



## FRANCHISE DISCLOSURE DOCUMENT

**Hawthorn Suites Franchising, Inc.**  
**A Georgia Corporation**  
**22 Sylvan Way**  
**Parsippany, New Jersey 07054**  
**(800) 758-8999**  
**<https://development.wyndhamhotels.com>**

The franchise offered in this disclosure document is for operation of an extended stay guest lodging facility under the Hawthorn® brand. The total investment necessary to begin operation of a typical 96-room Hawthorn facility ranges from \$12,229,557 to \$14,165,375 for a new construction project. The total investment necessary to begin operation of a typical 100-room Hawthorn facility ranges from \$316,632 to \$6,885,833 for conversion of an existing hotel. Land acquisition costs are not included in these ranges. The above amounts include a range of \$67,275 to \$72,425 that must be paid to the franchisor or an affiliate.

This Disclosure Document summarizes certain provisions of your franchise agreement and other information in plain English. Read this Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale or grant. **Note, however, that no governmental agency has verified the information contained in this document.**

The terms of your contract will govern your franchise relationship. Do not rely on the Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or an accountant.

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Franchise Development Department, Hawthorn Suites Franchising, Inc., 22 Sylvan Way, Parsippany, NJ 07054 or call (800) 758-8999.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as "*A Consumer's Guide to Buying a Franchise*," which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: March 30, 2024

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## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibits E-1 and E-2.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor’s direction; Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit D includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Hawthorn Extended Stay By Wyndham business in my area?</b>	Item 12 and the “territory” provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What’s it like to be a Hawthorn Extended Stay By Wyndham franchisee?</b>	Item 20 or Exhibits E-1 and E-2 list current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit B.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation and/or litigation only in New Jersey. Out-of-state mediation, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate or litigate with the franchisor in New Jersey than in your own state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO  
THE MICHIGAN FRANCHISE INVESTMENT LAW**

**The state of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you.**

(a) A prohibition on the right of a franchisee to join an association of franchisees.

(b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this Act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

(c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

(d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if (i) the term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the license or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.

(e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

(f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.

(g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

(i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.

(ii) The fact that the proposed transferee is a competitor of the franchisor or sub-franchisor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

(h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

**The fact that there is a notice of this offering on file with the attorney general does not constitute approval, recommendation, or endorsement by the attorney general.**

**Any questions regarding this notice should be directed to the Office of the Attorney General, Consumer Protection Division, Attn: Franchise Section, 525 W. Ottawa Street, G. Mennen Williams Building, 1st Floor, Lansing, Michigan 48913, (517) 373-7117.**

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## **Exhibits**

- Exhibit A State Addenda
- Exhibit B Regulatory Authorities; Registered Agents for Service of Process
- Exhibit C-1 Franchise Agreement; Guaranty; Initial Fee Note; Development Incentive Note; Dual Brand Addendum; Assignment and Assumption Agreement; State Addenda and Franchise Application
- Exhibit C-2 Master Information Technology Agreement
- Exhibit C-3 Elavon Hosted Services Agreement for Hosted Gateway Services
- Exhibit C-4 Three Party Agreement; Request For Three Party Agreement; Lender Notification Agreement; Request For Lender Notification Agreement
- Exhibit C-5 Termination and Release Agreement
- Exhibit C-6 Signature Reservation Service Agreement
- Exhibit C-7 Hotel Revenue Management Agreement
- Exhibit C-8 Hotel Connectivity Solutions Support Agreement
- Exhibit C-9 Remote Sales Services Agreement
- Exhibit C-10 Sculptor Loan Agreement and Wyndham Loan Agreement
- Exhibit D Financial Statements and Guaranty of Performance of Wyndham Hotels & Resorts, Inc.
- Exhibit E-1 List of Facilities in the United States as of December 31, 2023
- Exhibit E-2 List of Facilities in the United States that Voluntarily or Involuntarily left the Hawthorn Chain from January 1, 2023 to December 31, 2023 or that did not communicate with us during the ten-week period preceding the date of the Disclosure Document
- Exhibit F Tables of Contents for Standards of Operation and Design Manual and Wyndham Rewards Front Desk Guide
- Exhibit G State Effective Dates / Acknowledgement of Receipt

## ITEM 1. THE FRANCHISOR AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

To simplify the language in this Disclosure Document, “we,” “us,” “our” or “HSF” means Hawthorn Suites Franchising, Inc., the franchisor. “You” means the person or entity acquiring a franchise. If the franchisee is a corporation, partnership or other entity, “you” includes the franchisee’s owners. We use the terms “licensee” and “franchisee” and “licensor” and “franchisor” interchangeably.

**The Franchisor, its Affiliates and Parents.** We are a corporation formed in Georgia on March 20, 1996. We do not do business under any other name. We are a subsidiary of U.S. Franchise Systems, Inc. (“USFS”), a Delaware corporation incorporated on November 26, 1997. USFS is a subsidiary of Wyndham Hotel Group, LLC (“Wyndham Hotel Group” or “WHG”), which is wholly owned by Wyndham Hotels & Resorts, Inc., a Delaware corporation (“Wyndham Hotels & Resorts”) or (“WHR”). WHR guarantees the performance of our obligations under the “Franchise Agreements” we enter into with franchisees.

WHR was created by virtue of a tax-free spin-off of the hotel and transient lodging businesses of Wyndham Worldwide Corporation (“Wyndham Worldwide”) on May 31, 2018, through the distribution of 100% of the common stock of WHR to Wyndham Worldwide shareholders of record as of the close of business on May 18, 2018. On June 1, 2018, WHR began “regular way” trading on the New York Stock Exchange as a standalone public company. Following the spin-off, the remaining businesses of Wyndham Worldwide continued to operate as Travel + Leisure Co. (formerly Wyndham Destinations, Inc.), a publicly traded timeshare and timeshare exchange company.

### **Our Principal Place of Business and Agent for Service of Process.**

Our business address, and that of WHR, Wyndham Hotel Group, USFS, Worldwide Sourcing Solutions, Inc. (“WSSI”), and the Lodging Affiliates identified below is 22 Sylvan Way, Parsippany, New Jersey 07054. Our agent for service of process in the state of our principal place of business is Corporate Creations Network Inc., 811 Church Road #105, Cherry Hill, NJ 08002. Our agents for service of process in certain other states are disclosed in Exhibit B.

**Affiliates that Provide Products or Services to Franchisees.** Wyndham Hotel Group and its affiliate, WSSI, offer goods and services to our franchisees and the franchisees of the Lodging Affiliates as defined below. See Items 5 and 8.

**Lodging Affiliates.** In addition to the Franchisor, Wyndham Hotel Group directly or indirectly owns other franchising subsidiaries in the lodging industry (the “Lodging Affiliates”). Microtel Inns and Suites Franchising, Inc. (“MISF”), a Georgia corporation, is a wholly-owned subsidiary of USFS. Since October 1995, MISF has offered franchises for all-new construction, economy lodging facilities under the Microtel Inn & Suites by Wyndham® name. Other Lodging Affiliates which offer hotel franchises in the United States and are subsidiaries of Wyndham Hotel Group include Dolce International Holdings, Inc. (“DIH”), WHR Extended Stay, LLC (“WES”), Ramada Worldwide Inc. (“RWI”), Days Inns Worldwide, Inc. (“DIW”), Super 8 Worldwide, Inc., (“Super 8” or “SWI”), La Quinta Franchising LLC (“LQF”), Travelodge Hotels, Inc. (“THI”), Wingate Inns International, Inc. (“WII”), Baymont Franchise Systems, Inc. (“BFS”), Howard Johnson

International, Inc. (“HJI”), TRYP Hotels Worldwide, Inc. ( “TRYP”), TMH Worldwide, LLC (“TMH”), TRC Franchisor, Inc. (“TRC”), and AmericInn International, LLC (“AMI”), which offer and support lodging system franchises under the Dolce Hotels and Resorts<sup>®</sup>, ECHO Suites<sup>SM</sup> Extended Stay and Arise Suites<sup>SM</sup> Extended Stay, Ramada<sup>®</sup>, Days Inn<sup>®</sup>, Super 8<sup>®</sup>, La Quinta<sup>®</sup>, Travelodge<sup>®</sup>, Wingate by Wyndham<sup>®</sup>, Baymont Inn & Suites<sup>®</sup>, Howard Johnson<sup>®</sup>, TRYP by Wyndham<sup>®</sup>, Trademark Collection<sup>®</sup>, Registry Collection Hotels<sup>®</sup>, and AmericInn<sup>®</sup> guest lodging facility systems, respectively. Another Lodging Affiliate, Wyndham Franchisor, LLC. (“WDF”), offers and supports franchises for upscale, full service and select service Wyndham Grand<sup>®</sup>, Wyndham<sup>®</sup>, and Wyndham Garden<sup>®</sup> transient guest lodging facilities, respectively. The Lodging Affiliates do not own or operate any lodging facilities.

**Certain Other Franchise and Travel Industry Affiliates.** In addition to the Lodging Affiliates identified above, which offer franchises in the United States, certain of our affiliates offer and administer franchises or manage lodging facilities under our Marks, the trademarks of the Lodging Affiliates, or other trademarks not offered within the United States. The following chart outlines our affiliates that did so, as of December 31, 2023.

Region/Country	Franchise System	Franchisor
Canada	Baymont ECHO Suites Hawthorn Howard Johnson La Quinta Microtel Ramada Super 8 Trademark Collection TRYP Wingate Wyndham Garden Wyndham Wyndham Grand	Wyndham Hotel Group Canada, ULC (“WHG Canada”)
All of Asia with the exception of Mainland and Hong Kong China, Malaysia, Republic of Korea and Vietnam	Days Inn Howard Johnson Microtel Ramada Ramada Encore Super 8 Trademark Collection TRYP Wyndham Wyndham Garden Wyndham Grand	Wyndham Hotel Asia Pacific Co. Limited (“WHAP”) or Wyndham Hotels & Resorts Asia Pacific Pte. Ltd (“WHRAP”)
Hong Kong China	Baymont Days Inn Dolce Hawthorn Howard Johnson La Quinta	WHAP or Wyndham Hotel Hong Kong Co. Limited (“WH Hong Kong”)

	<p>Microtel  Ramada  Ramada Encore  Registry Collection  Super 8  Trademark Collection  TRYP  Wingate  Wyndham  Wyndham Garden  Wyndham Grand</p>	
Mainland China	<p>Baymont  Days Inn  Dolce  Hawthorn  La Quinta  Microtel  Ramada  Ramada Encore  Registry Collection  Trademark Collection  TRYP  Wingate  Wyndham  Wyndham Garden  Wyndham Grand</p>	WHAP or Wyndham Hotel Management (Beijing) Co., Ltd.
Pacific	<p>Days Inn  Microtel  La Quinta  Ramada  Trademark Collection  TRYP  Wyndham  Wyndham Garden</p>	WHAP or WHRAP
Australia, Malaysia, Republic of Korea and Vietnam	<p>Alltra  Days Inn  Dolce  Howard Johnson  Ramada  Ramada Encore  Trademark Collection  TRYP  Wyndham  Wyndham Garden  Wyndham Grand</p>	WHAP or Wyndham Hotels & Resorts Pacific Rim Pte. Ltd. (“WHRPAC”)
Most of Europe, Middle East & Africa	<p>Days Inn  Dolce  Hawthorn  Howard Johnson  La Quinta</p>	Wyndham Hotel Group (UK) Limited (“WHG UK”), Wyndham Hotel Group (UK) East Limited (“WHG UK East”), or WHG (Ireland) Hotels, U.C. (“WHG Ireland”)

	Ramada/Ramada Residences Ramada Encore Registry Collection Super 8 Trademark Collection TRYP Wyndham Garden Wyndham/Wyndham Residences Wyndham Grand/Wyndham Grand Residences	
Austria, Czech Republic, Germany, Poland, Romania, Slovakia, Switzerland	Vienna House Vienna House Easy	WHR Europe, Inc. (“WHRE”)
Morocco	Ramada Ramada Encore	Ramada International, Inc. (“RII”)
Saudi Arabia	Howard Johnson Ramada Ramada Encore Super 8 Wyndham Garden	HJI, SWI, WHG UK
Latin America and the Caribbean	Alltra Baymont Days Inn Dazzler (except Argentina, Paraguay, Peru and Uruguay) Dolce Esplendor (except Argentina, Paraguay, Peru and Uruguay) Howard Johnson La Quinta Microtel Ramada Registry Collection Super 8 Trademark Collection TRYP Wyndham Wyndham Garden Wyndham Grand	WHG Caribbean or RII
Argentina, Paraguay, Peru, Uruguay	Dazzler Esplendor	Wyndham Hotel Management de Argentina SRL (“WHMDA”)
<b>Region/Country</b>	<b>Managed System<sup>1</sup></b>	<b>Management Company</b>
Canada & France	Dolce	Special purpose entities wholly owned by DIH
United Kingdom	Ramada Encore	WHG UK, WHG Ireland

<sup>1</sup> As of December 31, 2023, our affiliates provided hotel management services to 57 hotels associated with the Days Inn, Dazzler, Dolce, Esplendor, Ramada, Super 8, Trademark Collection, Wingate, Wyndham Grand, Wyndham, or Wyndham Garden brands around the globe.

Bahrain, Egypt, Ethiopia, Jordan, Oman, Saudi Arabia, Qatar	Howard Johnson Ramada Ramada Encore Wyndham Wyndham Garden Wyndham Grand	WHG UK
Mainland China	Baymont Days Inn Dolce Hawthorn La Quinta Microtel Ramada Ramada Encore Registry Collection Trademark Collection TRYP Wingate Wyndham Wyndham Garden Wyndham Grand	Wyndham Hotel Management (Beijing) Co., Ltd.
China except Mainland China	Baymont Days Inn Dolce Hawthorn Howard Johnson La Quinta Microtel Ramada Ramada Encore Registry Collection Super 8 Trademark Collection TRYP Wingate Wyndham Wyndham Garden Wyndham Grand	WHAP
Fiji, Malaysia, Palau, Republic of Korea, Thailand, Vietnam	Days Inn Dolce Ramada Ramada Encore Trademark Collection TRYP Wyndham Wyndham Garden Wyndham Grand	WHAP or WHRPAC
Tinian, Northern Mariana Islands	Wyndham	WHG Hotel Management, Inc.

Costa Rica	Wyndham	Wyndham Hotel Management de Mexico, S. de R.L. de C.V. (“WHMDM”)
The Caribbean	Trademark Collection Wyndham Grand	WHG Caribbean or RII
Brazil	Wyndham Wyndham Grand	Wyndham Hotel Management do Brasil, Ltda. (“WHMDB”)
Argentina, Paraguay, Uruguay	Dazzler Esplendor Ramada TRYP	WHMDA

The following chart outlines the principal place of business for the affiliates listed above.

Region/Country	Affiliate	Principal Place of Business
Canada	WHG Canada	22 Sylvan Way, Parsippany, NJ 07054
China	WHAP	26F, K. Wah Center, 1010 Huai Hai Rd (M), Shanghai 200031, China
	Wyndham Hotel Management (Beijing) Co., Ltd.	Room 906C East Ocean Centre, No. 24A Jianguomenwai Street, Chaoyang District, Beijing, China 100022
Europe, Middle East & Africa	WHRE	22 Sylvan Way, Parsippany, NJ 07054
	WHG Europe, WHG UK, WHG UK East, and WHG Ireland	4th Floor, 3 Shortlands, Hammersmith, London W6 8DA England
Hong Kong China	WHAP and WH Hong Kong	26th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong
Latin America & Caribbean	WHG Caribbean	22 Sylvan Way, Parsippany, NJ 07054
	WHMDB	Av. Angélica, 2.220 - Consolação, São Paulo - SP, 01228-200, Brazil
	WHMDM	Bld. Manuel Avila Camacho 118 piso 24 Lomas de Chapultepec, Miguel Hidalgo CDMX, Mexico 11000
	WHMDA	Maipu 1300, Piso 18, CABA, Buenos Aires, C1006ACT, Argentina
	WHMDC	Carrera 15 N°81-30 Of. 303, Bogotá D.C., 3462011
Multiple	RII	22 Sylvan Way, Parsippany, NJ 07054
Singapore	WHAP, WHRAP, WHRPAC	88 Market Street, CapitaSpring #47-05, Singapore 048948
Southeast Asia/Pacific Rim	WHG Hotel Management, Inc.	22 Sylvan Way, Parsippany, NJ 07054

**Our Business and Hawthorn Hotels.** We offer franchises for the right to operate a hotel under the Hawthorn, Hawthorn Suites, Hawthorn Suites by Wyndham, Hawthorn Extended Stay, or Hawthorn Extended Stay by Wyndham trade names. A Hawthorn “Chain Facility” (or “Facility”) is, predominantly an all-suites, select service hotel that concentrates on two markets: extended-stay (five consecutive nights or more), and shorter transient stays (from one to four nights). You will use the Hawthorn “System” to identify and operate the Chain Facility. Chain Facilities generally provide spacious studios, and one and two-bedroom suites with fully equipped kitchens. Chain Facilities are required to offer a swimming pool, fitness center and other recreational

facilities. Chain Facility suites contain some or all of the following features: flat panel high-definition television, radio alarm clock, full refrigerator with ice maker, microwave oven and a two-burner cooktop, dishwasher, and table settings. A prototypical 81-room Chain Facility contains 64 studio suites in one or more buildings and is approximately 45,000 square feet. The preliminary site plan for a new 81 room prototypical Hawthorn Suites requires approximately 2 acres of land. In addition, the Chain Facility contains a lobby and registration desk, and other facilities such as guest laundry room, breakfast area, business center, fitness center, sundry shop and storage area. Under our current standards, you will offer daily complimentary hot buffet breakfasts and a minimum of one complimentary weekly management social to guests, subject to state and local laws. You operate the Chain Facility only from the location we approve before signing the Franchise Agreement (Exhibit C-1). We specify the location of your Chain Facility in the Franchise Agreement.

If you satisfy our qualifications, we may offer you franchises for both a Hawthorn® and a La Quinta® Inn & Suites (“La Quinta”) to be operated at the same location, either within the same building or in separate buildings adjacent to one another, but in each case with a shared lobby and amenities (the “Dual Brand Operation”). As part of a Dual Brand Operation, you must execute (i) a Franchise Agreement for the Hawthorn Facility (“Hawthorn Agreement”) in the form attached as an exhibit to this disclosure, (ii) a franchise agreement for the La Quinta Facility (“La Quinta Agreement”) in the form attached as an exhibit to the Franchise Disclosure Document of La Quinta Franchising LLC (“La Quinta FDD”), and (iii) a Dual Brand Addendum in the form attached to the Hawthorn Agreement in this disclosure. You must also satisfy all of our requirements for Dual Brand Operation, which may include: (1) the same individual or entity must be the franchisee under both the Hawthorn Agreement and the La Quinta Agreement; (2) the Facility must be built in compliance with our La Quinta and Hawthorn prototype; (3) the Facility must be operated in accordance with the brand standards of each brand and any standards either franchisor issues specifically with respect to Dual Brand Operation. Except to the extent fees and charges are expressly modified by the Dual Brand Addendum, you will pay all fees and charges in accordance with both the Hawthorn Agreement, the La Quinta Agreement and each of their brand-specific Standards.

USFS, through a trademark license agreement (the “Trademark License Agreement”), licenses to us the right to use, and to license others to use, the Chain Facility and the Hawthorn Marks. This Trademark License Agreement remains in effect.

**The Hospitality Industry.** The hospitality industry is highly competitive. Chain Facilities compete with all types of facilities that offer extended stay transient guest lodging to the public. The primary competition on a nationwide basis is from lodging establishments affiliated with other major lodging chains. Your Chain Facility may also compete with franchises of the Lodging Affiliates. Your ability to compete in your market will depend in large part upon your geographic area, specific site location, the Chain Facility’s condition, general economic conditions and the capabilities of your management and service team. Depending upon the location of your Facility, your sales may be seasonal.

**Industry Specific Laws.** You must comply with a number of federal, state and local laws and regulations which apply to businesses generally and to the construction and operation of hotels. These include environmental laws and those relating to zoning and construction, permits and



licensing; public accommodations and accessibility by persons with disabilities; labor; occupational safety; fire safety; health and food storage, preparation and service; privacy and data security; and laws regulating the posting of hotel room rates and the registration and identification of guests. In addition to these laws, laws of general application may have special relevance to hotels. Your business is subject to state and federal regulations that allow the government to restrict travel and/or require businesses to close during state or national emergencies. Because your business is operated as a destination to which your customers must travel, your business can be affected by such orders more than others. Consult your attorney for more information on these and other laws.

The Lodging Affiliates have been offering licenses or franchises for lodging facilities in the United States (including the continental United States, Alaska, Hawaii, and Puerto Rico) since the following dates:

<b>Affiliate</b>	<b>Began Franchising</b>	<b>Predecessor Began Franchising</b>	<b>Number of Franchised Facilities in U.S. as of December 31, 2023</b>
AMI	1994	-	218
BFS	2006	2004	539
DIH	2022	-	3
DIW	1992	1972	1,257
HJI	1990	1954	143
LQF	2003	1968	899
MISF	1995	1988	293
RWI	1989	1954	279
SWI	1975	-	1,419
THI	1996	1966	339
TMH	2017	-	87
TRC	2017	-	0
TRYP	2011	2000	8
WES	2022	-	0
WII	1998	1995	189
WDF	2018	2005	122

We have not engaged in or offered franchises for business other than transient guest lodging facilities and related restaurants. The Lodging Affiliates have never offered franchises in businesses other than guest lodging facilities and related restaurants.

## **ITEM 2. BUSINESS EXPERIENCE**

President and Chief Executive Officer: Geoff Ballotti

Mr. Ballotti has served as President and Chief Executive Officer of WHR since October 2017, and of Wyndham Hotel Group since March 2014. He holds similar positions with us and the Lodging Affiliates.

Director, Executive Vice President, General Counsel and Secretary: Paul F. Cash

Mr. Cash has served as our Director since October 2017 and as Executive Vice President, General Counsel and Secretary of WHR and Wyndham Hotel Group since October 2017. He holds similar positions with us and the Lodging Affiliates.

