borrower shall not be deemed to be in default under Section 9.1 hereof if Borrower's inability to satisfy any requirement thereof is due to circumstances beyond its control, such as the unavailability of information requested by Lender), or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of Section 9.1 hereof, for ten (10) Business Days after notice to Borrower from Lender;

(xiv) if there shall be default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to Borrower, Master Tenant or the Property;

(xv) if (A) an Event of Default (as defined in the Master Lease) occurs under the Master Lease, or (B) if any of the Master Lease Documents are amended, modified or terminated without the prior written consent of Lender; and/or

(xvi) if a material default by Master Tenant has occurred and continues beyond any applicable cure period under the Franchise Agreement (or any Replacement Franchise Agreement), as a result of which default the Franchisor thereunder gives notice of termination or cancellation of the Franchise Agreement (or any Replacement Franchise Agreement), or any expiration or other termination of the Franchise Agreement (or any Replacement Franchise Agreement) unless prior to or concurrently with any such expiration or termination Borrower has entered into a Replacement Franchise Agreement;

(xvii) if Borrower, Master Tenant or Guarantor shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or any Loan Document not specified in subsections (i) to (xvi) above or subsection (xviii) below, for ten (10) days after notice to Borrower or such other Person from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if Lender determines that (A) such non monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, (B) Borrower or such other Person, as applicable, shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, and (C) there is no material impairment to the value, use or operation of the Property, then such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower or such other Person, as applicable, in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days;

(xviii) if there shall occur any other Event of Default, as defined in any other Loan Document; or

(xix) Borrower shall be in default under any other deed of trust, mortgage or security agreement covering any part of the Property whether it be superior or junior in priority to the Security Instrument (it not being implied by this clause that any such encumbrance will be permitted).

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 Remedies. (a) Upon the occurrence of an Event of Default and during the continuation thereof, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity

may be exercised by Lender at any time and from time to time, whether or not all or any part of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees, to the extent permitted under applicable law, that if an Event of Default is continuing (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Security Instrument has been foreclosed upon, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document, except to the extent specifically limiting Lender’s right to take a specified action or specifically requiring Lender to take a specific action, shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its discretion including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Lender shall have the right from time to time during the continuance of an Event of Default to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the “Severed Loan Documents”) in such denominations as Lender shall determine in its discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall reasonably request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall lawfully do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until five (5) Business Days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any reasonable costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents, and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) If an Event of Default exists, Borrower shall terminate (or shall cause Master Tenant to terminate) the Franchise Agreement upon the written request of Lender or any receiver of the Property. If for any reason the Franchise Agreement is not terminated upon such request, Lender may terminate the Franchise Agreement upon its acquisition of the Property by foreclosure or deed in lieu thereof, notwithstanding any requirement of the Franchisor that Lender assume the Franchise Agreement or enter into a replacement Franchise Agreement. Borrower shall pay (or shall cause Master Tenant to pay) any liquidated damages owed to Franchisor in connection with any termination of the Franchise Agreement pursuant to this Section 8.2(d).

(e) As used in this Section 8.2, a “foreclosure” shall include, without limitation, any sale by power of sale.

Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE IX SPECIAL PROVISIONS

Section 9.1 Securitization.

9.1.1. Sale of Notes and Securitization. (a) Borrower acknowledges and agrees that Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations or securitizations, collectively, a “**Securitization**”).