Director, Senior Vice President and Chief Accounting Officer: Nicola Rossi

Mr. Rossi has served as our Director since June 2011 and as Senior Vice President and Chief Accounting Officer of WHR and Wyndham Hotel Group since October 2017. He holds similar positions with us and the Lodging Affiliates.

Executive Vice President and Chief Financial Officer: Michele Allen

Ms. Allen has served as Executive Vice President and Chief Financial Officer of WHR and Wyndham Hotel Group since December 2019. She holds similar positions with us and the Lodging Affiliates. In previous roles with WHR or its affiliates, Ms. Allen served as Executive Vice President, Financial Planning & Analysis and Treasurer of WHR, Wyndham Hotel Group and us from January 2019 through November 2019.

Executive Vice President, North America Franchise Operations: Shilpan Patel

Mr. Patel has served as our Executive Vice President, North America Franchise Operations of WHR since September 2023, and of Wyndham Hotel Group since October 2022. He holds similar positions with us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates Mr. Patel served as Senior Vice President, Franchise Services from May 2020 until October 2022, and Vice President, Retention and Relicensing from January 2016 until May 2020.

Executive Vice President and Chief Marketing Officer: Lisa Checchio

Ms. Checchio has served as Executive Vice President and Chief Marketing Officer of WHR and Wyndham Hotel Group since January 2019. In this role, Ms. Checchio oversees the planning, development and execution of the Marketing, Advertising, Loyalty, and Revenue Generation initiatives for us and the Lodging Affiliates.

Chief Information and Distribution Officer: Scott Strickland

Mr. Strickland has served as Chief Information and Distribution Officer of WHR and Wyndham Hotel Group since November 2023. In this role, Mr. Strickland oversees information technology strategy and systems for us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Mr. Strickland served as Chief Information Officer of WHR from May 2018 until November 2023 and of Wyndham Hotel Group from March 2017 until November 2023.

Senior Vice President – Sales: Angie Gadwood

Ms. Gadwood has served as Senior Vice President, Sales of Wyndham Hotel Group since December 2023. In this role, Ms. Gadwood oversees global, regional and local field sales efforts for us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Ms. Gadwood served as Group Vice President, Global Sales from April 2023 until December 2023, and Vice President, Field Sales from June 2018 until October 2019. From October 2019 until April 2023, Ms. Gadwood served as Vice President of Sales at G6 Hospitality in Carrollton, TX.

Senior Vice President – Loyalty & Strategic Partnerships: Charmaine Taylor

Ms. Taylor has served as Senior Vice President, Loyalty & Strategic Partnerships of Wyndham Hotel Group since November 2023. In this role, Ms. Taylor oversees the Wyndham Rewards loyalty program and global partnerships for us and the Lodging Affiliates. Prior to that, Ms. Taylor served as Senior Vice President, Head of Member Experience for New York, NY based Calibrate from January 2022 until October 2023, Senior Vice President, Service Partner Marketing & Experience at Arise Virtual Solutions, Inc. in Miramar, FL from October 2020 until January 2022, and Vice President, Operations at InterContinental Hotels Group in New York, NY from January 2018 until October 2020.

Vice President – Media & Brand Marketing: Marissa Yoss

Ms. Yoss has served as Vice President, Media & Brand Marketing for Wyndham Hotel Group since September 2023. In this role, Ms. Yoss oversees brand marketing and media for us and the Lodging Affiliates. Before then, Ms. Yoss served as Segment Lead for EssenceMediacom Holdings Limited from July 2022 until September 2023, and Senior Vice President, Client Business Lead for Universal McCann from January 2017 until July 2022 (both based in New York, NY).

Senior Vice President – Global Contact Centers and Franchise System Support: Janesh Patel

Mr. Patel has served as Senior Vice President, Global Contact Centers and Franchise System Support for Wyndham Hotel Group since February 2023. In this role, Mr. Patel oversees the Global Contact Centers and leads the Franchise System Support teams for us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Mr. Patel held the positions of Group Vice President, Global Contact Center from January 2021 until February 2023, and Vice President, Hotel Technology Client Support from March 2013 until January 2021.

Senior Vice President – Revenue Management & Distribution: Vikram Pradhan

Mr. Pradhan has served as Senior Vice President, Revenue Management & Distribution for Wyndham Hotel Group since February 2023. In this role, Mr. Pradhan leads the Revenue Management teams and oversees distribution for us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Mr. Pradhan held the position of Group Vice President, Global Revenue Management from April 2020 until February 2023. Prior to that, Mr. Pradhan served as Vice President, Revenue Management for New York, NY-based Convene LLC from November 2017 until April 2020.

Senior Vice President – Brand and Franchise Operations, North America/Iconic and Full Service Brands Field Operations Leader: Tracy Ripa

Ms. Ripa has served as Senior Vice President, Franchise Operations, North America of Wyndham Hotel Group since May 2020. She holds similar positions with us and the Lodging Affiliates. In this role, she also leads field operations for the AmericInn, Baymont, Days Inn, Dolce, Howard Johnson, Microtel, Ramada, Registry Collection, Super 8, Trademark Collection, Travelodge, TRYP, Wingate, Wyndham, Wyndham Garden, and Wyndham Grand brands. In previous roles with Wyndham Hotel Group or its affiliates, she served as Group Vice President, Franchise Operations and Quality from October 2018 until May 2020.

Head of Architecture, Design & Construction/Arise Suites, ECHO Suites, Hawthorn, and La Quinta Brand Leader/Select Service Brands Field Operations Leader: Krishna Paliwal

Mr. Paliwal has served as Head of Architecture, Design & Construction of Wyndham Hotel Group since May 2019. He holds similar positions with us and the Lodging Affiliates. Mr. Paliwal has also served as Brand Leader for the Arise Suites and ECHO Suites brands since December 2023, for the Hawthorn brand since March 2021, and for the La Quinta brand since June 2019. In this role, he leads field operations for these brands. Before then, he served as Senior Vice President, Design and Construction for us, Wyndham Hotel Group and the Lodging Affiliates from June 2018 until May 2019.

Group Vice President – Hotel Integration & Sourcing: Melissa Butler

Ms. Butler has served as Group Vice President, Hotel Integration & Sourcing of Wyndham Hotel Group since November 2023. She holds similar positions with us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Ms. Butler served as Vice President, Hotel Integration from August 2018 until November 2023.

Vice President – Sourcing Strategy & Engagement: Rachel Dabrowa

Ms. Dabrowa has served as Vice President, Sourcing Strategy & Engagement of Wyndham Hotel Group since August 2021. She holds similar positions with us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Ms. Dabrowa served as Senior Director, Franchise Operations & Quality from July 2018 until August 2021.

Vice President – Contracts Compliance: Suzanne Fenimore

Ms. Fenimore has served as Vice President, Contracts Compliance of Wyndham Hotel Group since February 2021. She holds similar positions with us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, she served as Sr. Director, Contracts Compliance from October 2012 until February 2021.

Vice President – Global Franchise Administration: Kendra Mallet

Ms. Mallet has served as Vice President, Global Franchise Administration of Wyndham Hotel Group since March 2024. She holds similar positions with us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Ms. Mallet served as Senior Director, Global Franchise Administration from March 2023 until March 2024, Director, Franchise Administration from September 2021 until March 2023, Senior Manager, Contracts Administration from January 2020 until September 2021, and Manager, Contracts Administration from June 2018 until January 2020.

Vice President – Franchise Services: Chris Demetriou

Mr. Demetriou has served as Vice President, Franchise Services of Wyndham Hotel Group since March 2024. He holds similar positions with us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Mr. Demetriou served as Senior Director, Relicensing & Retention from February 2015 until March 2024.

Vice President – Franchise Services: Dawn Whitley

Ms. Whitley has served as Vice President, Franchise Services of Wyndham Hotel Group since March 2024. She holds similar positions with us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, Ms. Whitley served as Senior Director, Franchise Services from February 2023 until March 2024, Director, Franchise Services from February 2021 until February 2023, and Senior Manager, Franchise Services from February 2017 until February 2021.

Vice President – Training and Development: Melissa DiBlasio

Ms. DiBlasio has served as Vice President, Training and Development of Wyndham Hotel Group since December 2019. She holds similar positions with us and the Lodging Affiliates. In previous roles with Wyndham Hotel Group or its affiliates, she served as Senior Director, Learning and Development from July 2018 until December 2019.

Executive Vice President and Chief Development Officer: Carl (Chip) Ohlsson

Mr. Ohlsson has served as Executive Vice President, Chief Development Officer of Wyndham Hotel Group since October 2015. He holds similar positions with us and the Lodging Affiliates.

Senior Vice President – Franchise Sales and Development: Jared Meabon

Mr. Meabon has served as Senior Vice President of Franchise Sales and Development of Wyndham Hotel Group since May 2019. He holds similar positions with us and the Lodging Affiliates.

Senior Vice President – Franchise Sales and Development: Stacey Nadolny

Ms. Nadolny has served as Senior Vice President of Franchise Sales and Development of Wyndham Hotel Group since September 2022. She holds similar positions with us and the Lodging Affiliates. Before then, Ms. Nadolny served as Managing Director for Chicago, IL-based HVS from January 2007 until September 2022.

Senior Vice President – Franchise Sales and Development: David Wilner

Mr. Wilner has served as Senior Vice President of Franchise Sales and Development of Wyndham Hotel Group since May 2018. He holds similar positions with us and the Lodging Affiliates.

Except as otherwise indicated in this Item, each of the above persons, is based in our Parsippany, NJ offices while employed by us, the Lodging Affiliates, WHR, or Wyndham Hotel Group.

## ITEM 3. LITIGATION<sup>2</sup>

### **Pending Litigation Against the Franchisor**

None.

### **Pending Litigation Against the Lodging Affiliates**

Norma Knuth v. Wyndham Worldwide Corporation, et al. (Court of Queen’s Bench for Saskatchewan, Judicial Centre of Regina, QBG-2650/2014). On December 5, 2014, Plaintiff Norma Knuth filed a class action suit as a representative of all “persons, corporations, and entities, resident or situated in Canada . . . that paid a “Destination Marketing Fee” to a hotel in Canada owned, operated, or managed by one of the defendants.” Plaintiff named Wyndham Worldwide, Wyndham Hotel Group, Days Inns Worldwide, Inc., Ramada Worldwide Inc., Super 8 Worldwide, Inc., Travelodge Hotels, Inc., and Wingate Inns International, Inc. (the “Wyndham Entities”), as well as several other hotel companies. Plaintiff claims that hotels in Saskatchewan and elsewhere in Canada have been charging a Destination Marketing Fee of 3% or 4% for various marketing fees that they should not be passing along to consumers. Plaintiff further alleges that hotel guests are not aware of the charge and are under no obligation to pay it, and that the name Destination Marketing Fee was intended to make guests believe it is a special government tax or fee. Plaintiff alleges each of the defendants owns, operates or manages the hotel which collects the fee. The causes of action are (i) violation of the Consumer Protection Act, (ii) negligence, (iii) unjust enrichment, and (iv) waiver of tort. Plaintiff seeks restitution in the amount of \$403 million, general damages, punitive damages and interest. Plaintiff filed an Amended Statement of Claim on May 29, 2015, and a Second Amended Statement of Claim on December 14, 2015.

### **Resolved Litigation Against the Lodging Affiliates**

Thomas Luca, Jr. v. Wyndham Worldwide Corporation, et al. (United States District Court for the Western District of Pennsylvania, Case 2:16-cv-00746-MRH). On June 6, 2016, Plaintiff Thomas Luca, Jr. filed a class action lawsuit against defendants Wyndham Worldwide, Wyndham Hotel Group, Wyndham Hotels and Resorts, LLC and Wyndham Hotel Management, Inc. (the “Wyndham Entities”). Plaintiff purports to bring the complaint on behalf of himself and: (i) as to resort fees, all United States citizens who have booked a hotel room through the Wyndham Entities’ websites within the applicable statute of limitations and were charged one or more resort fees; and (ii) as to the Terms of Use provision, all United States citizens who have booked a hotel room through the Wyndham Entities’ websites within the applicable statute of limitations. Plaintiff alleges violations of the New Jersey Consumer Fraud Act, through alleged misleading charging of resort fees, and violations of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act (“TCCWNA”), through an allegedly unlawful Terms of Use provision on the Wyndham Entities’ websites. On August 15, 2016, the Wyndham Entities filed motions to dismiss, and on February 15, 2017, the Court granted the motions to dismiss of Wyndham Worldwide and Wyndham Hotel Management, Inc., leaving Wyndham Hotel Group and

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<sup>2</sup> References to Wyndham Hotels and Resorts, LLC in this Item 3 mean the predecessor franchisor to the Wyndham Franchisor, LLC Lodging Affiliate and not our ultimate parent, Wyndham Hotels & Resorts, Inc.

Wyndham Hotels and Resorts, LLC as parties. Plaintiff filed a motion for class certification on October 15, 2018, which the remaining Wyndham Entities opposed on December 14, 2018, and is currently pending. On January 16, 2019, the Court dismissed the TCCWNA claim from the case. Wyndham Hotel Group and Wyndham Hotels and Resorts, LLC entered into a settlement agreement with Plaintiff whereby a class was certified for settlement purposes and eligible class members will receive either \$22 or 2,200 Wyndham Rewards points, and Wyndham will make certain display changes. The Court granted preliminary approval on October 18, 2019, and granted final approval on February 24, 2020.

Jay Brodsky v. Hilton Worldwide Inc., et al. (United States District Court for the District of New Jersey, Case 2:18-cv-13045-KM-JBC). On August 20, 2018, plaintiff Jay Brodsky filed an individual lawsuit against numerous hotel industry companies, including “Wyndham Hotels”. Plaintiff alleged a per se violation of the Sherman Antitrust Act (in the form of bid rigging and a group boycott), and in the alternative, a violation of the Sherman Act by unreasonably restraining trade among 60% of the market for the online sale of hotel rooms in connection with alleged arrangements between defendants, and between defendants and certain OTAs, to eliminate competitive bidding for branded keywords in connection with advertising. Specifically, plaintiff has alleged that each of the defendants agreed to refrain from using online advertising methods to compete for consumers, by preventing competitors from bidding for online advertising that uses competitors’ brand names. Defendants jointly settled for \$7,000 payment (\$1,400 as to Wyndham Hotels) to Mr. Brodsky on February 22, 2019, resulting in a dismissal of the action.

Percy Pooniwala and Dinaz Pooniwala v. Wyndham Worldwide, Inc., et al. (United States District Court for the District of Minnesota, Case No. No. 0:14-cv-00778). On February 28, 2014, plaintiffs served a complaint upon Super 8 Worldwide, Inc., Travelodge Hotels, Inc., Days Inns Worldwide, Inc., and Wyndham Worldwide Operations, Inc. (the “Wyndham Entities”) in the Fourth Judicial District, County of Hennepin, State of Minnesota, asserting allegations including (i) violation of the Minnesota Franchise Act; (ii) breach of contract; (iii) breach of the implied covenant of good faith and fair dealing; and (iv) retaliation. Plaintiffs’ claims related to four franchise agreements with the Wyndham Entities for the operation of Super 8, Travelodge and Days Inn franchised guest lodging facilities in Minnesota, and one proposed location that did not result in an executed franchise agreement. Plaintiffs allege that the Wyndham Entities wrongfully terminated, or were in the process of terminating, several of plaintiffs’ franchised sites because plaintiffs did not agree to settle a separate lawsuit pending in New Jersey. Plaintiffs sought damages in excess of \$150,000.00, as well as the recovery of attorneys’ fees. The Wyndham Entities filed counterclaims under the four franchise agreements and the location that did not result in an executed franchise agreement, including breach of contract and violations of the Lanham Act, seeking actual damages, liquidated damages, recurring fees and attorneys’ fees and costs. The parties reached a settlement in August 2015 as part of which plaintiffs made payments to the Wyndham Entities in the amount of \$220,000 made in monthly payments from November 2015 until April 2017 and the case was dismissed on September 25, 2015.

Joyce Roberts, individually and on behalf of classes of similarly situated individuals v. Wyndham International, Inc., Wyndham Worldwide Operations, Inc., Wyndham Hotels and Resorts, LLC &

Does 1-10 (Superior Court of the State of California, County of Santa Cruz (RG 12639589)). On July 17, 2012, a purported class action complaint was filed against Wyndham International, Inc., Wyndham Worldwide Operations, Inc., and Wyndham Hotels and Resorts, LLC (the “Wyndham Entities”), alleging that Defendants surreptitiously recorded, monitored, or eavesdropped upon telephone conversations with consumers. Specifically, Plaintiff asserts two causes of action, alleging the defendants violated California's Invasion of Privacy Act (California Penal Code Section 630 et seq.) when it allegedly recorded one or more calls plaintiff made to the Wyndham Rewards toll-free number through which reservations can be made for Wyndham hotels and to the Wyndham central reservations call center, without disclosing to plaintiff the conversations would be recorded, monitored, or eavesdropped upon. Plaintiff purports to bring the complaint on behalf of herself and all California residents who participated in one or more telephone conversations with the toll-free reservation numbers from a cellular, cordless, or hardwired landline telephone located in California and whose calls were recorded, monitored and/or eavesdropped upon by the Wyndham Entities surreptitiously or without disclosure. The Wyndham Entities were served on August 31, 2012, and removed the case to the United States District Court, Northern District of California. On May 15, 2013, the Court entered an order whereby Plaintiff's claims were voluntarily dismissed as to defendants Wyndham International, Inc. and Wyndham Worldwide Operations, Inc., leaving Wyndham Hotels and Resorts, LLC as defendant. Plaintiff filed her motion for class certification on April 27, 2015. Defendant's opposition to the motion for class certification was filed on June 19, 2015. The parties reached a settlement before the class certification motion hearing took place, which had been scheduled for September 1, 2015, and thereafter executed a settlement agreement. The Court granted final approval of the settlement and entered an order on the same, dismissing the lawsuit, on October 27, 2016.

Loren Stone v. Howard Johnson International, Inc. & Does 1-10 (United States District Court for the Central District of California (Los Angeles), CV. 12 1684). On February 28, 2012, a purported class action complaint was filed against Howard Johnson International, Inc. and several fictitious defendants, alleging that defendants surreptitiously recorded telephone conversations with consumers. Specifically, plaintiff asserted three causes of action, alleging defendants (i) violated California's Invasion of Privacy Act (California Penal Code Section 630 et seq.); (ii) violated the common law right to privacy; and (iii) acted negligently. Plaintiff purported to bring the complaint on behalf of himself and “all other California residents whose telephone conversations were surreptitiously recorded by defendants between July 13, 2006 and the present.” Plaintiff amended his complaint to add Wyndham Hotel Group on May 10, 2013. The parties reached a settlement and executed a written settlement agreement with Wyndham Hotel Group, LLC denying any allegations of liability or wrongdoing and paying \$1,500,000.00 into an account administered by the Claims Administrator. The court approved the settlement and the case was dismissed on November 30, 2015.

FTC v. Wyndham Worldwide Corporation, et al. (United States District Court for the District of New Jersey, Case No. 13-cv-1887 (ES)(JAD)). On June 26, 2012, the U.S. Federal Trade Commission (“FTC”) filed a lawsuit in Federal District Court for the District of Arizona against Wyndham Worldwide, Wyndham Hotel Group, Wyndham Hotels and Resorts, LLC and Wyndham Hotel Management, Inc. (the “Wyndham Entities”), alleging unfairness and deception-



based violations of Section 5 of the FTC Act in connection with three prior cyberattacks involving a group of hotels operating under the Wyndham trade name. The parties settled the case by executing a Stipulated Order for Injunction, which does not hold the Wyndham Entities liable for any violations, nor require it to pay any monetary relief. The Court entered the Order and dismissed the case with prejudice on December 11, 2015.

FFC Capital Corporation v. Wyndham Hotel Group, LLC (Court of Common Pleas of Allegheny County, Pennsylvania) (G.D. No. 14-003150). This lawsuit was filed on February 28, 2014, in Pennsylvania State Court, Allegheny County. FFC Capital Corporation (“FFC”) and Wyndham Hotel Group entered into a letter agreement on February 8, 2008 (the “Letter Agreement”) as to proposed acquisitions by affiliates of FFC of twenty-two Wyndham Hotel Group-branded hotels. The twenty-two hotels filed for voluntary bankruptcy in 2010. FFC sued for breach of contract under the Letter Agreement, arguing that Wyndham Hotel Group failed to pay service fees allegedly owed as to transfers of twenty-one of the twenty-two hotels. The parties entered into a settlement agreement on January 22, 2015, as part of which Wyndham Hotel Group made no admission of liability and paid FFC \$260,000 and the case was dismissed.

**Litigation Against Franchisees Commenced in the Past Fiscal Year:**

**Litigation Against Current Franchisees for Breach of Contract:**

Case Name	Date Complaint Filed	Court	Docket Number
HAWTHORN SUITES FRANCHISING, INC., WYNDHAM HOTEL GROUP, LLC, and WYNDHAM HOTELS & RESORTS, INC. v. TASACOM REAL ESTATE LLC d/b/a HAWTHORN SUITES DALLAS LOVE FIELD, SANJEEV JAIN, MOHAMMAD SADIQ NOSHABI, MMAROOFUL CHOUDHURY, and KANTI GAJERA	9/6/2023	United States District Court for the District of New Jersey	2:23- CV-16786

Other than the above actions, no litigation needs to be disclosed in this Item.

**ITEM 4. BANKRUPTCY**

No bankruptcy information is required to be disclosed in this Item.

**ITEM 5. INITIAL FEES**

**Application and Initial Fees**

All prospective franchisees must complete an application for a Hawthorn franchise (a “Franchise Application”) and forward it to us for our review. A copy of the Franchise Application appears at the end of Exhibit C-1. You must pay us a \$2,500 “Application Fee” when you submit your Franchise Application. It is non-refundable unless your application is not accepted due to proximity of the proposed site to another Chain Facility. You must pay an “Initial Fee” to us when

you sign the Franchise Agreement. The Initial Fee for a new construction or conversion Chain Facility is equal to the greater of \$40,000 or \$400 per room. For a proposed Dual Brand Operation, you must pay a separate Application Fee and Initial Fee for the Hawthorn Agreement and the La Quinta Agreement. If we approve your Franchise Application, the Application Fee will be credited towards your Initial Fee. We do not intend to refund any Initial Fee. If we defer payment of all or a portion of the Initial Fee, you will sign the “Initial Fee Note” found in Exhibit C-1. In 2023, Initial Fees ranged from \$13,500 to \$30,000.

The Initial Fee paid by franchisees of new construction and conversion facilities covers, in part, certain onboarding services, including:

Integration Services – Our quality team will perform an initial inspection of your property and integration visit and our field team will provide initial training on and assistance with facility operations topics including Systems Standards and using the Chain’s intranet site. We will also provide training through various online courses on subjects such as quality assurance, housekeeping, preventative maintenance, customer service and the RFP process. The value of these Integration Services is \$5,000.

Transferees of existing Chain Facilities and franchisees renewing their franchises must pay an Application Fee, as well as a “Relicense Fee” (instead of an Initial Fee), which is equal to the greater of \$40,000 or \$400 per room. For a Dual Branded Operation, you must pay a separate Application Fee and Relicense Fee for the Hawthorn Agreement and the La Quinta Agreement, if the Facility is to remain dual-branded. We may negotiate a lower Relicense Fee with you for a subsequent transfer or a renewal at the time the parties sign the original, transfer or renewal Franchise Agreement, when business circumstances warrant. Relicense Fees are not refundable.

The Relicense Fee for all franchise transfers in 2023 was \$25,000. Excluded from this range were any Administrative Assignments and any transfer franchises in which the transferor had previously negotiated a reduced Relicense Fee in their original Franchise Agreement with us. Also excluded were temporary operating agreements entered into with financial institutions and agreements entered into with receivers. There were no franchise renewals in 2023.

If you assign the Franchise Agreement, with our consent, to an entity affiliated with the initial franchisee using the Assignment and Assumption Agreement included in Exhibit C-1 (an “Administrative Assignment”), we will charge you a flat non-refundable Administrative Relicense Fee of \$5,000, which includes your Application Fee. If the Franchise Agreement is being assigned to a financial institution or a court-appointed receiver, with our consent, the non-refundable Administrative Relicense Fee is \$7,500, and includes the Application Fee. For a Dual Branded Operation, you may be required to pay a separate administrative Relicense Fee for the Hawthorn Agreement and the La Quinta Agreement for an Administrative Assignment

We may negotiate the amount, payment terms and payment of any of the above fees when business circumstances warrant.

### **Mandatory Support Services and Fees**

Franchisees purchasing new construction or conversion facilities must participate in the following required programs:

General Manager Certification – We will provide training for your general manager in our Hospitality Management Program. The fee for this mandatory training program is \$2,250, which will be billed within 90 days following the Opening Date of the Facility. Your general manager must successfully complete this training program before you open a new construction facility or, for a conversion facility, within 90 days after the Opening Date. If your initial general manager does not complete the Hospitality Management Program within the required time period, you must also pay the tuition then in effect at the time your general manager completes the program. This training may be offered in i) a hybrid, in-person and virtual format or ii) a virtual-only format.

Opening Training – We will provide opening training for your staff. This training is conducted on site at your Facility anywhere from two weeks prior to, or up to 30 days after, the Facility's Opening Date. The duration and fee for this training is dependent on the size of your Facility as follows: \$750 for 0-50 rooms (1 day), \$2,250 for 51-200 rooms (up to 3 days) and \$3,750 for 200+ rooms (up to 5 days), plus travel, lodging and meal expenses of the facilitator. For a Dual Brand Operation, we may supplement, amend or otherwise modify the Opening Training and General Manager Training (including the cost) to take into account the nature of the Dual Brand Operation.

Continuing Education – We will provide a comprehensive curriculum of hotel operations training. The cost of ongoing learning and development support for your entire hotel team is \$1,200 per year. This fee includes (i) the tuition for two regional workshops, (ii) access to Wyndham University, WHR's learning management system, for your entire hotel team and (iii) service culture support and training materials. For a Dual Brand Operation, you will only be required to pay one Continuing Education fee for access for all of the Facility's team members.

Digital Photographs – We will arrange for digital photographs to be taken of the Facility by our preferred professional photography company for use on our consumer website, third party travel websites, and various marketing media. The fee for the standard photo package is \$2,750. Third party channels may require rooms with certain attributes to be photographed. To meet those requirements, additional photos may be purchased at a cost of \$225 for each additional room type.

In addition to the above, franchisees of conversion facilities must also purchase the items below from us or our affiliate:

Initial Property Supplies – We will arrange for delivery of an initial supply of key property supplies that assist the Facility with meeting System Standards and/or participating in key marketing initiatives as reasonably determined by us. The fee for your initial supplies is \$500.

Temporary Signage – If we allow you to open the Facility before installing permanent signage, we will arrange for one of our approved suppliers to provide temporary signage

for the Facility in the form of a Mark-bearing bag to cover your primary free-standing exterior sign. The fee for temporary signage is \$1,000. However, if you install permanent signage from an Approved Supplier on or before the Opening Date, or if within 30 days of executing your Franchise Agreement you sign a quote for and pay the required deposit for permanent signage from the vendor assigned to provide temporary signage for the Facility, you will not be charged this fee.

All franchisees, including those of transfer facilities and those renewing their franchises, are required to participate in Continuing Education, to send their initial general manager to our Hospitality Management Program, and to pay the fee for such programs, as described above. However, renewal franchisees may be exempt from our Hospitality Management Program, provided their general manager has completed the training within the last eight years. For a Dual Brand Operation, the General Manager Training must be completed by only one initial general manager who has authority over the entire Facility.

### **Property Management Systems**

You must procure computer hardware and a software license so that the Facility can communicate with the Central Reservation System. We have approved a property management system (“PMS”) under our technology standard, which is provided by a third party through contract with us: the OPERA<sup>®</sup> system from Oracle Hospitality (“Oracle”). You must sign the Master Information Technology Agreement (“MITA”) with us along with the applicable PMS Schedule. The PMS Schedule will include any required or optional services and fees, including monthly support, services and interface fees paid after opening. See Exhibit C-2. The hardware for the PMS may be purchased from any source so long as it meets our technology standards and minimum technical requirements. See Item 11 for a description of the approved PMS. For a Dual Brand Operation, you may be required to procure the SynXis Property Management System or other approved PMS as described in the La Quinta FDD. Depending on the needs of your Dual Brand Operation you may be required to pay separate PMS Setup and Ongoing Support Fees pursuant to separate PMS Agreements for each of the Hawthorn Facility and the La Quinta Facility.

You will subscribe to OPERA PMS and you must pay a one-time non-refundable Set-Up and Implementation Fee of \$18,825 plus additional amounts for interfaces that may be required. This fee includes on-site deployment, installation, and training and must be paid at least 30 days before the Opening Date of the Facility. You will be required to subscribe to any future OPERA upgrade when it becomes available, which may include additional or different services and fees, and you may be required to execute a new OPERA Schedule to the MITA, or amend your current OPERA Schedule. (Exhibit C-2)

If you purchase an existing Chain Facility with a PMS, we may require you to upgrade it or purchase a new PMS to meet our current configuration requirements, at your cost. If no upgrade is needed, and you purchase an existing Chain Facility with a PMS, you must pay a \$3,900 transfer fee for the OPERA PMS plus possible additional fees for changes in the number of guest rooms in the Facility and changes to the number of interfaces the OPERA PMS uses.

If you are a transferee of a Chain Facility with a current PMS that meets our technology standards, we offer optional PMS recertification training for your Facility remotely at a fixed cost of \$500.

You may also request additional OPERA PMS training at a cost of up to \$10,000 for up to seven trainer days depending upon the number of staff that need to be trained and whether the training is conducted on-site or remotely. You are responsible for travel and lodging expenses for our trainer(s) if the training is provided at the Facility.

Set up of PMS systems and their associated ongoing fees are non-refundable.

**Design and Project Review Services**

We will provide you with an interior design prototype for the construction, renovation or furnishing of the Facility.

Franchisees of conversion and new construction facilities must complete pre-opening improvements or construction of the Facility by the date specified in the Franchise Agreement. If we choose to grant an extension of any deadline, including the Facility’s Opening Date, you must pay us a non-refundable extension fee of \$10,000. The extension fee is due within 10 days of the Facility’s Opening Date. We may negotiate the amount, payment terms or charging of this fee with you when business circumstances warrant.

You can purchase furniture, fixtures, equipment and other supplies which you may need before opening the Facility through WSSI’s “Approved Supplier” programs. However, if you choose to purchase certain design elements from a supplier other than an Approved Supplier, we may charge you a non-refundable Custom Interior Design Review Fee, for our review of custom interior design drawings or of a model room and one site visit. You must submit to us your design drawings to ensure compliance with our interior design standards. The Custom Interior Design Review Fee is currently \$6,000, but is subject to increase in the future.

**ITEM 6. OTHER FEES**

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
<b>General Fees</b>			
Royalty Fees	5.5% of GRR. <sup>2</sup>	Monthly on the 3rd day of the next month.	Payable from Opening Date until the expiration or sooner termination of your Franchise Agreement.
Marketing/Reservation Contributions	2.5% of GRR.	As above.	Payable from Opening Date until the expiration or sooner termination of your Franchise Agreement. (See Item 11)

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
Taxes	Amount assessed by federal, state and local tax authorities.	When we invoice you.	Taxes based on Recurring Fees and basic charges, including sales, gross receipt, value added, use or similar taxes, but not on income tax (or any optional alternative to income tax) assessed against us.
<b>Design and Renovation Service Fees</b>			
Rooms Addition Fee	Currently, \$400 for each guest room added to the Facility.	When we approve the addition.	Fee will be the same as the then current Initial Fee per room when you request our approval to increase the number of guest rooms in the Facility.
Custom Interior Design Review Fee	Currently, \$6,000.	When we invoice you.	If you choose to purchase certain design elements from a supplier other than an Approved Supplier, we may assess a Custom Interior Design Review Fee for our review of custom interior design drawings and one site visit. You must submit to us design drawings to ensure compliance with our interior design standards.
Property Improvement Plan Preparation Fee	Currently, \$1,500 per request.	When we invoice you.	This fee is charged if we have to prepare a property improvement plan "PIP" for the Facility, post opening.
<b>Training and Conferences</b>			
General Manager Certification	Currently, \$2,250.	When we invoice you before training.	Your initial general manager must attend our Hospitality Management Program within 90 days of your Opening Date. <sup>3</sup> (See Item 11)  For Dual Brand Operation, only one initial general manager who has authority over the entire Facility must complete the Hospitality Management Program. (See Item 5)

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
General Manager Certification Additional Attendee Fee	Currently, \$1,400.	When we invoice you before training.	Additional employees of the hotel may accompany the general manager to the Hospitality Management Program, for an additional charge. (See Item 11)
On-Site Opening Training	0–50 rooms / 1 day training \$750 51–200 rooms / Up to 3 days training \$2,250 200+ rooms / Up to 5 days training \$3,750	When we invoice you.	This training is mandatory for new construction and conversion Facilities. You are responsible for cost of travel and lodging for facilitators. This fee is subject to increase in the future. (See Item 11)  For a Dual Brand Operation, we may supplement, amend or otherwise modify the Opening Training and General Manager Training (including the cost) to take into account the nature of the Dual Brand Operation. (See Items 5&11)
New Owner Orientation	Currently, no fee for first attendee and \$1,000 for each additional attendee.	When we invoice you, if you send an additional attendee.	This training may be held for owners who have not previously owned a Chain Facility or a Lodging Affiliate Chain Facility. <sup>3</sup> (See Item 11)  For a Dual Brand Operation, this training is mandatory. No additional facilitator travel and lodging expenses. (See Item 11)
Remedial Training	Online: up to \$250. On-site: \$750 to \$1,250.	When we invoice you.	We may require you, the general manager and/or a staff member to participate in a remedial customer experience assessment or training. (See Item 11)
Product Quality Training	On-site: \$1,500 for 1 day; up to \$3,000 for 2 to 5 days; and up to \$5,000 for 6 to 10 days.	When we invoice you.	For additional and/or repeated instances of cleanliness or service failures, we reserve the right to require additional training. You are responsible for cost of travel and lodging for facilitators. (See Item 11)

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
Continuing Education	Currently, \$1,200 per year.	When we invoice you.	<p>You must pay for access to our Continuing Education training material. It includes training support and materials provided to all Facility team members. It includes regional workshops, service culture support materials and access to Wyndham University. This fee is subject to increase in the future. (See Item 11)</p> <p>For a Dual Brand Operation, you will only be required to pay one Continuing Education fee for access for all of the Facility's team members.</p>
Chain Conference Fee	Currently \$1,500 - \$1,800.	Before Conference when we invoice you.	<p>The Chain Conference Fee is currently \$1,800 for the first attendee and \$1,500 for each additional attendee. The Conference may be held as part of a multi-brand conference with other Lodging Affiliates. We will automatically bill and charge you the Conference Fee even if you do not attend. (See Item 11)</p> <p>For a Dual Brand Operation, provided that both brands hold their Chain Conference simultaneously at the same location, only one Chain Conference Fee will be charged for your first attendee. Additional Chain Conference Fees will be charged for each additional attendee.</p>
Job Posting Fee	Currently, \$100 per posting for a 30-day placement.	When we invoice you.	We offer an optional job-posting opportunity for franchisees to recruit for openings at your Facility on a central platform with other Chain Facilities and Wyndham-branded hotels. We



Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
			may offer bundled packages that include multiple postings and extended placement.
<b>Sales, Marketing and Distribution Programs</b>			
GDS Fees	\$2.00 per reservation.	When we invoice you.	GDS Fees are based on reservations booked through the Global Distribution Systems (“GDS”) administered by third-party vendors. Subject to modification to reflect changes in third party fees and our costs (including overhead) of providing the service, and new service offerings.
Third Party Channel Fee	\$2.00 per reservation.	When we invoice you.	Based on those reservations booked with our distribution partners and processed directly or indirectly through our distribution platform. Subject to modification as existing reservation channels are modified, partners are added to existing channels or new reservation channels are established.
Internet Booking Fees	\$2.00 per reservation.	When we invoice you.	Internet Booking Fees are based on reservations booked through an alternate distribution system. Subject to modification to reflect changes in third party fees and our cost (including overhead) of providing the service, and new service offerings.
Agency Commissions	Up to 20% of GRR.	When we or an Agency invoice you.	Reimburses us for Agency Commissions we pay on your behalf plus related administrative costs. Includes commissions for travel agents, online travel and referral websites, travel consortia, travel management companies and global sales agents. 20% limit is generated on qualifying consumed

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
			reservations and subject to modification to reflect changes in the commissions we pay on your behalf.
Agency Commission Service Charge	1.5% of commissionable revenue.	When we or an Agency invoice you.	The standard Service Charge is 1.5% on certain group sales and commission activities booked and consumed by agencies. Subject to modification to reflect changes in our costs.
Member Benefits Commissions	Up to 10% of GRR.	When we invoice you.	Based on reservations booked and consumed through our Member Benefits Program.
Member Benefits Commission Service Charge	1.5% of commissionable revenue.	When we invoice you.	The standard Service Charge is 1.5% on certain group sales and commission activities booked and consumed through member benefits programs. Subject to modification to reflect changes in our costs.
Digital Pay-For-Performance (“PFP”) Commission	Up to 10% of GRR.	When we invoice you.	The PFP commission is currently 7% but can be up to 10%. All Chain Facilities must participate in the self-funding PFP program, under which franchisees are charged a commission for consumed reservations booked via (i) links to the Chain website or (ii) unique call center numbers generated from search engines, local business review and social websites, other internet websites, mobile sites and applications. These commissions are used to purchase the key words, business listings and display ads that drive consumers to the Chain website and call center. The PFP commission is in addition to all other applicable fees associated with the reservation.
Everyone Sells Group	10% of	When we	When the referring party is a

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
Referrals Program	commissionable revenue.	invoice you.	Chain Facility or facility of an affiliate, 7% of the referral commission paid to the referring facility; when the referring party is an employee of our parent company or its predecessor, 6% of the referral commission paid to the employee. The remaining 3% and 4%, as applicable, is distributed to our Global Sales Organization to offset its administrative and overhead costs for supporting the Everyone Sells Group Referrals Program.
Cooperative Marketing & Sales	If established, \$1.00 per room per month up to a maximum of \$200 per month and 2,400 per year.	When we invoice you.	We currently have no supplemental cooperative marketing and sales program but may establish one in the future. (See Item 11)
Global Translation Fee	Currently, \$200 per language.	When we invoice you.	Your property's website will be translated in both English and Spanish. If you wish to have another translation, you will pay a fee for each additional language.
Signature Reservation Service Fee	Currently, 3.5% of the amount of GRR booked.	When we invoice you.	As part of our Signature Reservation Service ("SRS"), certain consumers seeking to make a reservation at your Facility or any other Wyndham-branded facility enrolled in SRS are directed automatically to our professionally trained agents to book their reservation. You are required to participate in the SRS program. (See Item 11)
Standard Revenue Management Services	Currently, 0.75% of GRR with a minimum of \$645 and maximum of \$1,395 per month.	As indicated on the invoice or, if not indicated, 15 days after receipt.	You are required to participate in our Standard Revenue Management bi-weekly service, at a minimum. Alternatively, you may satisfy this requirement by meeting certain criteria we establish

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
			from time to time in System Standards. (See Item 11)
Premium Revenue Management Services Fee	Currently, 1.00% of GRR with a minimum of \$1,450 and maximum of \$2,450 per month.	As indicated on the invoice or, if not indicated, 15 days after receipt.	Premium Revenue Management is a weekly service. Your Facility will be assessed to determine the most suitable Revenue Management Services based on a variety of factors including market, room count and occupancy rate. (See Item 11)
Remote Sales Service	\$1,400 per month.	When we invoice you.	You are required to participate in our Remote Sales Service. Alternatively, you may satisfy this requirement by meeting certain criteria we establish from time to time in System Standards. (See Item 11)
Groups360 Booking Fee	Currently, 6% of GRR booked via the Groups360 platform.	When we invoice you.	Groups360 is a group booking platform that allows guests to make group bookings directly at your Facility. Participation is currently optional but may be mandatory in the future. Of the 6% fee, a portion is remitted to Groups360 and a portion is retained by us.
<b>Guest Loyalty and Satisfaction Fees</b>			
Loyalty Program Charge <sup>4</sup>	4.25% - 5.5% of all amounts on which members earn points or other program currency.	Payable after a member is awarded points at the Facility and upon receipt of our invoice.	The amount of your Loyalty Program Charge may vary within the stated range based on the number of Wyndham Rewards Valid Enrollments obtained by your Facility during a defined measurement period, as described in the Front Desk Guide.  Loyalty Program Fees fund the costs associated with operation, customer support, technology and marketing of the Wyndham Rewards guest loyalty programs.
Loyalty Missed Valid Enrollment Fee	Up to \$1,200 per calendar quarter (or	Payable upon receipt of our	If your Facility repeatedly fails to achieve a required

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
	\$400 per month). Currently, \$750 per calendar quarter (or \$250 per month).	invoice	number of Wyndham Rewards Valid Enrollments during a defined measurement period, as described in the Front Desk Guide, you must pay us a Missed Valid Enrollment Fee.
Loyalty Member Services Administration Fee	Currently, \$50 per complaint.	Payable upon receipt of our invoice.	You must pay this fee if you do not process a member's points in a timely manner and we resolve the issue with the member.
Customer Care Program	Resolution costs.	When we invoice you.	You must pay the resolution costs if you do not reach out to resolve a guest's complaint within the required time frame (we establish (currently 72 hours after we notify you). Complaints may arise from a guest contacting us or if we become aware of complaints posted on third-party travel websites, distribution channels, blogs, social networks and other forums. We can modify the Customer Care Program from time to time including its operation and fees.
Wyndham Response Service	Currently, \$0 - \$15 per response.	Monthly when we invoice you.	We will respond to certain guest surveys and reviews of the Facility on your behalf. Depending on the Facility's guest satisfaction score, you will pay a fee of up to \$15 for each survey or review to which we respond.
Best Rate Guarantee Processing Fee	Currently \$195 per instance.	When we invoice you.	You must pay us the Best Rate Guarantee Processing Fee if we, or a guest, finds a lower publicly available rate on the Internet than you have provided to us, for the same date at your Facility. We reserve the right to monitor your rates, and continued non-compliance may also result in

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
			suspension from certain Marketing programs.
<b>Property Management and Technology</b>			
OPERA PMS Cloud Model Set-Up and Implementation Fee	Currently \$18,825 plus interface costs (\$525 – \$3,050).	Due at least 30 days before the Opening Date.	<p>This fee is for facilities using an OPERA Cloud-based PMS and includes on site deployment, installation, and training and certain interfaces. You must pay \$750 for the required interface to our approved automated revenue and rate management system. Other optional interfaces range from \$525 to \$3,050. (See Item 11).</p> <p>For a Dual Brand Operation, you may be required to procure the SynXis Property Management System or other approved PMS as described in the La Quinta FDD. Depending on the needs of your Dual Brand Operation you may be required to pay separate PMS Setup and Ongoing Support Fees pursuant to separate PMS Agreements for each of the Hawthorn Facility and the La Quinta Facility.</p>
PMS Monthly Support and Service Fee	Currently, \$699-\$1,000 per month.	When we invoice you.	<p>This fee is for facilities using the Standard level of the OPERA Cloud-based PMS. It includes monthly support, HTCS and CRISP services, standard service level of an automated revenue and rate management solution, and certain interfaces, including OTA Insights, mobile tipping, and mobile check-in / check-out. We also provide first-level support for the Facility's</p>

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
			<p>Wyndham-provided email account. The amount of the fee depends on the number of guest rooms at your Facility. (See Item 11)</p> <p>For a Dual Brand Operation, you may be required to procure the SynXis Property Management System or other approved PMS as described in the La Quinta FDD. Depending on the needs of your Dual Brand Operation you may be required to pay separate PMS Setup and Ongoing Support Fees pursuant to separate PMS Agreements for each of the Hawthorn Facility and the La Quinta Facility.</p>
Premium Automated Revenue and Rate Management Fees (RevIQ)	Currently, \$28 per month.	Monthly when we invoice you.	Currently, your PMS Monthly Support and Service Fee includes a standard service level of an automated revenue and rate management solution. We offer, as an option and for a fee, a premium service level. (See Item 11)
Mobile Operations Program (“MOP”)	Currently, \$0.60 per guestroom per month.	Monthly when we invoice you.	MOP is a mobile device-based system for managing housekeeping and maintenance functions at your Facility. This program is currently optional, but we may mandate in the future. The setup fee is included in the OPERA PMS Setup Fee. (See Item 11)
Emergency Safety Device (“ESD”)	Currently, \$35 per month	Monthly when we invoice you.	This fee is for MOP users only. This optional feature of the MOP system provides panic button functionality for your hotel staff on MOP-enabled mobile devices.
Preventative	Currently, up to \$1,500	When we	If you require assistance

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
Maintenance Software	per year.	invoice you.	tracking your preventative maintenance needs, as measured by your Facility (i) scoring 80% or lower (or its then equivalent) on a quality assurance inspection or (ii) receiving an average Medallia overall score for the preceding 12 month period less than 6.0 (or its then equivalent score), we will require you to subscribe to a preventative maintenance software service, including a mobile application, provided by a third party to help you manage your housekeeping and maintenance processes. We may offer as an option or, in the future, mandate a software service program and provider. (See Item 11)
Wyndham WIFI® Hotel Connectivity Solutions® Support (HCS)Fee	Currently, \$0.85 per room per month.	Monthly, when we invoice you.	If you choose to utilize Wyndham WIFI, you will pay the HCS Support fee to us. Equipment and installation of the WIFI solution is contracted and paid to a designated third-party vendor. (See Item 11)
<b>Remedies, Non-Compliance and Other</b>			
Extension Fee	\$10,000.	Within 10 days of Opening Date.	Payable any time we agree to extend your opening deadlines beyond those dates established in Schedule D of the Franchise Agreement.
Interest	Lesser of 1.5% per month or the maximum rate permitted by law.	When we invoice you.	Payable on any amount of Recurring Fees not paid by due date.
Returned Check Fee	Currently, \$100 for each occurrence.	When we incur or demand costs.	Includes checks you submit to us that are dishonored by your bank or other financial institution.
Paper Check Fee	\$160 processing fee per each occurrence.	When we invoice you.	See footnote 1 below.



Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
Reconnection Fee	Currently, \$4,000.	When we invoice you.	You must pay this fee to re-establish Central Reservation System service if we suspend the service because of your default under your Franchise Agreement or for any reason.
Audit Fee	Costs and expenses of audit.	When we invoice you.	If understated amount is 3% or more of total amount owed during a 6-month period.
Reinspection Fee and Costs	Currently, \$2,500 for the first failure, \$3,000 for the second failure, and \$3,500 for the third and any additional failures.	When we invoice you.	<p>You must pay our current Reinspection Fee for each reinspection we must conduct as a result of the Facility failing any required quality or improvement inspection. We may increase the Reinspection Fee in the future. We may also charge you for the travel, lodging and meal expenses of the quality assurance inspectors on reinspections.</p> <p>For a Dual Brand Operation, we, or an affiliate, shall conduct a combined Quality Assurance inspection for the Hawthorn and the La Quinta. If applicable, only one Quality Assurance reinspection Fee will be charged.</p>
Three Party Agreement / Comfort Letter Fee	Currently, \$1,000 per request.	When we invoice you.	The Three Party Agreement / Comfort Letter is a document issued by us in our sole discretion that grants your lender certain rights under the franchise agreement.
Indemnification Costs	Cost of defending and resolving indemnified claims.	When we incur or demand costs.	Franchise Agreement specifies when you indemnify us and our affiliates for “Losses and Expenses” incurred to defend third party claims and suits.
Dispute Resolution	If we prevail in litigation or we are subpoenaed in one of your legal proceedings involving the Facility.	As incurred or as dictated by the court.	Non-prevailing party reimburses prevailing party for litigation expenses to enforce the Franchise Agreement or collect amounts owed.

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
Condemnation Payments <sup>5</sup>	Recurring Fees for one year after notice of condemnation or to the date of condemnation, whichever is longer.	30 days after Facility condemnation is completed.	<p>You must give one year's notice of termination for condemnation. Fee payments continue until the Facility is actually taken by public authority.</p> <p>For a Dual Brand Operation, for the purposes of determining whether the Facility has suffered a Casualty, the percentage of guest rooms available shall be measured by the total number of rooms across both the Hawthorn Facility and the La Quinta Facility.</p>
Liquidated Damages	Greater of \$3,000 per guest room, or the average monthly Recurring Fees owed for the 12 months preceding termination, multiplied by 36. If there are fewer than 36 months remaining in the unexpired Term at the date of termination, then Liquidated Damages shall be an amount equal to the average monthly Recurring Fees owed for the 12 months preceding Termination, multiplied by the number of months remaining in the unexpired Term.	Within 10 days from date of termination.	<p>Room count is based on rooms we authorize you to open, regardless of any room reductions. For pre-opening termination, reduced to one-half of formula amount. If the Facility has been open for fewer than 12 months, then the amount will be the average monthly Recurring Fees since the Opening Date multiplied by 36. Payable for termination under causes specified in the Franchise Agreement.</p> <p>For a Dual Brand Operation, in the event that the Hawthorn Agreement and the La Quinta Agreement terminate simultaneously, then the \$250,000 minimum described in the La Quinta Agreement shall not apply and the minimum amount of Liquidated Damages owed shall be calculated in accordance with each Agreement on a per room basis.</p>

Name of Fee	Amount	Due Date	Remarks <sup>1</sup>
De-Identification Fee <sup>6</sup>	\$2,000 per day.	Upon demand.	An additional fee if you fail to comply with our de-identification procedures.

<sup>1</sup> Unless otherwise indicated, all fees are (i) imposed and collected by us, (ii) payable to us, (iii) non-refundable, and (iv) uniformly imposed. We may reserve the right to increase, modify, or change certain fees in the future as provided for in the Franchise Agreement. For a Dual Brand Operation, unless otherwise noted, you must pay the applicable fees as described in each of the Hawthorn Agreement and the La Quinta Agreement. We require you to pay all Recurring Fees and other fees and charges online via our self-service, electronic invoice presentation and payment tool, accessible through a centralized online platform, or through other technologies or other means as we may establish. In the online environment, payments can be made either by the electronic check payment channel or the credit card payment channel. We reserve the right to impose limits on the use of the credit card payment channel, and to charge additional processing fees for such use. If you submit payment for any fee using a paper check, you will incur a \$160 processing fee per each occurrence. Recurring Fees include the Royalty and Marketing/Reservation Contributions. We may negotiate increases or decreases for a particular transaction at the time the Franchise Agreement is signed for any fee listed above when business circumstances warrant. See Item 17.

<sup>2</sup> “GRR” or “Gross Room Revenues” means gross revenues attributable to or payable for rentals of guest (sleeping) rooms at the Facility, including all credit transactions, whether or not collected, guaranteed no-show revenue, net of chargebacks from credit card issuers, any proceeds from any business interruption or similar insurance applicable to the loss of revenues due to the non-availability of guest rooms and any miscellaneous fees charged to all guests regardless of the accounting treatment of these fees. Excluded from GRR are separate charges to guests for Food and Beverage (including room service); actual telephone charges for calls made from a guest room; key forfeitures and entertainment (including Internet fees and commissions); vending machine receipts; and federal, state and local sales, occupancy and use taxes.

<sup>3</sup> Depending on the circumstances, we may charge you a No-Show Fee of between 50% and 100% of the cost of the training that you or your personnel miss.

<sup>4</sup> We have the right to require all Chain Facilities to participate in the Wyndham Rewards® guest loyalty program, which is operated by our affiliate Wyndham Rewards, Inc. Under the Wyndham Rewards program, members can earn Wyndham Rewards points or Travel Partner Currency based on amounts spent at participating Chain Facilities as well as at participating Lodging Affiliate hotels or select affiliated properties, through purchases from non-affiliated merchants and service providers, or by making purchases with a Wyndham Rewards co-branded credit card. Members can redeem their Wyndham Rewards points for free or discounted night stays at Chain Facilities and Lodging Affiliate hotels, or select affiliated properties, for airline tickets, shopping and dining gift cards, merchandise and other rewards. Membership in Wyndham Rewards is free. All callers whose calls are received by our toll-free reservation center and all visitors to our consumer website will be offered the option to join Wyndham Rewards. You must also offer to enroll guests at your front desk, and are subject to an enrollment quota which Wyndham Rewards, Inc. may change, from time to time, for Chain Facilities, as reflected in the Front Desk Guide. All franchisees will be assessed Loyalty Program Fees, as applicable, on Wyndham Rewards member stays at their Facility. Stays for which members earn Wyndham Rewards points are defined in the Front Desk Guide, as may be amended. Certain member stays may not qualify for Wyndham Rewards point earnings. We will proactively match and award points to members even if they fail to present their membership number before check-out. We will reimburse you for free night stays at your Facility under a formula which is listed in the Front Desk Guide, which may be amended. Wyndham Rewards, Inc. has reserved the right to modify, alter, delete or add new terms or conditions, procedures, point values, redemption levels or rewards for the Wyndham Rewards program upon thirty (30) days’ notice. Wyndham Rewards, Inc. may terminate the program at any time upon six months’ prior notice.

<sup>5</sup> If a condemnation taking occurs less than one year after notice to us, you pay the average daily Royalties and Marketing and Reservation Contributions payable over the one-year period preceding the date of your condemnation notice to us multiplied by the number of days remaining in the one-year notice period. We may reduce the required notice period when business circumstances warrant.

<sup>6</sup> If you fail to comply with all of the de-identification provisions of the Franchise Agreement, you agree to: (i) pay a de-identification fee of \$2,000 per day until de-identification is completed to our satisfaction; and (ii) permit our representative to enter the Facility to complete the de-identification process at your expense.

## ITEM 7. ESTIMATED INITIAL INVESTMENT

**YOUR ESTIMATED INITIAL INVESTMENT  
FOR A 96 ROOM NEW CONSTRUCTION FACILITY**

Type of Expenditure	Amount <sup>1</sup>		Method of Payment	When Due	To Whom Payment is to be Made
Initial Fee (inclusive of Application Fee) <sup>1</sup>	\$40,000	\$40,000	Lump Sum	\$2,500 with Application, balance due at signing of Franchise Agreement.	Us
Photos <sup>2</sup>	\$2,750	\$5,000	As Incurred	Before Opening	Us, Wyndham Hotel Group
Training Tuition <sup>3</sup>	\$5,700	\$7,100	As Incurred	Before Opening	Us, Wyndham Hotel Group
Training Expenses <sup>4</sup>	\$2,700	\$4,450	As Incurred	Before Opening	Facility, Restaurants, Airlines, Car Rental Agency, General Managers, Travel provider
Market Study <sup>5</sup>	\$5,000	\$12,000	Lump Sum	Before Construction	Feasibility Consultant
Real Estate and Site Preparation <sup>6</sup>	N/A	N/A	N/A	N/A	N/A
Architecture, Design and Engineering, Phase I Environmental, Permits, Licenses, Deposits and Related Fees <sup>7</sup>	\$431,000	\$745,000	As Incurred	Before Opening	Architects, Engineers, Consultants, Government Agencies, Suppliers, Utility Companies, and other Professionals
Facility Construction <sup>8</sup>	\$9,530,220	\$10,517,115	As Incurred	Before Opening	Contractors, Subcontractors, Suppliers, and third-party Vendors
Construction Contingency <sup>9</sup>	\$476,511	\$525,856	As Incurred	As Arranged	Contractors, Subcontractors, Suppliers, and third-party Vendors
Technology Systems <sup>10</sup>	\$65,527	\$67,527	As Incurred	Before Opening	Computer Supplier, Professionals

<b>YOUR ESTIMATED INITIAL INVESTMENT FOR A 96 ROOM NEW CONSTRUCTION FACILITY</b>					
<b>Type of Expenditure</b>	<b>Amount <sup>1</sup></b>		<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Property Management Set-Up and Installation <sup>11</sup>	\$18,825	\$18,825	Lump Sum	Before Opening	Us, Affiliate
Furniture, Fixture and Equipment <sup>12</sup>	\$919,111	\$1,248,788	As Incurred	Before Opening	Vendors, Suppliers
Signage <sup>13</sup>	\$45,000	\$100,000	As Incurred	Before Opening	Vendors, Suppliers
Opening Inventory <sup>14</sup>	\$424,142	\$430,170	As Incurred	Before Opening	Vendors, Suppliers
Insurance <sup>15</sup>	\$15,000	\$30,000	Lump Sum	Before Opening	Insurance Carrier
Grand Opening Advertising <sup>16</sup>	\$20,000	\$45,000	As Incurred	Before Opening	Advertising Media, Agency, Printer, Photographer
Pre-Opening Wages	\$78,512	\$140,341	As Incurred	Before Opening	Employees, Contractors
Miscellaneous Non-Tangible Asset Costs <sup>17</sup>	\$18,094	\$34,909	As Incurred	Before Opening	Suppliers, Professionals
Additional Funds for 3 Month Initial Period <sup>18</sup>	\$131,465	\$193,294	Monthly Payments for Recurring Fees, As Incurred for Other Expenses	After Opening	Us, Employees, Suppliers, Utilities
<b>Total Estimated Initial Investment <sup>19,20,21</sup></b>	<b>\$12,229,557</b>	<b>\$14,165,375</b>	<b>The table does not include the cost of purchasing or leasing real estate.</b>		
<b>Total Cost per Room</b>	<b>\$127,391</b>	<b>\$147,556</b>			

The above table provides an estimate of the initial investment required for a Chain Facility. These figures exclude the cost of land.

<sup>1</sup> See Item 5 for amount or formula of each fee. We may defer payment of the Initial Fee. See Item 10. All fees are non-refundable, but we will refund your Application Fee if your application is not accepted due to proximity of the proposed site to another Chain Facility.

<sup>2</sup> This is the fee for the required photos for your Facility. The low end of the range is the cost for the required photo package and the high end of the range assumes you will require additional photographs to meet certain third-party requirements.

<sup>3</sup> The low and high end of the range includes your Continuing Education Fee. It also includes the tuition for your general manager to attend the required Hospitality Management Program and the cost for up to three days of required Opening Training. The high end of the range presumes an additional representative will also attend and pay the tuition for our Hospitality Management Program.

<sup>4</sup> The low and high end of the range presumes that your general manager /owner will drive to our required Hospitality Management Program and incur minimal travel costs and mid-level T&E expense. It also includes facilitator T&E for up to three days of required Opening Training. The high end of the range presumes an additional representative will also attend our Hospitality Management Program and incur significant T&E costs, including airfare and car rental.

<sup>5</sup> We do not require a market or feasibility study. We strongly suggest that you obtain one from a reputable consultant to confirm your decision to construct a Chain Facility and to provide potential financing sources with independent information on prospects for the Facility. We reserve the right to obtain, or to require you to obtain at your expense, as a condition for receiving our approval of the site, a positive market feasibility study prepared by a nationally prominent independent accounting or consulting firm we approve.

<sup>6</sup> You may either purchase or lease the land on which the Facility will be built. You need approximately two to four acres for a 96 suite Facility. We are unable to estimate the cost of real property acquisition or leasing as it will vary substantially depending on the location, size, condition, and the market value of the property involved and also by general economic conditions. If you lease the land, the lease must extend for the term of the Franchise Agreement. Locations near an airport, convention center, major highway route, or another location providing easy access for a traveler are desirable.

<sup>7</sup> This range includes the costs for permit fees, utility deposits and related fees, environmental studies, architectural (and structural, mechanical, electrical and plumbing engineering) fees to adapt our prototypical plans and specifications to meet requirements and local code. This item does not include impact fees which may be assessed by local authorities or site evaluation fees, geotechnical report fees, or civil engineering fees. You should check with the applicable local authorities to determine if impact fees are assessed and, if so, how they are calculated and the amount to be charged to your Facility. Fees vary widely depending on your specific location and situation.

<sup>8</sup> This range includes general construction, minimal site work and landscaping. The cost of construction may vary substantially from location to location. The type of construction used, cost of materials, labor costs, local code requirements and other factors will affect the cost.

<sup>9</sup> This amount is calculated as 5% of Facility Construction costs.

<sup>10</sup> The amount presented includes costs associated with guest room and public area high speed Internet access, PBX/telephone system (including consoles and guest room and administrative telephones) and television system. The low range assumes you will procure all of the above and you purchase the base system equipment. The high end of the range assumes you will procure all of the above, and also assumes that you acquire top of the line equipment for which to operate the PMS.

<sup>11</sup> You must purchase, lease or otherwise acquire the computerized hospitality property management system/computer (“PMS”) that has been designated by us. This amount is for the Standard OPERA Cloud system with on-site installation. This amount does not include additional interface fees which may be required based on optional interfaces you may utilize at the Facility. See Item 11 for information about the PMS.

<sup>12</sup> Includes furniture, fixtures and equipment (“FF&E”) for all areas of the Facility including guest rooms and public areas. These items are typically driven by the decorative furnishings package. The estimate presumes that you will install our approved interior design package in all guest rooms and public areas. Items included in the interior design package for the guest room and public areas may include flooring surfaces and bases; artwork and mirrors; casegoods; bathroom fixtures such as vanity bases, counters and shower tile; decorative bedding; lighting; seating; soft and upholstered goods; wallcoverings; and window treatments. This range includes procurement service provider fees estimated at 11% to 17% of the total cost of the FF&E purchased. The figures above do not include tax, freight or installation, which should be confirmed prior to purchasing.

<sup>13</sup> Includes cost of materials and installation for one pylon/monument sign, and one wall mounted sign/channel letters. The low end of the range presumes that you will be able to utilize the existing column for your pylon sign. The upper end of the range presumes that you will need to install a new column. Your actual cost will depend on many variables including sign size, materials and height, distance signs must be shipped, local labor costs, and local ordinances. This cost does not include local taxes and permits.

<sup>14</sup> Operating supplies and equipment (“OS&E”) includes items required by System Standards such as mattresses/box springs, bed frames and bases, televisions, linens, logoed items, housekeeping supplies, guestroom and bathroom amenities/supplies, safes, cribs, luggage racks, interior signage, breakfast display equipment, floor mats, PPE, sundry shop items & equipment. The low end of the range assumes you will purchase the required OS&E to open in compliance with System Standards. The high end of the range assumes you have chosen to purchase optional/suggested items not required by System Standards, but which you might choose to purchase, such as additional linens, rollaway beds, guest laundry equipment, etc. The figures above do not include tax or freight. These costs should be confirmed prior to purchasing.

<sup>15</sup> You must maintain commercial general liability insurance with combined single limits per occurrence of \$1 million primary coverage and \$3 million excess liability umbrella coverage (\$4 million total) plus other required coverage. Insurance requirements are subject to change on a Chain-wide basis. This does not include your costs for property and casualty insurance, workers' compensation, employer's liability, disability and other insurance benefits for your employees.

<sup>16</sup> The range assumes that, at a minimum, you will engage in a three-month digital advertising campaign via a third-party company, plus some or all of the following additional marketing activities: pre-opening direct mail, pre-opening parties, billboards, etc.

<sup>17</sup> Includes attorneys' and accountants' fees, business license fees, bank fees, the cost of back-office accounting systems, and similar business startup expenses.

<sup>18</sup> This amount is an estimate and includes the Recurring Fees you will pay us after opening. It does not include debt service payments or rent. Our estimate is based on our experience and the experience of our Lodging Affiliates and their franchisees in operating similarly situated brands over the last two years. These expenses include labor costs. We do not guarantee that you will not have additional expenses starting the business.

<sup>19</sup> None of the fees and costs payable to us in the above table is refundable. Fees and costs payable to suppliers and other third parties above generally are not refundable unless you negotiate that directly with them. See Item 10 for a discussion of financing which might be available for portions of your initial investment in a Chain Facility.

<sup>20</sup> Estimated Initial Investment Onboarding Costs include Initial Fee (inclusive of Application Fee), Photos, and Training costs range from \$51,150 to \$56,550 Estimated Initial Investment Construction Costs including Market Study, Architecture, Design, Engineering, Environmental Studies, Permits, Licenses, Deposits and Related Fees, Facility Construction, and Construction Contingency range from \$10,442,731 to \$11,799,971. Estimated Initial Investment Technology Costs including Technology Systems and Property Management Set-Up and Installation range from \$84,352 to \$86,352. Estimated Initial Investment Equipment and Product Costs including Furniture, Fixtures, Equipment, Signage, Opening Inventory and Insurance range from \$1,403,253 to \$1,808,958. Estimated Initial Investment Costs including Grand Opening Advertising, Pre-Opening Wages, Miscellaneous Non-Tangible Asset Costs and Funds for 3 Month Initial Period range from \$248,071 to \$413,544.

<sup>21</sup> We also offer an opportunity to build a new construction Dual Brand Operation Facility. (See Item 1) After adjusting for the difference in construction, FF&E and other dual brand-specific costs, we estimate that the total Estimated Initial Investment for a Dual Brand Operation Facility is \$13,025,066 to \$16,469,274 or between \$126,457 to \$159,896 per room. These estimates are based on a 103-room prototype consisting of 73 La Quinta rooms and 30 Hawthorn rooms.