(b) At the request of Lender, and to the extent not already required to be provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender or take other actions reasonably required by Lender, in each case in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors or the Rating Agencies in connection with any such Securitization. Lender shall have the right to provide to prospective investors and the Rating Agencies any information in its possession, including financial statements relating to Borrower, Guarantor, if any, the Property and any Tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus or other disclosure documents. Borrower agrees that each of Borrower, Principal, Guarantor and their respective officers and representatives, shall, at Lender’s request, cooperate with Lender’s efforts to arrange for a Securitization in accordance with the market standards to which Lender customarily adheres or which may be required by prospective investors or the Rating Agencies in connection with any such Securitization. Borrower, Principal and Guarantor agree to review, at Lender’s request in connection with the Securitization, the Disclosure Documents as such Disclosure Documents relate to Borrower, Principal, Master Tenant, Guarantor, the Property and the Loan, including, the sections entitled “Risk Factors,” “Special Considerations,” “Description of the Security Instrument,” “Description of the Mortgage Loan and Mortgaged Property,” “The Manager,” “The Borrower,” and “Certain Legal Aspects of the Mortgage Loan,” and shall confirm that the factual statements and representations contained in such sections and such other information in the Disclosure Documents (to the extent such information relates to, or is based on, or includes any information regarding the Property, Borrower, Master Tenant, Guarantor, Manager or the Loan) do not, to such Person’s knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(c) Borrower agrees to make upon Lender’s written request, without limitation, all structural or other changes to the Loan (including delivery of one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan and such new notes or modified note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, creation of one or more mezzanine loans (including amending Borrower’s organizational structure to provide for one or more mezzanine borrowers), delivery of opinions of counsel acceptable to the Rating Agencies or potential investors and addressing such matters as the Rating Agencies or potential investors may require; provided, however, that in creating such new notes or modified notes or mezzanine notes Borrower shall not be required to modify (i) the initial weighted average interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the aggregate amortization of principal of the Note, (iv) any other material economic term of the Loan, or (v) decrease the time periods during which Borrower is permitted to perform its obligations under the Loan Documents; and such modifications shall not, in the aggregate, have a material adverse effect on the economics of the Loan to Borrower. In connection with the foregoing, Borrower covenants and agrees to modify the Cash Management Agreement to reflect the newly created components or mezzanine loans.

(d) Intentionally Omitted.

(e) Borrower hereby appoints Lender its attorney-in-fact with full power of substitution (which appointment shall be deemed to be coupled with an interest and to be irrevocable until the Loan is paid and the Security Instrument is discharged of record, with Borrower hereby ratifying all that its said attorney shall do by virtue thereof) to execute and deliver all documents and do all other acts and things necessary or desirable to effect any Securitization authorized hereunder; provided, however, that unless an Event of Default exists, Lender shall not execute or deliver any such documents or do any such acts or things under such power until five (5) days after written notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower’s failure to deliver any document or to take any other action Borrower is obligated to take hereunder with respect to any Securitization for a period of ten (10) Business Days after such notice by Lender shall, at Lender’s option, constitute an Event of Default hereunder.

9.1.2. Securitization Costs. All reasonable third party costs and expenses incurred by Borrower and Guarantor in connection with Borrower’s compliance with this Section 9.1 (including the fees and expenses of the Rating Agencies) shall be paid or reimbursed by Borrower.

Section 9.2 Right To Release Information. Following the occurrence of any Event of Default, Lender may forward to any broker, prospective purchaser of the Property or the Loan, or other person or entity all documents and information which Lender now has or may hereafter acquire relating to the Debt, Borrower, Master Tenant, any Guarantor, any indemnitor, the Property and any other matter in connection with the Loan, whether furnished by Borrower, Master Tenant, any Guarantor, any indemnitor or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have to limit or prevent such disclosure, including any right of privacy or any claims arising therefrom.

Section 9.3 Exculpation. (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Security Instrument and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Security Instrument and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Security Instrument or the other Loan Documents. The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (ii) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; (iii) affect the validity or enforceability of the Guaranty or Environmental Indemnity or any of the rights and remedies of Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of any assignment of leases and rents contained in the Security Instrument and any other Loan Documents; or (vi) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Security Instrument or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property.

(b) Nothing contained herein shall in any manner or way release, affect or impair the right of Lender to recover, and Borrower shall be fully and personally liable and subject to legal action, for any loss, cost, expense, damage, claim or other obligation (including reasonable attorneys' fees and court costs) incurred or suffered by Lender arising out of or in connection with the following:

(i) fraud or material willful misrepresentation by Borrower, Master Tenant, Principal or Guarantor (or any of their respective Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor) or any agent, employee or other person with actual or apparent authority to make statements or representations on behalf of Borrower, Master Tenant, Principal, or Guarantor (or any of their respective Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor) in connection with the Loan ("apparent authority" meaning such authority as the principal knowingly or negligently permits the agent to assume, or which he holds the agent out as possessing);

(ii) the gross negligence or willful misconduct of Borrower, Principal, Master Tenant or Guarantor (or any of their respective Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor), agent, or employee of the foregoing;

(iii) material physical waste of the Property;

(iv) the removal or disposal of any portion of the Property during the continuation of an Event of Default without the replacement of same, to the extent the same is material to the operation of the Property;

(v) the misapplication, misappropriation, or conversion by Borrower (or any of its Affiliates which are controlled by Borrower, Master Tenant, Principal and/or Guarantor), Principal, Master Tenant or Guarantor of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents or other Property income or collateral proceeds, or (D) any Rents paid more than one month in advance (including, but not limited to, security deposits);

(vi) during the continuation of an Event of Default, the failure to either apply rents or other Property income, whether collected before or after such Event of Default, to the ordinary, customary, and necessary expenses of operating the Property or, upon demand, to deliver such rents or other Property income to Lender;

(vii) failure to maintain insurance or to pay taxes and assessments (unless Lender is escrowing funds therefor and fails to make such payments or has taken possession of the Property following an Event of Default, has received all Rents from the Property applicable to the period for which such insurance, taxes or other items are due, and thereafter

fails to make such payments) to the extent that the revenue from the Property is sufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property;

(viii) failure to pay charges for labor or materials or other charges or judgments that can create Liens on any portion of the Property, to the extent that the revenue from the Property is sufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property (and other than any election by Lender not to make funds held in any applicable Reserve Fund available therefor, so long as no Event of Default then exists and Borrower has otherwise complied with the applicable terms of the Loan Documents related to such disbursement);

(ix) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(x) any failure by Borrower to comply with any of the representations, warranties or covenants set forth in Sections 4.1.37 or 5.1.19 hereof;

(xi) Borrower and/or Master Tenant fails to permit on-site inspections of the Property, fails to maintain its status as a Special Purpose Entity or comply with any representation, warranty or covenant set forth in Section 4.1.30 hereof or fails to appoint a new property manager upon the request of Lender as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Security Instrument;

(xii) Borrower and/or Master Tenant's failure to comply with Section 2.7 hereof, the Cash Management Agreement and/or the Clearing Account Agreement relating to the establishment of a Clearing Account, a Cash Management Account, and/or the institution of cash management generally;

(xiii) any amendment, modification or termination of the Master Lease without Lender's consent;

(xiv) any amendment or modification of the Franchise Agreement without Lender's consent (to the extent such consent is required under the Loan Documents);

(xv) the termination, surrender or cancellation of the Franchise Agreement by Master Tenant without Lender's prior written consent or the termination or cancellation of the Franchise Agreement by Franchisor (as a result of the action or omission of Borrower or Master Tenant) prior to the expiration date of the Franchise Agreement unless such termination or cancellation is solely the result of Master Tenant's failure to pay the franchise fees and other charges due under the Franchise Agreement and such failure to pay is solely the result of revenue from the Property being insufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property provided that the foregoing shall not apply to the extent that (A) Borrower would otherwise be liable under this subsection (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; and/or

(xvi) 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 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) a DSCR Trigger Event occurs and Lender reasonably determines that the Property is performing at less than eighty percent (80%) of the performance of other hotels generally in the same competitive set, Borrower shall, at the request of Lender, cause Master Tenant to terminate the Management Agreement and replace the Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

Section 9.5 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as “Servicer”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the “Servicing Agreement”) between Lender and Servicer. Borrower shall not be responsible for any set up fees or any other initial costs relating to or arising under the Servicing Agreement, nor shall Borrower be responsible for payment of the regular monthly master servicing fee or trustee fee due to Servicer under the Servicing Agreement or any fees or expenses required to be borne by, and not reimbursable to, Servicer. Notwithstanding the foregoing, Borrower shall promptly reimburse Lender on demand for the following costs and expenses payable by Lender to Servicer as a result of the Loan becoming specially serviced: (i) any liquidation fees that are due and payable to Servicer under the Servicing Agreement in connection with the exercise of any or all remedies permitted under this Agreement, (ii) any workout fees and special servicing fees that are due and payable to Servicer under the Servicing Agreement, which fees may be due and payable under the Servicing Agreement on a periodic or continuing basis, and (iii) the costs of all property inspections and/or appraisals of the Property (or any updates to any existing inspection or appraisal) that Servicer may be required to obtain (other than the cost of regular annual inspections required to be borne by Servicer under the Servicing Agreement).

ARTICLE X MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and all such covenants and agreements shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid (or, in the case of a defeasance, defeased) unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 Lender’s Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law.

(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 DOES HEREBY DESIGNATE AND APPOINT:

Sneed, Vine & Perry, P.C.
900 Congress Avenue, Suite 300
Austin, Texas 78701
Attention: Adam S. Wilk, Esq.
Facsimile: (512) 476-1825

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH ACTION IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT 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 (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by telecopier (with answer back acknowledged) and with

a second copy to be sent to the intended recipient by any other means permitted under this Section, addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: KeyBank National Association
11501 Outlook, Suite 300
Overland Park, Kansas 66211
Facsimile No.: 877-379-1625
Attention: Loan Servicing

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

If to Borrower: Moody National 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 Clearing Account or Cash Management Account, as applicable.