<b>YOUR ESTIMATED INITIAL INVESTMENT FOR A 100 ROOM CONVERSION FACILITY</b>					
<b>Type of Expenditure</b>	<b>Amount <sup>1</sup></b>		<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Initial Fee (inclusive of Application Fee) <sup>1</sup>	\$40,000	\$40,000	Lump Sum	\$2,500 with Application, balance at signing of Franchise Agreement	Us
Photos <sup>2</sup>	\$2,750	\$5,000	As Incurred	Before Opening	Us, Wyndham Hotel Group
Training Tuition <sup>3</sup>	\$5,700	\$7,100	As Incurred	Before Opening	Us, Wyndham Hotel Group

<b>YOUR ESTIMATED INITIAL INVESTMENT FOR A 100 ROOM CONVERSION FACILITY</b>					
<b>Type of Expenditure</b>	<b>Amount <sup>1</sup></b>		<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Training Expenses <sup>4</sup>	\$2,700	\$4,450	As Incurred	Before Opening	Facility, Restaurants, Airlines, Car Rental Agency, General Managers, Travel provider
Amenities and Temporary Signage <sup>5</sup>	\$0	\$0	As Incurred	Before Opening	Us, Wyndham Hotel Group
Market Study <sup>6</sup>	\$5,000	\$12,000	Lump Sum	Before construction	Feasibility Consultant
Architecture, Design and Engineering, Phase I Environmental, Permits, Licenses, Deposits and Related Fees <sup>7</sup>	\$0	\$206,000	As Incurred	Before Opening	Architects, Engineers, Consultants, Government Agencies, Suppliers, Utility Companies, and other Professionals
Facility Improvements <sup>8</sup>	\$0	\$3,958,100	As Incurred	Before Opening	Contractors, Subcontractors, Suppliers, and third-party Vendors
Conversion Contingency <sup>9</sup>	\$0	\$197,905	As Incurred	Before Opening	Contractors, Subcontractors, Suppliers, and third-party Vendors
Technology Systems <sup>10</sup>	\$0	\$70,132	As Incurred	Before Opening	Computer Supplier, Professionals
Property Management Set-Up and Installation <sup>11</sup>	\$18,825	\$18,825	Lump Sum	Before Opening	Us, Affiliate
Furniture, Fixtures and Equipment <sup>12</sup>	\$55,175	\$1,563,846	As Incurred	Before Opening	Vendors, Suppliers
Signage <sup>13</sup>	\$20,000	\$100,000	As Incurred	Before Opening	Vendors, Suppliers
Opening Inventory <sup>14</sup>	\$9,057	\$440,327	As Incurred	Before Opening	Vendors, Suppliers
Insurance <sup>15</sup>	\$15,000	\$30,000	Lump Sum	Before Opening	Insurance Carrier
Grand Opening Advertising <sup>16</sup>	\$1,800	\$15,000	As Incurred	Before Opening	Advertising Media, Agency, Printer, Photographer
Miscellaneous Non-Tangible Asset Costs <sup>17</sup>	\$6,954	\$21,648	As Incurred	Before Opening	Suppliers, Professionals



<b>YOUR ESTIMATED INITIAL INVESTMENT FOR A 100 ROOM CONVERSION FACILITY</b>					
<b>Type of Expenditure</b>	<b>Amount <sup>1</sup></b>		<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Additional Funds for 3 Month Initial Period <sup>18</sup>	\$133,671	\$195,500	Monthly Payments for Recurring Fees, As Incurred for Other Expenses	After Opening	Us, Employees, Suppliers, Utilities
<b>Total Estimated Initial Investment <sup>19,20</sup></b>	<b>\$316,632</b>	<b>\$6,885,833</b>	<b>The table does not include the cost of purchasing or leasing real estate.</b>		
<b>Total Cost per Room</b>	<b>\$3,166</b>	<b>\$68,858</b>			

The above table provides an estimate of the initial investment required for a Chain Facility. These figures assume that you already own the Facility.

<sup>1</sup> See Item 5 for amount or formula of each fee. We may defer payment of the Initial Fee. See Item 10. All fees are non-refundable, but we will refund your Application Fee if your application is not accepted due to proximity of the proposed site to another Chain Facility.

<sup>2</sup> This is the fee for the required photos for your Facility. The low end of the range is the cost for the required photo package and the high end of the range assumes you will require additional photographs to meet certain third-party requirements.

<sup>3</sup> The low and high end of the range includes your Continuing Education Fee. It also includes the tuition for your general manager to attend the required Hospitality Management Program and the cost for up to three days of required Opening Training. The high end of the range presumes an additional representative will also attend and pay the tuition for our Hospitality Management Program.

<sup>4</sup> The low and high end of the range presumes that your general manager /owner will drive to our required Hospitality Management Program and incur minimal travel costs and mid-level T&E expense. It also includes facilitator T&E for up to three days of required Opening Training. The high end of the range presumes an additional representative will also attend our Hospitality Management Program and incur significant T&E costs, including airfare and car rental.

<sup>5</sup> The low end of the range assumes you have your signage installed prior to open and you only receive an initial shipment of key supplies. The high end of the range assumes you need a temporary sign cover in order to open before permanent signage is installed.

<sup>6</sup> We do not require a market or feasibility study. We strongly suggest that you obtain one from a reputable consultant to confirm your decision to construct a Chain Facility and to provide potential financing sources with independent information on prospects for the Facility. We reserve the right to obtain, or to require you to obtain at your expense, as a condition for receiving our approval of the site, a positive market feasibility study prepared by a nationally prominent independent accounting or consulting firm we approve.

<sup>7</sup> The low end of the range presumes that the Facility is in excellent condition and does not need any architectural, design or engineering work. The high end of the range presumes that the Facility will undergo a comprehensive renovation and incur the costs for permit fees, utility deposits and related fees, environmental studies, architectural (and structural, mechanical, electrical and plumbing engineering) fees to adapt our prototypical plans and specifications to meet requirements and local code. This item does not include impact fees which may be assessed by local authorities or site evaluation fees, geotechnical report fees, or civil engineering fees. You should check with the applicable local authorities to determine if impact fees are assessed and, if so, how they are calculated and the amount to be charged to your Facility. Fees vary widely depending on your specific location and situation.

<sup>8</sup> The low end of the range assumes that the Facility's exterior, public areas, guest rooms and plumbing, heating, ventilation, air conditioning and other systems are in good condition and meet System Standards. The high end of the range assumes that the Facility requires extensive structural renovations to meet System Standards, and the exterior, public areas and guest rooms are in poor condition and require refinishing. (e.g., exterior walkways, swimming pool surface, landscaping, and ceiling tile).

<sup>9</sup> This amount is calculated as 5% of Facility Improvement costs.

<sup>10</sup> The amount presented includes costs associated with guest room and public area high speed Internet access, PBX/telephone system (including consoles and guest room and administrative telephones), television system and system equipment. The low end of the range presumes that you own adequate equipment to operate the PMS, the Facility's PBX/telephone, television, and high-speed Internet access systems meet our standards and specifications and do not need to be upgraded. The high end of the range presumes that the Facility's high-speed Internet access, PBX/telephone and television systems all need to be replaced. The high end of the range presumes that you need to acquire equipment needed to operate the PMS.

<sup>11</sup> You must purchase, lease or otherwise acquire the computerized hospitality property management system/computer ("PMS") that has been designated by us. This amount is for the Standard OPERA Cloud system with on-site installation. This amount does not include additional interface fees which may be required based on optional interfaces you may utilize at the Facility. See Item 11 for information about the PMS.

<sup>12</sup> Includes furniture, fixtures and equipment ("FF&E") for all areas of the Facility including guest rooms and public areas. These items are typically driven by the decorative furnishings package. The low end of the range assumes that the existing FF&E are in excellent condition and meet System Standards. The high end of the range assumes that most of the existing FF&E are in poor condition and need to be replaced. The estimate presumes that you will install our approved interior design package in all guest rooms and public areas, which may include flooring surfaces and bases; artwork and mirrors; casegoods; bathroom fixtures such as vanity bases, counters and shower tile; decorative bedding; lighting; seating; soft and upholstered goods; wallcoverings; and window treatments. This range includes procurement service provider fees estimated at 11 % to 17% of the total cost of the FF&E purchased. These figures do not include tax, freight or installation, which should be confirmed prior to purchasing.

<sup>13</sup> Includes cost of materials and installation for one pylon/monument sign, and one wall mounted sign/channel letters. The low end of the range presumes that you will be able to utilize the existing column for your pylon sign. The upper end of the range presumes that you will need to install a new column. Your actual cost will depend on many variables including sign size, materials and height, distance signs must be shipped, local labor costs, and local ordinances. This cost does not include local taxes and permits.

<sup>14</sup> Operating supplies and equipment ("OS&E") includes items required by System Standards such as mattresses/box springs, bed frames and bases, televisions, linens, logoed items, housekeeping supplies, guestroom and bathroom amenities/supplies, safes, cribs, luggage racks, interior signage, breakfast display equipment, floor mats, PPE, sundry shop items & equipment. The low end of the range presumes that you will need to purchase certain Mark-bearing items required by System Standards. The high end of the range presumes that your inventory of operating supplies needs to be replaced in its entirety to open in compliance with System Standards and that you have chosen to purchase optional/suggested items not required by System Standards, but which you might choose to purchase, such as additional linens, rollaway beds, guest laundry equipment, etc. The figures above do not include tax or freight. These costs should be confirmed prior to purchasing.

<sup>15</sup> You must maintain commercial general liability insurance with combined single limits per occurrence of \$1 million primary coverage and \$3 million excess liability umbrella coverage (\$4 million total) plus other required coverage. Insurance requirements are subject to change on a Chain-wide basis. This does not include your costs for property and casualty insurance, workers' compensation, employer's liability, disability and other insurance benefits for your employees.

<sup>16</sup> The range assumes that, at a minimum, you will engage in a three-month digital advertising campaign via a third-party company, plus some or all of the following additional marketing activities: pre-opening direct mail, pre-opening parties, billboards, etc.

<sup>17</sup> Includes attorneys' and accountants' fees, business license fees, bank fees, the cost of back-office accounting systems, and similar business startup expenses.

<sup>18</sup> This amount is an estimate and includes the Recurring Fees you will pay us after opening. It does not include debt service payments or rent. Our estimate is based on our experience and the experience of our Lodging Affiliates and their franchisees in operating similarly situated brands over the last two years. These expenses include labor costs. We do not guarantee that you will not have additional expenses starting the business.

<sup>19</sup> None of the fees and costs payable to us in the above table is refundable. Fees and costs payable to suppliers and other third parties above generally are not refundable unless you negotiate that directly with them. See Item 10 for a discussion of financing which might be available for portions of your initial investment in a Chain Facility.

<sup>20</sup> Estimated Initial Investment Onboarding Costs include Initial Fee (inclusive of Application Fee), Photos, Training costs and Amenities and Temporary Signage range from \$51,150 to \$56,550 Estimated Initial Investment Construction Costs including Market Study, Architecture, Design, Engineering, Environmental Studies, Permits, Licenses, Deposits and Related Fees, Facility Improvements, and Conversion Contingency range from \$5,000 to \$4,374,005 Estimated Initial Investment Technology Costs including Technology Systems and Property Management Set-Up and Installation range from \$18,825 to \$88,957. Estimated Initial Investment Equipment and Product Costs including Furniture, Fixtures, Equipment, Signage, Opening Inventory and Insurance range from \$99,232 to \$2,134,173 Estimated Initial Investment Costs including Grand Opening Advertising, Miscellaneous Non-Tangible Asset Costs, and Funds for 3 Month Initial Period range from \$142,425 to \$232,148.

## **ITEM 8. RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

Except as disclosed below, you are not required to purchase or lease products or services 1) from us or our affiliates, 2) from suppliers approved by us, or 3) under our specifications. We may derive commissions or other revenue as a result of these purchases and leases.

### **Standards and Specifications**

To ensure consistency among Chain Facilities, each Facility must meet System Standards. These standards require that most of the items you use or sell at your Facility meet our specifications. Items that must meet our specifications include certain aspects of the Facility's construction and operation (including insurance); certain services you offer in the Facility, including food and beverage services, the Facility's equipment, décor and amenities, guest room size, signage, photographs, advertising, furniture and fixtures, various supplies, bath and bed linens, window treatments, bed toppings, mattresses and box springs, flooring, wall coverings, lighting, wireless high-speed Internet access, PMS, computer hardware and peripheral equipment, operating system software, and telephone and lock systems; and in certain circumstances your third-party manager or management company and management agreement. Our specifications may include minimum requirements for delivery, performance, design, appearance, and quality. We will provide you this information in our Standards of Operation and Design Manual (the "Manual"). We may revise existing standards and add new ones through updates to the Manual.

You will obtain and maintain during the term of the agreement the insurance coverage required by Section 3.8 of the Hawthorn Franchise Agreement and under the System Standards Manual, which is outlined below. All Hawthorn Facilities must have active insurance coverage effective at the start of construction or renovation and in continuous force while operating under the Hawthorn System or as a Hawthorn. Each insurance policy must include as a named insured the party or parties (and their respective successors or assigns) that are identified as the "Franchisee" or "Franchisees" in the Franchise Agreement. Coverage must be on an occurrence basis. Each liability policy must name as an additional insured all of the following: Hawthorn Suites Franchising, Inc.; Wyndham Hotels & Resorts, Inc.; Wyndham Hotel Group, LLC; and all related entities and all of their current and former subsidiaries, affiliates, successors, and assigns, as their interests may appear. Each liability policy must provide that the insurance coverage for each additional insured is primary and is not contributory with or excess of any insurance coverage that may be available to an additional insured.

Specific coverages include Commercial General Liability Insurance with minimum coverage of \$1,000,000 combined single limit per occurrence covering premises, products, independent contractors, bodily injury, personal injury, contractual and advertising liability, property damage, and insured contract liability; Liquor Liability with minimum coverage of \$1,000,000 per occurrence as well as inclusion in excess liability coverage if beer, liquor, or alcoholic beverages are sold or served on site, including but not limited to, by restaurants or lounges, minibars, or vending machines; Comprehensive Automobile Liability Insurance with minimum coverage of \$1,000,000 combined single limit per occurrence on all vehicles; Worker's Compensation in compliance with state laws; Employers Liability Insurance with minimum coverage of \$100,000; Business Interruption (Loss of Earnings) Insurance with a minimum of \$100,000 of coverage, actual loss or twelve (12) months sustained; and Umbrella/Excess Liability Insurance at least as broad as the required underlying coverage, with minimum limits of liability of \$3,000,000 per occurrence. In addition, each Franchisee with an on-site restaurant, including but not limited to an owned or leased lounge or recreational facility space, must require that the operator satisfy the minimum insurance requirements listed in the System Standards Manual.

The failure to carry insurance coverage meeting the requirements described in the System Standards is a material default under the Franchise Agreement and may be grounds for termination of the Franchise Agreement. In addition, should you for any reason fail to procure or maintain the insurance required, we have the right and authority (without, however, any obligation) to immediately procure such insurance and to charge the cost thereof to you, which charge, together with a reasonable fee for our expenses in so acting, will be payable by you immediately upon demand.

We estimate that the items you purchase meeting System Standards will represent approximately 50% to 75% of your total initial expenditures for goods and services in establishing a new construction or conversion Facility. We expect that these items will represent approximately 10% to 15% of your annual purchases and leases.

### **Approved Suppliers**

To support the purchasing efforts of our franchisees, we and/or our affiliate WSSI negotiate purchasing terms, including price, volume discounts and commissions, on a range of products and services. In doing so, we and WSSI seek to promote the overall interests of our and our affiliates' lodging systems, management companies, and interests as franchisors. Currently, we and/or WSSI identify certain suppliers of products and services with whom we and/or WSSI may have negotiated purchase terms, who are then designated as "Approved Suppliers." You may purchase products and services directly from these Approved Suppliers through supplier-provided websites or through more traditional means. We may provide your contact information to our Approved Suppliers and you may be contacted by our Approved Suppliers.

Suppliers not on the Approved Supplier list that are interested in doing business with us or the Lodging Affiliates must apply by registering online at our Supplier Registration site <http://wyndham.supplierone.co>. Interested suppliers are evaluated and potentially approved according to an approval process established by WSSI. Currently, WSSI does the evaluations and approvals. The specific criteria and processes utilized by WSSI in the approval process are not

disclosed to franchisees. WSSI will review a supplier that has registered with the Supplier Registration site on an as-needed basis.

WSSI may not review all suppliers. For those that it does review, it will notify the supplier of approval within approximately one year after the supplier provides WSSI all information it requests about the supplier. Only suppliers chosen by WSSI to become an Approved Supplier will be notified by WSSI of their acceptance. WSSI may revoke a supplier's "Approved" status if the supplier's agreement with us, WSSI, or an affiliate expires and is not renewed, or if the supplier is in default under their agreement with us, WSSI, or an affiliate. We will notify our franchisees if this occurs. Revocation does not mean that you can no longer purchase from this supplier; it simply means that the supplier no longer participates in WSSI's program to offer discounts or other benefits to our franchisees.

Approved Suppliers generally pay WSSI a commission based upon the volume of sales to franchisees. Commissions typically are a percentage of net or gross sales to franchisees, and usually range from 1% to 5% of net or gross sales to franchisees. WSSI may enter into other commission arrangements with Approved Suppliers from time to time, such as a fixed fee per purchase order, on the basis of arms' length negotiations.

In 2023, our and the Lodging Affiliates' net revenues from franchisees' purchases of products or services required by or subject to our or the Lodging Affiliates' respective System Standards was approximately \$7.2 million, or approximately 0.5% of WHR's total net revenues of \$1.397 billion (as reflected in its consolidated statements of income (loss) for 2023); and our and the Lodging Affiliates' net revenues from franchisees' purchases of optional products or services was approximately \$8.3 million, or approximately 0.6% of WHR's total net revenues of \$1.397 billion.

None of our officers owns a material interest in any supplier to our System. However, from time to time, our officers may own non-material interests, for investment purposes only, in publicly-held companies that are suppliers to our System.

### **Required Purchases from Approved Suppliers**

The only items you must buy from an Approved Supplier are items bearing the Marks (such as signage, supplies, and digital photographs); certain elements necessary to create a brand-defining ambience (such as music, scent, or specific décor), items related to health and safety; the firm you retain to prepare a market feasibility study for your Facility (if any); and certain technology systems, including guest wireless high-speed internet access, credit card acquiring services; and your PMS (although you will pay us, or an affiliate, for certain services related to your PMS, and may be required to pay us, or an affiliate, for certain services related to your guest wireless high-speed internet access system). There may be only one Approved Supplier for certain items bearing the Marks or related to health and safety and we do not plan to approve other suppliers. In addition, there is only one Approved Supplier for the required PMS and there is only one Approved Supplier for the credit card gateway services you must use with the PMS. Otherwise, you can purchase items from any party you wish as long as the items meet our System Standards. We may have sole Approved Suppliers in the future for various items, which may include us or an affiliate. We and

our affiliates intend to make a profit on any items we or they sell to you.

If you choose to purchase certain design elements from a supplier other than an Approved Supplier, you must provide us your custom interior design drawings for our review to ensure compliance with our standards, and we may charge a fee for such review. You must use our call center to book reservations from customers who call your Facility to make a reservation. See Items 5 and 6. These are the only services that you must purchase or lease from us or an affiliate and neither we nor any affiliate are currently an Approved Supplier for any other item.

We may offer to issue the Development Incentive in cash or disbursed to a third party on your behalf for the approved use of constructing your hotel, in our sole discretion as business circumstances warrant. If the Development Incentive is to be issued in cash, we may require you to use the services of an approved procurement service provider or purchase directly from a manufacturer or Approved Supplier. The fee for procurement services is typically 11% - 17% of the total cost of the furniture, fixtures, and equipment purchased.

We do not provide you with any material benefits (for example, the opportunity to acquire additional franchises, special renewal rights or similar benefits) if you purchase goods or services through our Approved Supplier program. We do not have a purchasing or distribution cooperative that you must join.