(c) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not an Indemnified Party shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to any Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

(d) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency, after any Securitization (and excluding any such fees and expenses incurred by such Rating Agency in connection with any Rating Agency review of the Loan, the Loan Documents or any transaction contemplated thereby as part of a Securitization), in connection such Rating Agency's review of the Loan, the Loan documents or any transaction contemplated thereby in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document, and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 Schedules Incorporated. The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries. (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender, Borrower and the other Persons party thereto, and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower, or another Party to any Loan Document, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

(c) Borrower authorizes Lender to act upon any direction it receives from Master Tenant incident to the Loan Documents with respect to matters for which Master Tenant has responsibility pursuant to the Master Lease Documents (including, without limitation, with respect to requests for, and the application of, disbursements from any applicable Reserve Fund), and, as between Lender and Borrower, agrees to be bound by any such direction.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, KeyBank National Association or any of their Affiliates shall be subject to the prior written approval of Lender and KeyBank National Association in their commercially reasonable discretion.

Section 10.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any

equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or (unless specifically engaged by Lender in writing) Lender in connection with the transactions contemplated herein. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Liability. If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several. Under no circumstances whatsoever shall Lender have any liability for punitive, special, consequential or incidental damages in connection with, arising out of, or in any way related to or under this Loan Agreement or any other Loan Document or in any way related to the transactions contemplated or any relationship established by this Agreement or any other Loan Document or any act, omission or event occurring in connection herewith or therewith, and, to the extent not expressly prohibited by applicable laws, Borrower for itself and its Guarantor and indemnitors waives all claims for punitive, special, consequential or incidental damages. Lender shall have no duties or responsibilities except those expressly set forth in this Agreement, the Security Instrument and the other Loan Documents and those imposed under applicable law. Neither Lender nor any of its officers, directors, employees or agents shall be liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross negligence or willful misconduct. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 10.24 Certain Additional Rights of Lender (VCOC). Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including Section 5.1.11 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property).

The rights described above in this Section 10.24 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 (OFAC). Borrower hereby represents, warrants and covenants that neither Borrower nor any Guarantor is (or will be) a person with whom Lender is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not knowingly engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby covenants to provide Lender with any additional information within Borrower's or Guarantor's possession or control that Lender reasonably deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

Section 10.26 Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

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 _____, 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:

LENDER:

KEYBANK NATIONAL ASSOCIATION, a
national banking association

By:

Name:

Title:

SCHEDULE I
(RENT ROLL)

None.

SCHEDULE II
INTENTIONALLY OMITTED

SCHEDULE III
(ORGANIZATIONAL CHART OF BORROWER)

SCHEDULE IV
FORM OF TENANT DIRECTION LETTER
[BORROWER LETTERHEAD]

_____, 20__

[Tenants under Leases]

Re: Lease dated _____ between _____, as Landlord, and _____, as Tenant,
concerning premises known as _____

Gentlemen:

This letter shall constitute notice to you that the undersigned has granted a lien and security interest in the captioned lease and all rents, additional rent and all other monetary obligations to landlord thereunder (collectively, “**Rent**”) in favor of KeyBank National Association, its successors and assigns, as lender (“**Lender**”), to secure certain of the undersigned’s obligations to Lender. The undersigned hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with Rent and hereafter to deliver all Rent to the following address:

[Clearing Bank]

Account Name: “_____ Clearing Account
FBO KeyBank National Association, successors and assigns
Account No.: _____
Attention: _____
ABA# _____

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that Lender, or any successor lender so identified by Lender, may by written notice to you rescind the instructions contained herein.

Sincerely,
[Borrower]

SCHEDULE V

**FORM OF CREDIT CARD DIRECTION LETTER
[BORROWER LETTERHEAD]**

[Date]

[Addressee]

Re: Payment Direction Letter for _____ (the “**Property**”)
Loan No. _____

Dear [____]:

MOODY NATIONAL 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: “_____ Clearing Account
FBO KeyBank National Association, successors and assigns
Account No.: _____
Attention: _____
ABA# _____

These payment instructions cannot be withdrawn or modified without the prior written consent of the Lender or its designee, or pursuant to a joint written instruction from the Owner, Lessee and the Lender or its designee. Until you receive written instructions from the Lender or its designee, continue to send all payments due under the Agreement to _____ (“**Bank**”) pursuant to the terms hereof. All payments due under the Agreement shall be remitted to Bank no later than the day on which such amounts are due.

If you have any questions concerning this letter, please contact [____] at [____]. We appreciate your cooperation in this matter.

[NO FURTHER TEXT ON THIS PAGE]

Very truly yours,

BORROWER:

By: _____

Name: _____

Title: _____

SCHEDULE VI

Intentionally Omitted

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this “**Guaranty**”) is made as of September 20, 2016, by **MOODY NATIONAL REIT II, INC.**, a Maryland corporation, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**Guarantor**”) in favor of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an address at 11501 Outlook, Suite 300, Overland Park, Kansas 66211, (together with its successors and assigns, “**Lender**”).

RECITALS

The following recitals are a material part of this Guaranty:

A. Lender is making a loan in the principal sum of \$45,000,000.00 (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, the Cash Management Agreement and/or the Clearing Account Agreement relating to the

establishment of a Clearing Account, a Cash Management Account, and/or the institution of cash management generally;

(xiii) any amendment, modification or termination of the Master Lease without Lender's consent;

(xiv) any amendment or modification of the Franchise Agreement without Lender's consent (to the extent such consent is required under the Loan Documents);

(xv) the termination, surrender or cancellation of the Franchise Agreement by Master Tenant without Lender's prior written consent or the termination or cancellation of the Franchise Agreement by Franchisor (as a result of the action or omission of Borrower or Master Tenant) prior to the expiration date of the Franchise Agreement unless such termination or cancellation is solely the result of Master Tenant's failure to pay the franchise fees and other charges due under the Franchise Agreement and such failure to pay is solely the result of revenue from the Property being insufficient to pay such amounts as well as other costs of servicing the Debt and of operating the Property provided that the foregoing shall not apply to the extent that (A) Borrower would otherwise be liable under this subsection (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; and/or

(xvi) 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 and (ii) Liquidity of no less than \$4,500,000.00. For the purposes hereof, Guarantor's Net Worth and Liquidity shall be determined by Lender in its reasonable discretion, at any time and from time to time, and Guarantor's net worth shall exclude any equity attributable to the Property.

As used herein:

"Net Worth" shall mean, as of a given date, (i) the fair market value of a Guarantor's total assets as of such date (and for the avoidance of doubt and notwithstanding anything to the contrary contained herein, the calculation of Net Worth shall exclude any equity attributable to the Property) less (ii) such Guarantor's total liabilities as of such date, determined in accordance with generally accepted accounting principles, consistently applied.

"Liquidity" shall mean (a) unencumbered Cash and Cash Equivalents of Guarantor and (b) marketable securities of Guarantor, each valued in accordance with GAAP (or other principles acceptable to Lender).

"Cash and Cash Equivalents" shall mean all unrestricted or unencumbered (A) cash and (B) any of the following: (x) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by an agency thereof and backed by the full faith and credit of the United States; (y) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof which, at the time of acquisition, has one of the two highest ratings obtainable from any two (2) of Standard & Poor's Corporation, Moody's Investors Service, Inc. or Fitch Investors (or, if at any time no two of the foregoing shall be rating such obligations, then from such other nationally recognized rating services as may be acceptable to Lender) and is not listed for possible down-grade in any publication of any of the foregoing rating services; (z) domestic certificates of deposit or domestic time deposits or repurchase agreements issued by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia having combined capital and surplus of not less than \$1,000,000,000.00, which commercial bank has a rating of at least either AA or such comparable rating from Standard & Poor's Corporation or Moody's Investors Service, Inc., respectively; (aa) any funds deposited or invested by Guarantor in accounts maintained with Lender and which are not held in escrow for, or pledged as security for, any obligations of Guarantor, Borrower and/or any of their affiliates; (bb) money market funds having assets under management in excess of \$2,000,000,000.00 and/or (cc) any unrestricted stock, shares, certificates, bonds, debentures, notes or other instrument which constitutes a "security" under the Security Act of 1933 (other than Guarantor, Borrower and/or any of their affiliates) which are freely tradable on any nationally recognized securities exchange and are not otherwise encumbered by Guarantor.

14. **Notice of Litigation.** Guarantor shall promptly give Lender notice of all litigation or proceedings before any court or Governmental Authority affecting Guarantor or its property, except litigation or proceedings which, if adversely determined, could not reasonably be expected to have a material adverse effect on the financial condition or operations of Guarantor or its ability to perform any of its obligations hereunder.