## ITEM 9. FRANCHISEE’S OBLIGATIONS

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this Disclosure Document. <sup>1</sup>**

Obligation	Section in Franchise Agreement and Dual Brand Addendum (“DBA”)	Section in Revenue Management Agreement	Section in Remote Sales and Services Agreement	Section in Signature Reservation Service Agreements	Section in Master Information Technology Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	3.1, Schedule D, DBA Recitals (if applicable)	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Items 7, 8, 11
b. Pre-opening purchases/leases	3.1, 3.8, 3.10, 3.15, Schedule D	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Items 5, 7, 8, 11
c. Site development and other pre-opening requirements	3.1, Schedule D, DBA Recitals (if applicable)	1.	1.	Schedule A	Not Applicable	Items 5, 6, 7, 11
d. Initial and ongoing training	3.3, 4.1, DBA Section 5.c and	Not Applicable	Exhibit A	Not Applicable	Attachment 1.1; Oracle	Items 6, 7, 11

Obligation	Section in Franchise Agreement and Dual Brand Addendum (“DBA”)	Section in Revenue Management Agreement	Section in Remote Sales and Services Agreement	Section in Signature Reservation Service Agreements	Section in Master Information Technology Agreement	Disclosure Document Item
	Exhibit A (if applicable).				Schedule Attachment 1.1; MOP Schedule 1.3, Attachment 1.1	
e. Opening	3.1, Schedule D, DBA 5.d (if applicable)	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Item 11
f. Fees	3.7, 3.9, 3.12, 3.14, 3.15, 4.1, 4.2, 4.3, 4.8, 6, 7, 9.3, 9.4, 11.4, 12.1, 12.2, 13.1, 13.2, 15.6, 17.4, Schedule C, Schedule D, DBA Section 5.b and Exhibit A(if applicable)	3., Exhibit A	3., Exhibit A	1.	2, 3.1, 4; 15.5; Oracle Schedule 4, Attachment 4.1, MOP Schedule 4.1	Items 5, 6, 11, 17
g. Compliance with standards and policies/operating manual	3.2, 3.3, 3.4, 3.6, 3.7, 3.8, 3.10, 3.11, 3.12, 3.13, 3.15, 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 7.1, 7.5, 9.3, 13.1, 13.2, 15.4, 15.6, Schedule D, DBA Sections 1, 3, 5 (if applicable)	1., 7, 11	1., 7, 11	Not Applicable	3.6, 8.1, 8.2, 8.4; Oracle Schedule 3.3, Attachment 2.4; MOP 3.3.1	Items 8, 11
h. Trademarks and proprietary information	3.4, 3.10, 3.11, 4.4, 4.5, 4.8, 8.3, 9.1, 9.2, 11.2, 13.1, 15.1, 15.2, 15.4, 15.5,	Not Applicable	Not Applicable	Not Applicable	3.1, 3.2, 3.3, 3.5, 5.1, 7.3, 8.5, Attachment 1.1; Oracle Schedule	Items 8, 13, 14

Obligation	Section in Franchise Agreement and Dual Brand Addendum (“DBA”)	Section in Revenue Management Agreement	Section in Remote Sales and Services Agreement	Section in Signature Reservation Service Agreements	Section in Master Information Technology Agreement	Disclosure Document Item
	15.6, DBA Section 5.e (if applicable)				3.1, 3.3; MOP Schedule 2.2	
i. Restrictions on products/services offered	3.2, 3.4, 3.11, 3.12	1.	1.	3.	3.2	Items 8, 16
j. Warranty and customer service requirements	3.2, 3.4, 3.11	8.	8.	5.	6.2, 9; Oracle Schedule 5.2; MOP Schedule 5.2	Items 6, 11
k. Territorial development and sales quotas	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
l. Ongoing product/service purchases	3.10, 4.2, 4.4, 15.6	Exhibit A	Exhibit A	3.	2, 3, 6.1; Oracle Schedule 2, 3, Attachment 1.1, 2.2, 2.3, 2.4, 4.1; MOP Schedule 2, Attachment 2.2, 2.3	Item 8
m. Maintenance, appearance and remodeling requirements	3.1, 3.2, 3.12, 3.14	Not Applicable	Not Applicable	Not Applicable	2.1;	Items 6, 8, 11
n. Insurance	3.8, Schedule D	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Items 6, 7, 8
o. Advertising	3.4, 4.3, 7.1.2, 15.6	Not Applicable	Not Applicable	Schedule A	Not Applicable	Items 6, 11
p. Indemnification	8, Schedule C	Not Applicable	Not Applicable	Not Applicable	10.1; Oracle Schedule 6.1; MOP Schedule 6.1	Item 6
q. Owner’s participation/management/staffing	3.2, DBA 5.c (if applicable)	2., Exhibit A	2., Exhibit A	Schedule A	3.6, 4.5; Oracle Schedule	Items 11, 15



Obligation	Section in Franchise Agreement and Dual Brand Addendum (“DBA”)	Section in Revenue Management Agreement	Section in Remote Sales and Services Agreement	Section in Signature Reservation Service Agreements	Section in Master Information Technology Agreement	Disclosure Document Item
					3.3, 5.1; MOP Schedule 3.3	
r. Records and reports	3.6	Exhibit A	Exhibit A	Schedule A	3.6, 8.2, 8.3, 10.1; Oracle Schedule 3.3	Item 6
s. Inspections and audits	3.7, 4.8, Schedule D	Exhibit A	Exhibit A	Not Applicable	3.2; Oracle Schedule Attachment 2.4	Items 6, 11
t. Transfer	9, DBA Section 3 (if applicable)	Not Applicable	Not Applicable	Not Applicable	4.1, 13.2; Oracle Schedule 4.1; MOP Schedule 4.1	Items 6, 17
u. Renewal	5, DBA Section 2 (if applicable)	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Item 17
v. Post-termination obligations	12, 13, DBA Sections 4.e, 4.f (if applicable)	Not Applicable	Not Applicable	Not Applicable	13.5, 15.9, 15.16	Items 6, 17
w. Non-competition covenants	3.11, 2, DBA Section 6.a (if applicable)	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Item 12
x. Dispute resolution	11.4, 17.6.1, 17.6.2, 17.6.3, 17.6.4, 17.6.5	6.	6.	4.	15.5, 15.8, 15.15	Item 17
y. Other: Guaranty of franchisee obligations	Guaranty (Attachment to the Franchise Agreement) DBA Section 6.b (if applicable)	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Note 1

<sup>1</sup> If you are a corporation, partnership or other entity, your significant owners must sign a guaranty (see Exhibit C-1) agreeing to assume and discharge all obligations of the franchisee under the Franchise Agreement. If we offer you Development Incentive financing (see Item 10), your significant owners must co-sign the Development Incentive Note with you. If the significant owners are residents of community property or certain other states, their spouses must also sign the note.

## ITEM 10. FINANCING

Except as specified in this Item 10, we do not offer or provide any financing arrangements for Hawthorn franchisees, either directly or indirectly.

**Initial Fee Deferral.** We may defer payment of the Initial Fee, if business circumstances warrant, in our sole discretion. The deferral is usually for a short term such as 90 days, or until the Facility opens as a Chain Facility, whichever occurs first. If deferred, you must pay the Initial Fee in one or more installments without the accrual of interest unless you do not pay the Initial Fee within ten days after it is due. The number of payments may vary based on business circumstances, but generally requires up to three equal installments over a 90-day period. We do not require any security for the Initial Fee Note. The Initial Fee Note may be prepaid at any time without penalty. You and your owners must sign the Initial Fee Note in substantially the form shown in Exhibit C-1. If your owners are residents of community property or certain other states, their spouses must also co-sign the Initial Fee Note. Under the Initial Fee Note, you and your guarantors, or any co-makers of the Initial Fee Note, waive traditional defenses. These defenses include presentment, demand, notice of demand, protest, notice of non-payment, notice of protest, notice of dishonor and diligence in collection. We reserve the right to modify the terms of the Initial Fee Note and/or grant extensions, novations, releases or compromises to you or any co-maker without the consent of, or affecting the liability of, any other party to the Initial Fee Note. The Initial Fee Note is not subject to setoff, offset or recoupment. If the Franchise Agreement terminates for any reason or you transfer the Facility, we may demand that you immediately pay the Initial Fee Note in full. If you fail to make any required installment payment on time, we may demand that you immediately pay the Initial Fee Note in full. If you do not pay the Initial Fee Note within 10 days after it is due, the Initial Fee Note will bear simple interest at the rate of the lesser of 18% per annum (1.5% per month) or the highest rate allowed by law. Default under the Initial Fee Note will constitute a default under the Franchise Agreement. If the Initial Fee Note is collected by or through an attorney, we will be entitled to collect reasonable attorney's fees and all costs of collection.

**Development Incentive Financing.** We may offer certain "Development Incentives" for new construction and conversion Chain Facilities. The incentives are based on various factors and are determined in our sole discretion. These factors may include the number of rooms and location of the proposed Facility, market overview, surrounding hotels, demand drivers, and a feasibility study. The Development Incentive is a loan that is not subject to repayment unless the franchise terminates before the end of the term of the Franchise Agreement for the Facility or a Transfer occurs. The Development Incentive is typically funded shortly after the Facility's Opening Date, Subsequently, at each anniversary of the Facility's Opening Date, 1/20<sup>th</sup> of the original amount of the Development Incentive is forgiven without payment (based on the Term of the Franchise Agreement) such that the Development Incentive Note is fully forgiven at the end of the Term. If the franchise terminates or is transferred before the expiration of the Term, you must repay the balance of the Development Incentive. The Development Incentive Note bears no interest except in the case of default, in which case the interest rate will be 18% per annum (1.5% per month) or the highest rate allowed by law. If you must repay the balance of the Development Incentive and fail to make any required payment on time, we may demand that you immediately pay the Development Incentive in full. Default under the Development Incentive Note will constitute a

default under the Franchise Agreement. We do not typically require any additional security for the Development Incentive Note, but reserve the right to do so in certain circumstances depending on the amount of the Development Incentive and the creditworthiness of you and your principals. The Development Incentive Note may be prepaid at any time without penalty. If the Development Incentive Note is collected by or through an attorney, we will be entitled to collect reasonable attorney's fees and all costs of collection.

To receive the Development Incentive, you and your principals, as co-makers, must sign a Development Incentive Note, which will specify the amount of the incentive, in the form attached to Exhibit C-1 when you sign and deliver to us the Franchise Agreement. If you and/or your principals are residents of community property or certain other states, your and /or their spouses must also co-sign the Development Incentive Note. In addition, you must sign an addendum to the Franchise Agreement, agreeing to make all payments due under the Franchise Agreement and ancillary agreements through electronic funds transfers through the ACH (automated clearing house) system. You must provide us with a current balance sheet, loan documents and other information we request detailing the total cost of the Facility, the amount being financed, and your equity investment in the Facility. If we offer you a Development Incentive, you may not be eligible for any reduction in Initial or Recurring Fees (see Items 5, 6 and 15). The Development Incentive program may be modified, limited, extended, or terminated at any time without advance notice or amendment of this Franchise Disclosure Document.

The Development Incentive will be disbursed after (i) you have passed a final credit review with no material adverse changes in your business, legal, litigation, bankruptcy status or finances, or of your guarantors or the Facility since preliminary approval, (ii) the Facility officially opens with our consent, (iii) you have completed all required pre-opening improvements specified in the Franchise Agreement; (iv) you have paid the Initial Fee; (v) you are in good standing under the Franchise Agreement and all ancillary agreements; and (vi) you have completed any other prerequisites for disbursement that you and we agree to in the Franchise Agreement. Additionally, we may require you to use the services of an approved procurement service provider, or purchase directly from a manufacturer or approved supplier, as outlined below.

We may offer to issue the Development Incentive in cash or disbursed to a third party on your behalf for the approved use of constructing your hotel, in our sole discretion as business circumstances warrant. If the Development Incentive is to be issued in cash, we may require you to use the services of an approved procurement service provider or purchase directly from a manufacturer or approved supplier. The fee for procurement services is typically 10% - 15% of the total cost of the furniture, fixtures and equipment purchased.

You and your guarantors or co-makers waive traditional defenses, as described above for the Initial Fee Note. With or without notice to or consent from you, your guarantors or co-makers, we may grant renewals, extensions, modifications, compositions, compromises, releases or discharges of other parties. If you transfer the Facility, you must repay the balance of the Development Incentive Note unless the transferee and its principals assume the obligation to repay the Incentive and provide us with such other security as we may require in our sole discretion. If you are purchasing an existing Chain Facility and we approve you to assume the obligation to repay the unamortized balance of the Development Incentive Note, then you must agree to assume all of the same terms

under the Development Incentive Note as the original recipient of the Development Incentive.

**Women Own the Room (“WOTR”) Development Incentive.** We offer a special financing program intended to empower women entrepreneurs through hotel ownership. We will provide an approved women-owned franchisee a Development Incentive at a target amount of \$2,500 per guest room of the Facility, but not to exceed 50% of the franchisee’s equity investment in the Facility. The WOTR program also includes personalized opening and on-going operational guidance and support, which may include complimentary programs or discounts on select support services. To qualify for this program a majority of the legal and beneficial ownership interests of the franchisee must be held by women. We will have sole discretion in determining whether you qualify for the program. All of the other requirements, terms and conditions described above for Development Incentives also apply to the WOTR Development Incentive Program.

**Black Owners & Lodging Developers (“BOLD”) Support.** We offer customized support through our BOLD program, which is designed to engage and advance Black entrepreneurs on the path to hotel ownership. The specific support offered to each BOLD program member is tailored to the individual franchise applicant but will provide personalized opening and on-going operational guidance and support, such as complimentary programs or discounts on select supplemental support services. To qualify for this program a majority of the legal and beneficial ownership interests of the franchisee must be held by Black entrepreneurs. We will have sole discretion in determining whether you qualify for the program. The support offered to an applicant through the BOLD program may include a Development Incentive, in which case all the other requirements, terms and conditions listed above with regard to Development Incentives will apply.

In addition to all of the above, you may request a Lender Notification Agreement using the forms we provide you. Any lender you select may also request a collateral assignment of or security interest in the Franchise Agreement, but we have no obligation to enter into any agreement or arrangement with any lender. See Exhibit C-4.

We have no practice or intent to sell, assign or discount to a third party all or part of any financing arrangement above.

### **Third Party Financing Program**

#### **Introduction**

Together with Sculptor Real Estate Acquisition LP (together with its affiliates, “Sculptor”), a company that offers real estate financing, we have developed a construction loan program for qualifying franchisees (the “Third Party Financing Program”). Sculptor is not affiliated with us. The finance program consists of two parts: (1) Sculptor offers senior mortgage loans to qualified franchisees for the construction of Chain Facilities (the “Sculptor Loans”), and our immediate parent, Wyndham Hotel Group, provides Sculptor a partial guaranty of the Sculptor Loans; and (2) in combination with the Sculptor Loans, we or Wyndham Hotel Group offer mezzanine or Development Incentive loans to you or an affiliate (a “Wyndham Loan”) or, in place of a Wyndham Loan, Wyndham Hotel Group may provide Sculptor a larger partial guaranty of the Sculptor Loan.

## **The Principal Amounts**

If you and your Chain Facility qualify for this loan program, you will be able to get financing from Sculptor for the construction of your Chain Facility of up to a 70% of loan-to-cost ratio and additional financing from us of up to a 5% of loan-to-cost ratio; for a total loan-to-cost ratio of up to 75%. The loan-to-cost ratio is the ratio of the maximum loan amount to the total amount of your project budget, which budget (approved by us and Sculptor) includes estimated project costs, including site costs, hard costs, soft costs, and financing costs. For example, if your project budget were \$20,000,000, the maximum amount of the Sculptor Loan would be \$14,000,000 and the maximum amount of the Wyndham Loan would be \$1,000,000. At our option, instead of providing a Wyndham Loan, we can instead increase the partial guaranty of your Sculptor Loan, and in that case, Sculptor will finance up to 75% of the loan-to-cost ratio. The Wyndham Loan will be either a Development Incentive loan, a mezzanine loan, or a combination of the two. As mentioned, the Wyndham Loan can also be replaced by an increased partial guaranty from Wyndham Hotel Group of the Sculptor Loan.

## **Qualifying for the Loans**

The qualifying conditions for this financing are set by Sculptor and us together. Currently, those conditions include that: (i) the project budget for your Chain Facility is at least \$10,000,000 and less than \$50,000,000; (ii) your projections for your Chain Facility demonstrate an anticipated stabilized yield on cost of at least 10% based on a revenue generating index of 100; (iii) you and your affiliates are in good standing, including not having any outstanding defaults or amounts owed, under your franchise agreement relating to the Chain Facility that is being financed, or any other franchise agreement with us or the Lodging Affiliates; and (iv) you satisfy both our and Sculptor's "know-your-customer" requirements and have not been subject to any bankruptcy action in the last 7 years or involved in any material litigation or similar proceeding with Sculptor, us or the Lodging Affiliates.

You would also have to go through Sculptor's due diligence process that is customary for loans of this size and nature and the due diligence process could include: site inspections; review of litigation, judgment and tax liens, OFAC and bankruptcy searches on the borrowers and guarantors; review of the borrowers' and guarantors' financial condition; review and acceptance of your building plans and construction documents; review and approval of your construction budget and construction schedule; and review and approval of agreements related to the Chain Facility and its construction, such as a guaranteed maximum price contract for the construction with a contractor, and a comfort letter between Sculptor, us/our affiliate, and you.

## **Interest Rates and Fees**

The interest and fees on the Sculptor Loan are described below. If we are providing a Wyndham Loan in the form of a mezzanine loan, then the interest rates and fees on both the Sculptor Loan and the Wyndham Loan are generally the same and the following description applies to both of the loans, except where we have specified that the terms are different.<sup>1</sup>

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<sup>1</sup> If we are providing a Wyndham Loan in the form of a Development Incentive, then the terms of the Development Incentive are

The interest rate is the sum of (a) the higher of the Federal Reserve Bank of New York Secured Overnight Financing Rate (SOFR) 30-day rate and 3.5%, and (b) 5.9%, calculated on a 360-day year and accruing for each actual day. However, if the Sculptor Loan is for more than a 70% loan-to-cost ratio, the interest rate may be higher, and it is not specified at this time what that rate would be. You will be required to obtain an interest rate cap agreement with a notional amount equal to the maximum principal amount of your Sculptor Loan and the Wyndham Loan. You will also be required to set up a reserve account for certain amounts. There is an origination fee of 1.25% of the maximum principal amount on each of the Sculptor Loan and Wyndham Loan.

You will have to reimburse Sculptor for all out-of-pocket costs Sculptor incurs in connection with the origination of the Sculptor Loan. This includes fees for third party reports, reasonable third-party counsel fees, and fees for zoning, engineering, insurance, market and environmental consultants, no matter if you close on the Sculptor Loan or not. Before Sculptor begins its due diligence, you will have to deposit \$50,000 towards these expenses. If the deposit is used in full, Sculptor may request additional funds from you.

The Sculptor Loan and Wyndham Loan are co-terminous and will be payable over 36 months. The term can be extended for two 12-month periods if you pay an extension fee. The extension fee is 0.25% of the outstanding principal balance of the applicable loan. During their term, the loans are interest-only.

Under the Sculptor Loan and Wyndham Loan, you will pay an exit fee of 0.75% of the maximum principal amount of the applicable loan. The exit fee is payable whether you prepay the loan or not.

At the time you repay (or prepay) the Sculptor Loan, Sculptor must also have received at least 1.25 multiple of the loan principal. The loan principal, interest payments (excluding default interest), and a portion of the origination fee, the exit fee and any extension fee are all included when determining if you have paid Sculptor the minimum multiple. Reimbursement of costs and expenses, default interest, late payment charges and similar fees do not count towards the minimum multiple.

Each of the loans can be prepaid in full, but not in part. There is no specific prepayment penalty, though you would have to pay the minimum multiple of 1.25 on the Sculptor Loan. The default rate is the interest rate plus 5% per annum.

### **The Security Interest**

The Sculptor Loan must be secured by, among other things: a recorded and insured first mortgage, deed of trust, or deed secure debt on the real property and improvements that constitute the Chain Facility; a pledge of all direct ownership interest in the borrowers under the Sculptor Loan (the

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generally the same as described above in the Development Incentive Financing section of this Item 10. In addition, in certain instances if you are conducting extensive renovations to convert an existing hotel to a Chain Facilities then you may also qualify for financing under the Third Party Financing Program. In those cases, the terms of the loans would be generally the same as described in this section.

“Sculptor Borrowers”); an assignment of all leases, rents, and other receivables of the Chain Facility; a perfected first priority security interest in all personal property, escrows, reserves, and clearing account or cash management account of the Sculptor Borrowers; an assignment of all property-related contracts (including, subject to a comfort letter with us, the franchise agreement), plans, permits, and approvals for the Chain Facility; and other customary documentation that is reasonably required by Sculptor.

The Wyndham Loan must be secured by, among other things: a pledge of all direct ownership interests in the owners of the Sculptor Borrowers; a perfected first priority security interest in all personal property, escrows, and reserves, and any clearing account or cash management of the borrower; and other customary documentation that is reasonably requested by Wyndham.

### **Guarantors**

A creditworthy affiliate of the borrower must guarantee each of the loans. The guarantor(s) must satisfy Sculptor’s and our customary “know your customer” requirements. For both loans, the guarantor(s) must not have been a debtor in bankruptcy or contested foreclosure in the last 7 years. The guarantor(s) will guarantee, on a non-recourse basis, the payment of all costs associated with completing the construction, renovation and fixturing of the Chain Facility. The guaranty may be converted to a full recourse guaranty in the event that the borrower, the guarantor or certain of their affiliates engage in any customary “bad acts” such as granting an additional mortgage or deed of trust on the Chain Facility without the lender’s consent, transferring an ownership interest in the borrower without the lender’s consent, or filing a voluntary petition for bankruptcy.

### **Other Terms**

Unless you are reasonably determined by us and Sculptor to be an experienced hotel operator, you will have to hire a manager to manage your Chain Facility that is reasonably acceptable to both us and Sculptor.

The form loan documents for the Sculptor Loan and the form loan documents for the Wyndham Loan (in the event that the Wyndham Loan is in the form of a mezzanine loan) are attached as Exhibit C-10.

We and our affiliates do not receive any consideration for placing financing with Sculptor. The assignment of the loans by both Sculptor and us is regulated by an agreement between both parties.

### **Potential Liabilities Upon Default**

If you default under the Sculptor Loans or the Wyndham Loans (in the event that the Wyndham Loan is in the form of a mezzanine loan) and fail to cure the default within the time permitted (if any) under the loan documents, then Sculptor and we will be entitled to pursue standard and customary remedies, including: acceleration of the loan (which requires all amounts due under the loan documents to become immediately due and payable), foreclosure of the security interests granted under the loans, and the termination of the franchise arrangement between you and us. In

addition, the borrower will be responsible for each lenders' cost of enforcing the applicable loan documents and collecting the debt. The Sculptor Loans and the Wyndham Loans contain both monetary and non-monetary default events that are described in the applicable loan documents and include: failing to make a monthly debt service payment, failing to construct the Chain Facility on schedule, incurring additional indebtedness, impermissible transfers, and failing to maintain insurance.

### **Certain Required Waivers**

As part of entering the loan program, you will be required to make certain waivers customary in construction financing, including waivers of certain defenses and/or other legal rights, such as the right to a jury trial, the right to receive notice other than as required under the loan documents, the statute of limitations, and the right to make counterclaims against the lenders. Failure to abide by these waivers can, potentially, trigger liability for the guarantor(s) of the loans.

### **Transfer of Loans by Lenders**

While it is not the present intent of either Sculptor or us to transfer the loans made under this program, both we and Sculptor reserve the customary right to transfer the loans made as part of this program in any manner we deem necessary or desirable. Any such assignment will not diminish your rights and obligations under the loan documents or the franchise agreement.