15. **Access to Records.** Guarantor shall give Lender and its representatives access to, and permit Lender and such representatives to examine, copy or make extracts from, any and all books, records and documents in the possession of Guarantor relating to the performance of Guarantor's obligations hereunder and under any of the Loan Documents, upon reasonable notice and all at such times during normal business hours and as often as Lender may reasonably request. If Guarantor is not an individual, Guarantor shall continuously maintain its existence and, except with Lender's prior written consent shall not dissolve or permit its dissolution.

16. **Assignment by Lender.** In connection with any sale, assignment or transfer of the Loan, Lender may sell, assign or transfer this Guaranty and all or any of its rights, privileges, interests and remedies hereunder to any other person or entity whatsoever without notice to or consent by Guarantor, and in such event the assignee shall be entitled to the benefits of this Guaranty and to exercise all rights, interests and remedies as fully as Lender.

17. **Termination.** This Guaranty shall terminate only when the Debt has been paid or defeased in full and all Liabilities have been paid in full, including all interest thereon, late charges and other charges and fees included within the Liabilities and the Debt. When the conditions described above have been fully met, Lender will, upon request, furnish to Guarantor a written cancellation of this Guaranty.

18. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (c) by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:	KeyBank National Association 11501 Outlook, Suite 300 Overland Park, Kansas 66211 Facsimile No.: 877-379-1625 Attention: Loan Servicing
with a copy to:	Katten Muchin Rosenman LLP 550 South Tryon Street, Suite 2900 Charlotte, North Carolina 28202 Attention: Daniel S. Huffenus, Esq. Facsimile No.: (704) 444-2050
If to Guarantor:	Moody National REIT II, Inc. 6363 Woodway, Suite 110 Houston, Texas 77057 Attention: Brett C. Moody Facsimile No.: (713) 997-7505

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 DOES HEREBY DESIGNATE AND APPOINT:

Sneed, Vine & Perry, P.C.
900 Congress Avenue, Suite 300
Austin, Texas 78701
Attention: Adam S. Wilk, Esq.
Facsimile: (512) 476-1825

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH ACTION IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT 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 (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

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.

[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

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 September 20, 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. 10106606

**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 September 20, 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 11501 Outlook, Suite 300, Overland Park, Kansas 66211, 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 \$45,000,000.00 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 as of May 24, 2016, as amended by that certain First Amendment to Hotel Lease Agreement executed in connection 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.

ALL SITUATE in the County of King, State of Washington

NOTE: Parcel C is a Parking License Agreement and any interest or rights are subject to the terms and conditions set forth therein.

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

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this “**Agreement**”) is made as of September 20, 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 **MOODY NATIONAL REIT II, INC.**, a Maryland corporation, having an address at 6363 Woodway, Suite 110, Houston, Texas 77057 (“**Guarantor**”; Borrower and Guarantor hereinafter referred to, individually and collectively, as the context may require, as “**Indemnitor**”), in favor of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, having an address at 11501 Outlook, Suite 300, Overland Park, Kansas 66211 (together with its successors and assigns, “**Indemnitee**”) and the other Indemnified Parties (as defined in the Loan Agreement).

RECITALS:

The following recitals are a material part of this Agreement.

A. Borrower is the owner of the Property.

B. Indemnitee is prepared to make a loan (the “**Loan**”) to Borrower in the principal amount of \$45,000,000.00 pursuant to a Loan Agreement of even date herewith between Indemnitee and Borrower (the “**Loan Agreement**”), which Loan shall be evidenced by that certain Promissory Note of even date herewith given by Borrower in favor of Indemnitee (the “**Note**”) and secured by, among other things one or more mortgages/deeds of trust/deeds to secure debt, dated as of the date hereof, given by Borrower to Indemnitee and encumbering the Property (the “**Security Instrument**”). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

C. Indemnitee is unwilling to make the Loan unless Indemnitor agrees to provide the indemnification, representations, warranties, covenants and other matters described in this Agreement for the benefit of the Indemnified Parties.