## **ITEM 11. FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

**Except as listed below, we are not required to provide you with any assistance.**

### **Franchisor's Assistance**

#### **Pre-Opening Assistance**

Before you open your Chain Facility, we will provide you with the following assistance:

1. You select the Facility's location and describe it in the Franchise Application. We reserve the right to obtain, or to require you to obtain at your expense, as a condition for receiving our approval of the site, a positive market feasibility study prepared by a nationally prominent independent accounting or consulting firm we approve. Since individual sites are necessarily unique, no listing of relevant factors will be applicable to all sites. However, we believe these factors are important: geographical area; population, density, and other demographic factors; proximity to transportation, major attractions, and destinations; commercial development; traffic patterns; competition; accessibility; and the compatibility of the area with the proposed use. We grant a franchise for a new construction or conversion Facility for a specific location or site only and approve your site when we approve your Franchise Application. There is no specific time limit in which this approval must be completed. However, we typically complete our review of your site and the other elements of your Franchise Application, and award or decline to award you a franchise, within 30 to 60 days after we receive



your completed Franchise Application and all supporting documentation. Approval of your application and of the site only indicates our willingness for you to represent the Chain at that site. (Franchise Agreement – Application and Schedule D)

2. We will designate a Protected Territory for the Facility in the Franchise Agreement. (Franchise Agreement – Section 2)

3. If you are converting your existing hotel into a Chain Facility, or in the case of a Transfer, we will inspect the Facility and create a PIP of improvements needed before you open the Facility under our service marks and afterwards. The PIP is attached to the Franchise Agreement when it is signed. (Franchise Agreement – Schedule D)

4. For a new construction Facility, we will provide your architect with access to prototype drawings and specifications reflecting the overall design intent for the Facility (the “Prototype Plans”). A member of our Architecture, Design and Construction team will be available to consult with your architect about the plans we provide. We will review and, if appropriate, approve any detailed architectural plans and specifications for constructing a new Facility. We will review any requests to materially modify or deviate from the plans or specifications after they have become “Approved Plans.” We may charge you a fee to review such material modifications to your plans or specifications. (Franchise Agreement – Schedule D)

5. We may inspect the Facility during or following construction or renovation to determine compliance with System Standards and, where appropriate, approve its opening as a Chain Facility. (Franchise Agreement – Schedule D)

6. We will provide you with a copy of, or access to, our Manual, which contains the System Standards and specifications for your Chain Facility, including standards for the furniture, fixtures, and certain equipment used to furnish your Chain Facility. (Franchise Agreement – Section 4.7; for Dual Brand Operations: Dual Brand Addendum Section 1)

7. We will furnish you with written specifications for required products and services, as well as information about Approved Suppliers whose products have been approved for usage, as described in greater detail in Item 8. (Franchise Agreement – Section 4.4)

8. If you wish to deviate from one of our standard interior design packages or to use a custom design package, we will, for an additional fee, review, approve, or provide comments on your interior design package and, following our approval, any subsequent modifications to your package. (Franchise Agreement – Schedule D)

9. We will provide Mandatory Support Services to assist you in opening the Facility. These Services are not applicable to franchisees renewing their franchises with us. See Item 5 for a more detailed description of our Mandatory Support Services and the fees we charge for them. (Franchise Agreement – Section 1 of Schedule D)

10. We will provide training to you and your general manager as described in this Item below. (Franchise Agreement – Section 4.1; for a Dual Brand Operation: Dual Brand Addendum Section 5.c and Exhibit A)

11. We offer, for a fee, an optional service via a third party through which you can purchase an online media campaign in connection with the Facility’s opening. The minimum campaign available for purchase runs for three months at a rate of \$1,800 for conversion facilities and \$20,000 for new construction and is focused on your Facility to support bookings during an initial ramp-up period.

12. We do not deliver or install equipment, signs, fixtures, opening inventory, or supplies.

### **Length of Time Before Opening**

There is no “typical length of time” between the signing of a Franchise Agreement or the first payment for a franchise, and the Opening Date of the Facility. This is due to the impact of a number of variables including (i) your ability to obtain any necessary financing, (ii) whether the Facility is to be converted from an existing hotel or is to be newly constructed, and (iii) the process required to obtain all necessary permits, licenses and approvals from various government agencies.

We have established certain parameters for the pre-opening period. You must provide us with proof of ownership or ground lease of the location within 30 days after we sign the Franchise Agreement. In cases of an existing facility newly entering the Chain or an existing Chain Facility being transferred, you must begin renovation no later than 30 days after we sign the Franchise Agreement. You must complete the pre-opening phase of the work and be ready, willing, and able to open the Facility under the System no later than 270 days after we sign the Franchise Agreement. In the case of new construction, you must begin construction of the Facility within 12 months after we execute the Franchise Agreement and, complete construction and receive our written approval to open the Facility 24 months after signing the Agreement. (Franchise Agreement – Schedule D)

### **Continuing Assistance**

After the Chain Facility opens, we will provide you with the following assistance:

1. We will continue to provide you with access to the confidential Standards of Operation and Design Manual (“Manual”) and any other manuals for franchisees which contain specifications for the construction or renovation and operation of the Facility under the System. The Wyndham Rewards Front Desk Guide is a System Standard. These Manuals and System Standards may be

amended. The table of contents of the Manual consisting of 147 pages is set forth in Exhibit F. (Franchise Agreement – Section 4.7)

2. We may hold a Chain conference, which may be in the form of a WHR multi-brand conference with special sessions and programs only for our Chain. Currently, we hold a conference approximately every 18 to 24 months, but this is subject to change. We also may hold periodic regional summits throughout the year. (Franchise Agreement – Section 3.9)

3. We or our contractor will conduct announced and unannounced inspections and/or mystery shops of the Facility. (Franchise Agreement – Section 4.8)

4. We will continue to provide you with operational support and information about the Chain by e-mail, telephone, or via the Chain’s internal online platform. In addition, our field support team may periodically visit your Facility to provide on-site operational support provided you are in compliance with your obligations under the Franchise Agreement. Our representatives also will consult with you in person when they are at the Facility for compliance inspections, upon your request. (Franchise Agreement – Section 4.6)

5. We will provide access to a proprietary online platform where you can access brand specific information, including System Standards and corporate communications specific to Chain and WHR initiatives. We will offer tools to help support your business including site reporting, industry reporting, bill payment, marketing, Global Sales, Loyalty, and Revenue Management resources as well as access to ratings and reviews, and corporate information. We may, in the future, charge a fee for the support and maintenance of this service.

6. We and our affiliates will continue to provide you with information about Approved Suppliers. See Item 8 above. (Franchise Agreement – Section 4.4)

7. We will provide a computerized Central Reservation System (“CRS”), directly or indirectly through another party or a technological substitute as we may determine, for making reservations at Chain Facilities. See the Computer Systems discussion below. (Franchise Agreement – Section 4.2)

8. We will provide you a service by which certain calls and messages are routed to our professionally-trained agents and, in some cases, to digital agents, to answer questions and book reservations on behalf of your Facility. See Exhibit C-6 for the Signature Reservation Service Agreement.

9. We offer comprehensive revenue management programs for additional fees. These programs are available at two levels of service for varying fees: Standard and Premium, as further described

below. No matter the service level, Revenue Management Services (“RMS”) include inventory management, strategic positioning, future demand strategy and targeted promotions and packages, at different frequencies. We reserve the right to evaluate a variety of factors, including but not limited to, your Facility’s room count, occupancy rate, trends, and market to determine the most suitable level of service. Based on our assessment of your Facility and its performance, we may limit the levels of services available to your Facility. See Exhibit C-7 and Item 6 for additional description of options and fees.

- Standard RMS is a bi-weekly service that includes STR review and evaluation, rate and inventory maintenance, as well as scheduled communication and accessibility and bi-weekly meetings with your assigned Revenue Management Specialist.
  - New construction, conversion, and transfer Facilities must participate in Standard RMS at a minimum. Alternatively, you may satisfy this requirement by meeting certain criteria we establish from time to time in System Standards.
- Premium RMS is a weekly service that includes inventory management, as well as scheduled communication and accessibility, weekly meetings with your assigned Revenue Management Specialist, and STR review and recommendations.
  - We may offer a Premium Plus RMS for a flat monthly fee (currently, \$5,245) to certain hotels that require additional support. Premium Plus RMS includes Premium RMS plus daily recommendations, twice-weekly strategy discussions, and two annual property visits.

10. We will provide you with access to a customer experience software platform (currently Medallia), which will aggregate all reviews regarding the Facility from TripAdvisor and other major online travel agency sites, as well as customer surveys. We will respond to certain customer surveys and online reviews of the Facility, including complaints that are posted on third-party travel websites. You will pay us for each review to which we respond, which we will waive during all periods that your Facility maintains a positive overall guest satisfaction score. (Franchise Agreement – Schedule C)

11. You are required to participate in our Remote Sales Service for an additional monthly fee. Under the service, we will assign a designated representative to support your Facility who will respond to group sales leads (within certain parameters authorized by you) and solicit new business for your Facility. Alternatively, you may satisfy this requirement by meeting certain criteria we establish from time to time in System Standards. See Exhibit C-9 and Item 6 for a description of options and fees.

12. We will provide you with a guest engagement platform that enables your hotel to connect with guests via texts to their mobile devices. There currently is no charge for this platform. First level

support for this platform is included in the HTCS service provided as part of the Monthly Support and Service Fee described under **Property Management System**, below.

13. We may choose to bundle certain optional service offerings. If we do so, the fee for such combined offering would not exceed that to be charged if you were to participate in each program individually. We reserve the right to assess your Facility and its performance based on a variety of factors to determine if you qualify for any bundled program offering. If available to you, you must execute the then-current form of agreement for such combined service.

### **Advertising**

We engage in advertising and marketing activities funded by the Marketing and Reservation Contributions that franchisees pay us to promote the Hawthorn network and to maximize the general public recognition, acceptance or use of Hawthorn. The marketing may include various forms of advertising and promotion activities using any media we deem appropriate. Specific advertising activities may include online, broadcast, and print media; sponsorships; e-mail; and direct mail. Advertising may be created and placed internally or by advertising agencies with the participation and supervision of in-house staff. The Fund (as defined below) may also be used to pay for e-commerce, market research, public relations, guest services, training, the CRS, distribution, and the staffing of sales offices that generate corporate, government, tour, and other bookings at Hawthorn hotels and other marketing support. We select the nature and type of advertising copy, media placement, and other aspects of the marketing program. Media coverage may be local, regional or national. We do not have to expend any portion of the Fund or otherwise for marketing or advertising in your trading area or territory and we do not promise that your Facility will benefit directly or proportionately from marketing activities.

Each franchisee's Marketing and Reservation Contribution will be deposited into a marketing fund (the "Fund"). The amount of this fee is 2.5% of GRR. Neither we nor any affiliate owns any outlets; however, it is our intention that any franchisor-owned outlets and all or substantially all franchisees contribute to the Fund on an equal basis.

The Marketing and Reservation Contributions are not held in trust and we do not manage the Fund in a fiduciary capacity, although its funds are separately accounted for on our books. We administer and apply the Fund at our discretion. We are not required to, nor do we, have the Fund audited. We do not provide reporting to you or other members about its finances. Any monies that remain in the Fund at the end of the year (or deficiencies where the amount spent for marketing exceeds the contributions collected for the year) are carried over into the following year. The Fund may be used to compensate us or an affiliate for any administrative or other services, such as reasonable expenses incurred for accounting, collection, data processing, computer services, bookkeeping, reporting, system maintenance, and legal services that we or the affiliate provide to the Fund to support marketing activities, the CRS, and for our out-of-pocket costs. In addition, we or an affiliate may provide products or services to the Fund. We may earn a profit on these activities,

products, and services. However, they will be provided at a cost comparable to the cost that the Fund would otherwise incur if the products or services were obtained from unaffiliated third parties. In 2023, expenditures for marketing from the Fund were used as follows: 22.2% for media placement (including electronic marketing), 1.3% for production, 13.6% for administration (including bad debt expense) and 62.9% for other expenses (e.g., public relations, guest services, group and corporate sales, field services, and training). In 2023, no funds were utilized principally to solicit the sale of new franchises.

You may conduct your own local marketing program if all materials conform with System Standards, including proper usage of the Marks, or are approved in writing by us. At our option, we may offer you advertising copy and other marketing template materials at prices that are designed to reasonably cover our direct and indirect costs. We also may require you to participate in a local or regional advertising program.

We presently do not have an advertising council or a marketing and sales cooperative, although we may consult from time to time with groups of members to solicit their views and input. However, we review the annual marketing and sales plan with the Hawthorn Franchise Advisory Council (“FAC”) which acts in an advisory capacity only and provides input on the plan. We have the right to change or dissolve the FAC. In the future, we may establish a local, regional, or market segment-based marketing and sales cooperative (“Co-op”) which you may participate in on a voluntary basis. All franchisees in the Co-op will pay dues under the same formula, which will be payable annually in advance of the year in which the marketing and sales are to be done. We will offer matching contributions from the Fund to support qualifying marketing and sales activity by the Co-op. We will administer the activities of the Co-op on its behalf, including collecting dues and performing other bookkeeping functions, organizing Co-op meetings and placing marketing and sales programs. The Co-op will not operate from written governing documents. We will not be required to issue annual or periodic financial statements for the Co-op, however we will create and provide updates to a marketing and sales plan for the coming year, for participating members of the Co-op. We have the authority to form, change, dissolve, or merge the Co-op at our discretion.

## **Computer Systems**

### **Central Reservation System**

We will provide a computerized CRS, or such technological substitute as we may determine, for making reservations at Chain Facilities. (Franchise Agreement – Sections 4.2, 7.1)

During the Term, the Facility will participate in the CRS on an exclusive basis, including entering into all related technology agreements and complying with all terms and conditions which we establish from time to time for participation. The Facility may not book any reservations through any other electronic reservation system, booking engine or other technology.

We can and may independently access your electronic information and data, and collect and use this electronic information and data in any manner we choose, without any compensation to you.

### **Property Management System**

You must procure a PMS, including computer hardware and software and Internet access service, so that the Facility can interface with the CRS.

The PMS books reservations, performs check-in and check-out functions, manages rates and inventory, collects and transmits to the enterprise data warehouse certain information collected about each guest reservation, automates the front desk and operational record keeping of the Facility, and interfaces with other electronic systems at the Facility.

We currently have one approved system under our technology standard as follows. The databases, servers, application servers, and storage for the PMSs are housed at the provider's data center and not at the Facility. We may from time to time, at our option, change or make exceptions to our PMS technology standard. You will be required to execute a Master Information Technology Agreement ("MITA") with us and the Schedule to the MITA for the PMS.

You will subscribe to Oracle's OPERA Cloud Standard PMS, offered as a cloud-based solution. You must pay a one-time Set-Up and Implementation Fee of \$18,825. The Set-Up and Implementation Fee includes on-site deployment, installation, and training, including the installation of the Standard Interfaces (as described below). Fees for the set up and installation of additional interfaces range from \$525 to \$3,050 per interface, including a mandatory \$750 RevIQ Standard interface. The Set-Up and Implementation Fee must be paid at least 30 days before the Opening Date of the Facility.

The Set-Up and Implementation Fee includes the installation of "Standard Interfaces," which, collectively, mean interfaces to the CRS; the mobile guest check-in/check-out platform; fundamental and customary hotel systems, such as key locks and telephone systems; and the tokenized credit card interface.

We provide monthly support and services related to your PMS, which currently includes the support of the OPERA PMS; HTCS and CRISP services; RevIQ Standard (an automated revenue management and rate solution); the Standard Interfaces; and database and backups and hosting fees, all as further described in the MITA (Exhibit C-2).

The Monthly Support and Service Fee for OPERA Standard ranges from \$699 per month to \$1,000 per month, depending on the number of rooms at your hotel, as set forth in the MITA. The Monthly Support and Service Fee may be updated from time to time. Additional fees may apply if you select the premium level of RevIQ; if you choose or require additional interfaces to your PMS; and as otherwise necessary to customize the technology solutions to best suit your hotel and its operation.

You will be required to subscribe to any future PMS upgrades when they become available, which

may include additional services and fees. You may be required to execute a new PMS Schedule to the MITA, or amend your current PMS Schedule. The annual cost of any optional or required maintenance, upgrades, or support contracts for OPERA Cloud Standard ranges from \$8,388 for a 100 room Chain Facility to \$12,000 for a 200 room Chain Facility. These costs will vary depending on the size of your Chain Facility.

The hardware for your Facility's PMS can be purchased from any source so long as it meets our technology standards and minimum technical requirements. We require that you utilize tokenization technology for the transmission of credit card information to and from the PMS. We currently have one approved gateway provider to support tokenization and chip and pin technology. Accordingly, you are required to sign the Hosted Services Agreement with Elavon (Exhibit C-3), which may include additional services and fees, when you sign the MITA and the PMS Schedule. In the future, we may add or discontinue gateway providers in our sole discretion.

We may require you to purchase additional or replacement computer hardware or software, additional random-access memory or additional hard disk storage to keep pace with changes in technology. There is no contractual limitation on the cost or frequency of this obligation. Neither we nor Oracle has any obligation to modify, enhance or rewrite the PMS software for the OPERA systems.

### **Network Connectivity Services/Guest Internet**

You must obtain network connectivity to enable your PMS to interface with the CRS. You may procure network connectivity through a broadband Internet connection from an ISP, for which you must pay the ISP's service fee. Your network connectivity must meet the system requirements prescribed by Oracle for an OPERA PMS.

You must offer wireless high speed Internet access in all guest rooms, meetings rooms, and public areas at the Facility. We offer, as an option, support for a WIFI solution called Wyndham WIFI. If you choose to participate you will sign an agreement with a third-party vendor for equipment and installation of the WIFI solution and an agreement with us for support under our Hotel Connectivity Solutions Support Agreement. See Item 6 and Exhibit C-8.

### **Preventative Maintenance/Mobile Operations Support Tool**

Through your subscription to the OPERA PMS, you may, for a fee, subscribe to an optional third-party mobile device-based system (MOP) for managing and automating tasks such as housekeeping, maintenance, and guest support functions at your Facility. As part of the MOP system, for an additional fee, you also may subscribe to an optional Emergency Safety Device feature that provides panic button functionality to your hotel staff on MOP-enabled mobile devices. With written notice, we may mandate subscription to the MOP system or a similar system and supplier in the future, by updating System Standards.

### **Other Technology Provided by Us**



We will provide access to the following programs, presently at no additional cost to you: one branded email account (as described below); a data platform to facilitate your revenue management; our OTA reconciliation program; and a designated guest engagement platform that enables the hotel to connect with guests via texts to their mobile devices. First level support for these programs and platforms is included in the HTCS services provided as part of the Monthly Service and Support Fee described under **Property Management System**, above.

We will provide you an email account for your hotel to receive official brand communications from us, as well as to correspond with guests. We reserve the right to discontinue providing email services at any time at our sole discretion. We may employ certain safeguards relating to account access, and reserve the right in the future to place additional access controls on the account in line with best practices (e.g., multi-factor authentication), as well as utilize email or other filtering provided with the service, which may restrict certain potentially harmful content from being received.

### **Training**

WHR's hospitality operations training team offers a variety of mandatory and optional training programs, workshops, online training and other training resources.

All personnel employed at your Facility in those positions we designate to receive training must attend and successfully complete our initial training program and other training programs we may require. These programs and their fees are described below. In addition, you are responsible for your employees' travel, lodging and meal expenses and wages while attending any training program. (Franchise Agreement – Section 4.1; for a Dual Brand Operation: Dual Brand Addendum Section 5.c)

### **Training Administration**

We maintain a staff of field-based training professionals who conduct training regionally and at the hotel level. Each of these trainers has an operational, training and/or human resources background with us and/or with other hotel companies. We also draw upon the experience of other officers and employees of us and the Lodging Affiliates in conducting training.

### **General Manager Certification (Hospitality Management Program)**

We will provide training for your general manager in our Hospitality Management Program ("HMP" or the "Program"). This Program consists of approximately 34 hours of training and may be offered in i) a hybrid, in-person and virtual format or ii) a virtual-only format. In-person components are held in our corporate offices in Parsippany, NJ, as well as at locations local to our corporate offices or central locations in North America. Classroom training can be delivered through various media including in-person (except for the virtual-only format), live webinars or self-paced

learning activities on our online training platform, Wyndham University. PowerPoint presentations, participant manuals and additional handouts are utilized during the Program.

If we do not offer HMP within the time periods specified below, required participants must complete the next available Program.

- Initial general manager: no later than 90 days after the Facility's Opening Date; and
- Replacement general manager: no later than 90 days after he/she assumes responsibility as a general manager.

The tuition fee is \$2,250 for HMP, if the initial general manager successfully completes this mandatory training program and all related components to our satisfaction within the timeframe noted above. If the general manager does not complete the Program as required, you must pay the initial tuition in addition to the tuition then in effect at the time your general manager completes the Program. Additional employees of the Facility may complete HMP at the same time as your general manager at a tuition fee of \$1,400 per participant. If your general manager participates in the hybrid format, you are responsible for all travel, lodging and meal expenses for your general manager. If you own more than one Chain Facility, you must send your initial (and any replacement) general manager from each Facility to HMP within the specified time frames. We reserve the right to require the general manager of your Facility to recertify by attending HMP (or its then equivalent offering), every eight years at the then current tuition.

### **Human Trafficking Prevention Training**

In addition to HMP Training, each general manager is required to take our Human Trafficking Prevention Training course no later than 90 days after the Facility opens, and within 90 days of a subsequent general manager's start date. Your general manager must complete the course biennially, within two calendar years from the last completed training. The material for this course is delivered via Wyndham University's web-based training module. There is currently no fee for this training. If your general manager plans to receive similar human trafficking prevention training from a third party, the course must be pre-approved if you wish for it to satisfy this requirement. In addition, your general manager must certify on a biennial basis that he or she has trained or caused the training of hotel staff in human trafficking prevention. We will provide training resources to assist in satisfying this requirement through Wyndham University and the Chain's internal online platform. For a Dual Brand Operation, the Human Trafficking Training must be completed and certification maintained by only one general manager who has authority over the entire Facility.