D. Indemnitor is entering into this Agreement to induce Indemnitee to make the Loan.

AGREEMENT:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor hereby agrees for the benefit of the Indemnified Parties as follows:

1. **Indemnification.** Indemnitor covenants and agrees, at its sole cost and expense, to protect, defend, indemnify, release and hold the Indemnified Parties harmless from and against any and all Losses (defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way attributable to any one or more of the following: (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Indemnitor, any Person affiliated with Indemnitor, and any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Indemnitor, any Person affiliated with Indemnitor, and any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including any failure by Indemnitor, any Person affiliated with Indemnitor, and any tenant or other user of the Property to comply with any order of any Governmental Authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with the environmental condition of the Property; (h) in each case, to the extent arising from the presence of Hazardous Substances or the violation of any Environmental Law, any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including costs to investigate and assess such injury, destruction or loss; (i) any acts of Indemnitor, any Person affiliated with Indemnitor, and any tenant or other user of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances at any facility or incineration vessel containing such or similar Hazardous Substances; (j) any acts of Indemnitor, any Person affiliated with any Indemnitor, and any tenant or other user of the Property in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; and (k) in each case, to the extent relating to Hazardous Substances or violation of any Environmental Law, any

misrepresentation or inaccuracy in any representation or warranty relating to the environmental condition of the Property or material breach or failure to perform any covenants or other obligations relating to the environmental condition of the Property pursuant to this Agreement, the Loan Agreement or the Security Instrument.

2. **Duty to Defend and Attorneys and Other Fees and Expenses.** Upon written request by any Indemnified Party, Indemnitor shall defend same (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of such Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding, providing that no compromise or settlement shall be entered without Indemnitor's consent, which consent shall not be unreasonably withheld. Upon demand, Indemnitor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

3. **Definitions.** Capitalized terms used herein and not specifically defined herein shall have the respective meanings ascribed to such terms in the Loan Agreement. As used in this Agreement, the following terms shall have the following meanings:

The term "**Legal Action**" means any claim, suit or proceeding, whether administrative or judicial in nature.

The term "**Losses**" means any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including strict liabilities), obligations, debts, diminutions in value (but only to the extent of any deficiency in respect of the Debt), fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys' fees, engineers' fees, environmental consultants' fees, and investigation costs (including costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

4. **Unimpaired Liability.** The liability of Indemnitor under this Agreement shall in no way be limited or impaired by, and Indemnitor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Note, the Loan Agreement, the Security Instrument or any other Loan Document to or with Indemnitee by Indemnitor or any Person who succeeds Indemnitor or any Person as owner of the Property. In addition, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by (i) any extensions of time for performance required by the Note, the Loan Agreement, the Security Instrument or any of the other Loan Documents, (ii) any sale or transfer of all or part of the Property, (iii) except as provided herein, any exculpatory provision in the Note, the Loan Agreement, the Security Instrument, or any of the other Loan Documents limiting Indemnitee's recourse to the Property or to any other security for the Note, or limiting Indemnitee's rights to a deficiency judgment against Indemnitor, (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under the Note, the Loan Agreement, the Security Instrument or any of the other Loan Documents or herein, (v) the release of Indemnitor or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the other Loan Documents by operation of law, Indemnitee's voluntary act, or otherwise, (vi) the release or substitution in whole or in part of any security for the Loan, or (vii) Indemnitee's failure to record the Security Instrument or file any UCC financing statements (or Indemnitee's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

5. **Enforcement.** The Indemnified Parties may enforce the obligations of Indemnitor without first resorting to or exhausting any security or collateral or without first having recourse to the Note, the Loan Agreement, the Security Instrument, or any other Loan Documents or any of the Property, through foreclosure proceedings or otherwise, provided, however, that nothing herein shall inhibit or prevent Indemnitee from suing on the Note, foreclosing, or exercising any power of sale under, the Security Instrument, or exercising any other rights and remedies thereunder. This Agreement is not collateral or security for the Debt, unless Indemnitee expressly elects in writing to make this Agreement additional collateral or security for the Debt, which Indemnitee is entitled to do in its discretion. It is not necessary for an Event of Default to have occurred for the Indemnified Parties to exercise their rights pursuant to this Agreement. Notwithstanding any provision of the Loan Agreement, the obligations pursuant to this Agreement are exceptions to any non-recourse or exculpation provision of the Loan Agreement; Indemnitor is fully and personally liable for such obligations, and such liability is not limited to the original or amortized principal balance of the Loan or the value of the Property.

6. **Survival.** The obligations and liabilities of Indemnitor under this Agreement shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument. Notwithstanding the provisions of this Agreement to the contrary, the liabilities and obligations of Indemnitor hereunder shall not apply to the extent that Indemnitor can prove that such liabilities and obligations arose solely from Hazardous Substances that: (a) were not present on or a threat to the Property prior to

the date that Indemnitee or its nominee acquired title to the Property, whether by foreclosure, exercise of power of sale or otherwise (or, if the Property is transferred to an assuming Transferee in accordance with the provisions of the Loan Agreement, were not present on or a threat to the Property prior to the date on which such Transferee acquired title to the Property) and (b) were not the result of any act or negligence of Indemnitor or any of Indemnitor's affiliates, agents or contractors.

7. **Interest.** Any amounts payable to any Indemnified Parties under this Agreement shall become immediately due and payable on demand and, if not paid within thirty (30) days of such demand therefor, shall bear interest at the lesser of (a) the Default Rate or (b) the maximum interest rate which Indemnitor may by law pay or the Indemnified Parties may charge and collect, from the date payment was due, provided that the foregoing shall be subject to the provisions of Section 10 of the Note.

8. **Waivers.** (a) Indemnitor hereby waives (i) any right or claim of right to cause a marshaling of Indemnitor's assets or to cause 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) Indemnitee exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Indemnitee, or (iii) any other decision or determination is to be made by Indemnitee, the decision of Indemnitee to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Indemnitee, shall be in the sole and absolute discretion of Indemnitee 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 Indemnitee, 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

SIGNATURE PAGE TO ENVIRONMENTAL IDEMNITY AGREEMENT

FIRST AMENDMENT
TO
HOTEL LEASE AGREEMENT

This First Amendment (“Amendment”) to that certain Hotel Lease Agreement dated May 24, 2016 (the “Master Lease”), by and between Moody National Yale-Seattle Holding, LLC, a Delaware limited liability company (“Lessor”) and Moody National Yale-Seattle MT, LLC, a Delaware limited liability company (“Lessee”), is entered into by Lessor and Lessee effective as of September 20, 2016 (“Effective Date”). Terms used but not otherwise defined herein shall have the meaning set forth in the Master Lease.

WHEREAS, Lessor and Lessee desire to make certain changes to the Master Lease.

NOW, THEREFORE, in exchange for the foregoing, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Section 1.2. The definition of “Commencement Date” as set forth in Section 1.2 of the Master Lease shall mean September 20, 2016.
2. Section 2.1, Initial Loan. The reference to “\$56,250,000” in the definition of “Initial Loan” as set forth in Section 2.1 of the Master Lease is hereby replaced with “\$45,000,000”.
3. Section 2.1, Initial Loan Documents. The definition of “Initial Loan Documents” as set forth in Section 2.1 of the Master Lease is hereby replaced with the following:

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) Clearing Account – Deposit Account Control Agreement, (vi) Environmental Indemnity, (vii) Assignment of Leases and Rents, (viii) Promissory Note, (ix) Assignment of Leases and Rents and Security Agreement, (x) Master Lease Subordination and Attornment Agreement; and (b) any other documents executed by Lessor, Lessee (where applicable) and Initial Lender evidencing the Initial Loan).
4. Section 2.1. A new definition of “PIP Reserve” shall be added to Section 2.1 of the Master Lease as follows:

PIP Reserve: As defined in Section 10.3.
5. Section 2.1. A new definition of “Seasonality Reserve” shall be added to Section 2.1 of the Master Lease as follows:

Seasonality Reserve: As defined in Section 3.1(c).
6. Section 3.1(c). Section 3.1(c) of the Master Lease is hereby replaced in its entirety with the following:

Seasonality Reserve. Upon execution of this Lease, Lessor shall have funded a \$234,000 reserve (“Seasonality Reserve”) as required under the Initial Loan Documents for the purposes set forth therein, which reserve shall be utilized by Lessee for the payment of its rent obligations set forth in this Lease in accordance with the terms and conditions of the Initial Loan Documents. Additional monthly reserves for such purpose required to meet the terms of the Initial Loan Documents shall be the obligation of the Lessee.
7. Section 10.3, Furniture, Fixture and Equipment Allowance. The reference to “\$70,000” in Section 10.3 of the Master Lease is hereby replaced with “\$1,200,000”.
8. As amended hereby, the Master Lease shall continue in full force and effect.
9. The terms and provisions of this Amendment shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties.
10. This Amendment may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.
11. This Amendment shall be construed and enforced 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.

IN WITNESS WHEREOF, this Amendment is effective as of the date first set forth above.

LESSOR:

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

By: /s/ Brett C. Moody

Brett C. Moody, President

LESSEE:

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

By: /s/ Brett C. Moody

Brett C. Moody, President