### **Count on Us® Training**

In addition to HMP Training, each general manager is required to take our Count on Us training course no later than 90 days after the Facility opens, and within 90 days of a subsequent general manager's start date. In addition, all team members must complete the required trainings focused

on Count on Us included in the Introduction and Overview as well as the Count on Me Certification and Safe Stay Guidelines. In Room Attendants are also required to complete the Public Space and Guest Room Cleaning, Laundry Procedures and Room Attendant Safety trainings. If your Facility provides food service, all applicable team members must complete the Food Service training. Your general manager must certify the training has been completed. The material for this course is delivered via Wyndham University’s web-based training module. There is currently no fee for this training. We will provide training resources to assist in satisfying this requirement through Wyndham University and the Chain’s internal online platform.

## **Opening Training**

If your Facility is a new construction or conversion hotel, you are required to participate in Opening Training. This training is conducted on-site at your Facility anywhere from two weeks prior to, or up to 30 days after, the Facility’s Opening Date. The duration and fee for this training is dependent on the size of your Facility as follows: \$750 for 0-50 rooms (1 day); \$2,250 for 51-200 rooms (up to 3 days); and \$3,750 for more than 200 rooms (up to 5 days), plus travel, lodging and meal expenses of the facilitator. Training topics include Count on Me service culture, Housekeeping, Front Desk, and Wyndham Hotels & Resorts Tools and Resources. PowerPoint presentations, participant manuals, additional content driven handouts, and activities are utilized during this training. For a Dual Brand Operation, you will be required to pay for and your staff participate in one Opening Training for the entire Facility. We may supplement, amend or otherwise modify the Opening Training and General Manager Training (including the cost) to take into account the nature of the Dual Brand Operation.

In 2024, we plan to offer HMP training approximately eight times, spread out over the year. Training may be offered in either format: i) hybrid, in-person and virtual, with the in-person portion held in either our corporate offices in Parsippany, NJ, a location local to our corporate offices, or central locations in North America, or ii) virtual-only. We anticipate that four sessions will be hybrid and four will be entirely virtual. If your general manager attends the hybrid format, we reserve the right to require in-person attendance at specific locations based on the region in which the Facility is located. Human Trafficking Prevention Training and Count on Us Training are available online at any time via Wyndham University and our internal online platform. Opening Training will be conducted at each Facility anywhere from two weeks prior to, or up to 30 days after, the Facility’s Opening Date. Required participants must complete all training components to our satisfaction, (including any pre-course activities) as outlined below unless stated otherwise in the Franchise Agreement. Tuition for these programs is subject to increase and is non-refundable.

The charts below show a summary of these programs as they existed on December 31, 2023.

### **TRAINING PROGRAM**

<b>HOSPITALITY MANAGEMENT PROGRAM</b>
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<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Organization and Brand Overview	2 hours	None	Corporate designated location (Hybrid only) or Online
Sales and Marketing Management	7 hours	None	Corporate designated location (Hybrid only) or Online
Revenue Management and Tools	4 hours	None	Corporate designated location (Hybrid only) or Online
Customer Experience / Quality Assurance	3 hours	None	Corporate designated location (Hybrid only) or Online
Property Operations and Tools	9 hours	None	Corporate designated location (Hybrid only) or Online
Leadership and People Management	9 hours	None	Corporate designated location (Hybrid only) or Online
<b>HUMAN TRAFFICKING PREVENTION TRAINING</b>			
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Human Trafficking Prevention - detection, prevention, and assistance	1 hour	N/A	Virtual
<b>COUNT ON US® TRAINING</b>			
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Introduction and Overview	15 Minutes	0	Virtual
Public Space and Guest Room Cleaning, Laundry Procedures and Room Attendant Safety	48 Minutes	0	Virtual
Count on Me Certification, Safe Stay Guidelines	90 Minutes	0	Virtual

Food Service (If applicable): Personal Hygiene and Service	15 Minutes	0	Virtual
<b>OPENING TRAINING</b>			
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Count on Me Certification; Housekeeping; Front Desk; WHR Tools including Wyndham Community, Electronic Payment Tool, Medallia, and STR reports	Dependent on Days of Training:  8 – 40 hours	Dependent on Days of Training:  Up to 30 hours	Your Facility

Notes: The hospitality industry experience of the learning team staff ranges from 27 to 47 years, with an average (mean) of 33 years. Their experience with WHR, its predecessors, the Lodging Affiliates and us ranges from 1 to 37 years, with an average (mean) of 18 years.

### **New Owner Orientation**

We may hold new owner orientation for franchisees who have not previously owned a Chain Facility or any hotel licensed by the Lodging Affiliates. This training will cover topics including Design and Construction, Brand Standards, Global Sales, Loyalty and Revenue Management. There is no fee for the first attendee of the program which may run for up to three days; however, if training is provided in-person, you will be responsible for your travel, lodging, and meal expenses. Additional attendees may participate, at your option, for a charge of \$1,000 each.

### **Remedial Training**

We may require you, your GM and/or Facility staff to participate in a remedial customer experience assessment or training if the Facility receives (i) a failing score on a quality assurance inspection, (ii) a score of 6.0 (or then equivalent score) or below in consumer feedback responses, (iii) experiences significant complaints to our Customer Care Department, as determined by us in our sole discretion, or (iv) if at the time of the Facility’s first post-opening Quality Assurance inspection, the Facility receives a failure rating on guest room cleanliness or a failing service score. The assessment or training may take the form of an online tutorial for a fee of up to \$250, or depending on need, a one-to-two-day, remedial class on housekeeping for an additional fee of up to \$1,250, which may be offered at our corporate offices, at a regional location, or at the Facility. If the assessment or training is conducted at the Facility, you must provide complimentary lodging for our representative. Fees are subject to change by modifying System Standards.

### **Product Quality Training**

For additional or repeated instances of cleanliness or service failures, we reserve the right to require additional on-site training that can range from 1-10 days and cost between \$1,500 and \$5,000, plus

the cost of travel and lodging for our instructors. Fees are subject to change by modifying System Standards.

### **Wyndham Rewards Training**

We reserve the right to require all Chain Facilities to participate in a training program on our customer loyalty program, Wyndham Rewards. All managers must complete a manager specific web-based training and all front desk associates must complete a general web-based training.

### **Continuing Education**

We will provide a comprehensive curriculum of hotel operations training. This training is available to all hotel team members and delivered in the form of live workshops, webinars, playbacks, online courses, videos, job aids, checklists, discounts to industry memberships/certifications, etc. Training topics include Guest Loyalty, Hotel Culture, Guest Service, Leadership/People Management, Quality, Revenue Management/Generation, Sales/Marketing, Financial Management, Reputation Management, Food and Beverage, Social Responsibility, Hospitality Law, and Hotel Systems (keystroke and best practices).

The cost of ongoing learning and development support for your entire hotel team is \$1,200 per year. This fee includes (i) the tuition for two (2) regional workshops, (ii) access to Wyndham University, WHR's learning management system for your entire hotel team, and (iii) service culture support and training materials. For a Dual Brand Operation, you only will be required to pay one Continuing Education fee for access for all of the Facility's team members.

### **Optional Customized Training**

At your request, we may provide customized training for your front desk, restaurant, reservations, housekeeping, engineering, and/or other operations employees. We will determine the number of facilitators and the length and content of the training based on our assessments of your requested training. The cost of any training starts at \$750 per day (up to eight hours, whether on-site or virtual), plus travel and lodging expenses for the facilitator(s) if you opt to have the training held on-site at the Facility. Final cost is dependent on the type of training, time and resources required.

### **Conferences**

We require general managers to attend an annual national leadership conference. The national leadership conference will typically be held every 12 to 18 months and may be included as part of a WHR multi-brand conference. Costs for these conferences are determined annually and billed back to you even if you do not attend the conference.

### **Regional Meetings**

Certain personnel employed at the Facility may be required to attend periodic meetings held to address matters of general interest to the System. We will establish the locations where these

programs are offered. If you participate in any of these programs, you must pay any tuition we establish for the program as well as the travel, lodging and meal expenses and wages for your personnel attending it.

### **No-Show and Cancellation Policy**

If you or your general manager, or any other member of your staff you designate, fails to register for a required training program within the required time period, or registers for a training program but fails to attend such program as scheduled without, notifying us in advance, whether such attendance is required or optional, we may charge you a No-Show Fee of up to 100% of the tuition for the program. If you, your general manager, or any other member of your staff cancels participation in any training program less than 14 days before it is scheduled to be held, we may charge you a Cancellation Fee of up to 50% of the tuition for the program. No-Show and Cancellation Fees are in addition to the tuition you will have to pay at the then offered rate when you, your general manager, or any other member of your staff attends the program. We may assess you additional No-Show or Cancellation Fees for continued failures by you.

### **ITEM 12.TERRITORY**

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own or manage, or from other channels of distribution or competitive brands that we control. This may include transient or extended stay lodging facilities, timeshare resorts, vacation or residence clubs, fractional ownership residences, condominiums or the like which are owned, managed or franchised by our current or former affiliates or by companies or brands we or our affiliates acquire. These competitive outlets could be adjacent, adjoining or proximate to your Chain Facility. You will be assigned a “Protected Territory” under Section 2 of the Franchise Agreement in which we will not own, operate or manage another Chain Facility without your consent. We will not grant any additional franchises for a Chain Facility in the Protected Territory after you execute your Franchise Agreement with us. However, any Chain Facility located within the Protected Territory when your Franchise Agreement becomes effective may have its franchise renewed or reissued, expanded for additional guest rooms or, if its franchise terminates or is not renewed, replaced with a replacement Chain Facility having not more than 120% of the guest rooms of the replaced Chain Facility, located within the same trading area.

We will negotiate the Protected Territory with you before you sign the Franchise Agreement. These negotiations will take into account one or more of the following: the nature of the market your Facility will serve (urban/suburban/rural); population density; demographics; natural travel boundaries (such as rivers or impassable lands); what public and private facilities, if any, may generate lodging demand for your Facility (including airports, highways, sports and entertainment venues, colleges, military bases, tourist attractions, hospitals, shopping malls and commercial and industrial activities); the “seasonal” versus year-round nature of the anticipated occupancy of your Facility; the weekend versus weekday anticipated occupancy of your Facility; and other variables. The Protected Territory may be defined as a radius from the door of the Facility or an irregular area bound by one or more streets, highways, governmental jurisdiction boundaries or natural boundaries, or by latitude and longitude and described in words, depicted on a map, or both. In

any case, your Protected Territory will be described in Section 2 of the Franchise Agreement. There is no minimum Protected Territory that we offer.

We may own, operate, lease, manage or franchise Chain Facilities anywhere outside of the Protected Territory without restriction or obligation, even if they compete with your Facility. We may grant Protected Territories for other Chain Facilities that overlap your Protected Territory.

Continuation of your territorial rights does not depend upon whether you achieve certain sales volumes, market penetration or other contingencies. We may operate, lease, manage, or license any other party to operate a Chain Facility in the Protected Territory beginning (a) six months before the expiration of the Franchise Agreement, or (b) as of the date that a date for the premature termination of the Franchise Agreement has been confirmed in writing by us. During the term of your Franchise Agreement, neither you nor your owners, officers or directors may own, lease, manage or franchise a timeshare resort, vacation or residence club, fractional ownership residence, condominium/apartment leasing or rental business, or the like, for any facility or business that shares directly or indirectly, common areas, amenities, recreation facilities, services, supplies or support activities with the Facility. You are also prohibited from promoting a different or competing business, including advertising hotels other than Chain Facilities or those of the Lodging Affiliates, and advertising any timeshare or vacation ownership resort not affiliated with us or our current and former affiliates. If you breach this obligation, we may terminate your Protected Territory. Your Protected Territory may be impacted upon a Notice of Condemnation. We have no other rights to modify your Protected Territory during the term of your Franchise Agreement.

We grant you a franchise to operate a Chain Facility only for a specific location we approve. Relocation of a Facility or the establishment of additional Chain Facilities is subject to our usual application procedures and requires the execution of additional Franchise Agreements. Franchisees are not usually granted options, rights of first refusal or similar rights to acquire additional Chain Facilities in their trading area.

We will not restrict you or any other franchisee from soliciting or accepting guest reservations from inside or outside of your Protected Territory, including through telemarketing, direct mail, online marketing or other means, providing that you comply with applicable law. However, the Facility must not book reservations through any electronic reservation system, booking engine or other channel other than our CRS or through approved consumer website(s) or third-party distribution sites unless permitted under our System Standards or with our prior written consent. You will be required to participate in Chain marketing programs in which you make a commitment to serve guests according to the terms of the programs.

There are no restrictions on us or our affiliates soliciting or accepting reservations from guests residing in your Protected Territory on behalf of you and other Chain Facilities, and we reserve the right to continue to do so using the Marks. This may include through our toll-free reservation number, our consumer website, electronic or direct mail, or other means.

Our affiliates may own, manage or franchise in your trading area under their service marks described in Item 1 (other than the Marks), (i) transient lodging facilities, or (ii) timeshare resorts, vacation or



residence clubs, fractional ownership residences, condominiums, apartment buildings or the like. As of December 31, 2023, all of our and the Lodging Affiliates’ transient lodging facilities in the United States are franchised. WHR or Wyndham Hotel Group may acquire additional hotel chains in the future which have company owned/operated or franchised properties in your trading area. Any conflicts between you and us regarding territory, customers and our support will be resolved under the Franchise Agreement. We have no procedure for resolving conflicts between you and franchisees of other brands. However, any resolution of any conflicts regarding territory, customers or support services will be entirely within our discretion.

In addition, we provide information about and book reservations for hotels franchised by the Lodging Affiliates through CRS toll-free reservation numbers or consumer website(s). You will receive no compensation for sales through our distribution channels, unless we make a reservation on your behalf, in which case, you will receive the revenue from the reservation. However, we will prioritize Chain Facilities over other hotels in a destination if there is room availability at Chain Facilities, they meet the guest’s search criteria, including closest proximity to a point of reference or point of interest, and they are not in default under their Franchise Agreement. The Lodging Affiliates have reciprocal programs for booking reservations at Chain Facilities. We have the right to provide reservation services to lodging facilities other than Chain Facilities or to other parties.

**ITEM 13. TRADEMARKS**

We will grant you the right to operate your Facility under the Marks (defined below) “Hawthorn,” “Hawthorn Suites,” “Hawthorn Suites by Wyndham,” “Hawthorn Extended Stay” or “Hawthorn Extended Stay by Wyndham,” or any new ones which are included in the System. We may ask or permit you to utilize a secondary designation with the licensed Mark for the Facility.

The following service marks are registered or pending registration on the principal register of the United States Patent and Trademark Office. Affidavits of use and renewal applications have been filed as required by law.

<b>Mark</b>	<b>Registration/ Application Date.</b>	<b>Registration/ Application No.</b>
HAWTHORN SUITES	Registration Date: August 28, 2012	Registration No. 4,198,186
HAWTHORN SUITES BY WYNDHAM	Registration Date: December 7, 2010	Registration No. 3,887,289
	Registration Date: December 7, 2010	Registration No. 3,887,288
	Registration Date: November 23, 2010	Registration No. 3,881,027
HAWTHORN	Registration Date: September 24, 2019	Registration No. 5,865,224

Mark	Registration/ Application Date.	Registration/ Application No.
<b>Hawthorn</b> EXTENDED STAY	Registration Date: January 9. 2024	Registration No. 7,267,263
<b>Hawthorn</b> EXTENDED STAY	Registration Date: January 9. 2024	Registration No. 7,267,278
<b>Hawthorn</b> EXTENDED STAY BY WYNDHAM	Registration Date: January 9. 2024	Registration No. 7,267,285
HAWTHORN SUITES EXTENDED STAY BY WYNDHAM	Application Date: June 12, 2023	Application No. 98038287

The “Hawthorn,” “Hawthorn Suites” and “Hawthorn Extended Stay” marks are owned by USFS. The “Hawthorn Suites by Wyndham” and “Hawthorn Extended Stay by Wyndham” marks are jointly owned by USFS and Wyndham Hotels and Resorts, LLC<sup>2</sup>, a WHR subsidiary. The Trademark License Agreement between USFS and us has a term which currently extends until May 31, 2024 and automatically renews on an annual basis thereafter unless it is terminated by one party upon 30 days’ notice. The Trademark Licensee Agreement may be terminated, by USFS or us, with or without cause, on 30 days’ prior written notice. If the Trademark License Agreement expires or is terminated, USFS will assume all of our rights and obligations regarding the Marks and the System under any then effective franchise agreement. Currently, we and USFS intend to renew continually the Trademark License Agreement on or before the expiration of its term. The Trademark License Agreement among Wyndham Hotels and Resorts, LLC, USFS and us for the “Hawthorn Suites by Wyndham” and “Hawthorn Extended Stay by Wyndham” Marks has a term which extends until March 31, 2043.

Except as described above, there are no other agreements that currently limit our right to use or license the Marks in a manner material to the franchise.

Your right to use the Marks and any other symbols, logos, insignia, trademarks or service marks developed for or with your Hawthorn Facility is derived solely from the Franchise Agreement and is limited to the conduct of business under and in compliance with the Franchise Agreement and all applicable specifications, standards and operating procedures we prescribe during the term of the Franchise Agreement. Any unauthorized use of the Marks by you will constitute an infringement of our rights in and to the Marks. You may not use the Marks in your corporate

<sup>2</sup> References to Wyndham Hotels and Resorts, LLC in this Item 13 mean the owner of the “Wyndham” family of trademarks and not our ultimate parent, Wyndham Hotels & Resorts, Inc.

name, partnership name, tradename, name of any business entity, legal name, social media profile or handle name, or in any Internet address or domain used to identify a site on the Internet unless otherwise approved by us, but you may use a Mark in an assumed business or trade name filing, provided such filing is the full name of the property, including any secondary designation as set forth in the Franchise Agreement. You must cooperate to provide us with documents or other evidence necessary to obtain protection for the Marks or to maintain their continued validity and enforceability. As between us, we and our affiliates own all rights in the Marks and associated goodwill. You may not contest our or their interest in the Marks, or assist anyone else to do so.

You must promptly notify us of any unauthorized use of the Marks or marks that are confusingly similar to the Marks. You must notify us of any challenge to your right to use, or the ownership of, the Marks. We alone have the right to control any proceeding or litigation involving the Marks, including any settlement. We need not initiate suit against imitators or infringers who do not have a material adverse impact on your Facility or any other suit or proceeding to enforce or protect the System in a matter we do not believe to be material. We also have the right to keep all sums obtained in settlement or as a damages award in any proceeding or litigation without any obligation to share any portion of the settlement sums or damages award with you. You will cooperate with our efforts to resolve these disputes.

We will indemnify, defend and hold you harmless, to the fullest extent permitted by law, from and against all Losses and Expenses (defined in Appendix A of the Franchise Agreement), you incur in any action or claim alleging that your proper use of the Marks is an infringement of a third party's rights to any trademark, service mark or trade name (Franchise Agreement – Section 8.3). You will promptly notify us in writing when you become aware of any alleged infringement or an action is filed against you. You will cooperate with the defense and resolution of the claim. We may resolve the matter by obtaining a license of the property for you at our expense, or by requiring that you discontinue using the infringing property or modify your use to avoid infringing the rights of others.

We may substitute different marks for, or modify the current Marks if the current Marks can no longer be used, or if we determine in our sole discretion that the substitution or modification will be beneficial to the System. If we transfer our rights under the Franchise Agreement, we may also require the purchaser to substitute different names or marks in connection with the continued operation of the business. In either case, you may be required, at your expense, to discontinue or modify your use of any of the Marks or to use one or more additional or substitute names, marks or other identifying symbols.

Other than the uses of the name “Hawthorn” or “Hawthorne” noted below, we do not know of either prior rights or infringing uses that could materially affect your use of the principal trademarks in any state, other than a prior right in Salem, Massachusetts, where a hotel by the name of “Hawthorne Hotel” has been operating since 1918. We have discovered that there are transient lodging facilities (i.e., hotels, motels, inns, and /or bed and breakfasts) that utilize the name “Hawthorn” or “Hawthorne” as part of their trade name. To the best of our knowledge, the non-affiliated transient lodging facilities that use the name Hawthorn or Hawthorne are:

Hawthorne Plaza Inn, Hawthorne, CA

Best Western Plus Hawthorne Terrace Hotel, Chicago, IL  
Hawthorne Motel, Chatham, MA  
Hawthorne Hotel, Salem, MA  
Hawthorn House, Nantucket, MA  
Hawthorne Inn & Conference Center, Winston-Salem, NC  
Hawthorne Historic Inn, San Diego, CA

We are aware of non-material, unauthorized use of one or more of the Marks as part of third-party domain names.

There are no currently effective material determinations of the United States Patent and Trademark Office, Trademark Trial and Appeal Board, the trademark administrator of any state or any court; no pending material infringement, opposition or cancellation actions; nor any pending material federal or state court litigation involving the Marks other than as may be stated in this Disclosure Document.

#### **ITEM 14. PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

There are no issued patents or patent applications that, as of the date of this Disclosure Document, are material to the franchise or part of your Franchise Agreement. We claim copyright protection in all copyrightable materials developed for our business, including the System Standards, Manual, videos, training materials, marketing materials (including all advertising and promotional materials), architectural drawings, building designs, interior design manuals and guidelines, proprietary fabrics, artwork and furnishings, logos, and business and marketing plans, whether or not registered with the U.S. Copyright Office (“Copyrighted Materials”).

Under the Franchise Agreement, we may revise the System Standards and you must comply with those changes.

We have an agreement with Oracle as our PMS technology partner, under which they offer cloud-based solutions for property management. We will license to you the right to use the OPERA PMS for the term of your Franchise Agreement, subject to obsolescence or any other early termination of your MITA. We can license or sublicense the PMS to you under our contractual arrangements with Oracle. Limitations on the use of the OPERA PMS are described in Exhibit C-2.

You must take all appropriate actions to preserve the confidentiality of our trade secrets, our other information not generally known to the lodging industry, or other information we otherwise impart to you or your representatives in confidence, including the Manual and other documents (the “Confidential Information”). Access to Confidential Information should be limited to persons who need the Confidential Information to perform their jobs and are subject to your general policy on maintaining confidentiality as a condition of employment or who have first signed a confidentiality agreement. You will not permit copying of Confidential Information (including, as to computer software, any translation, decompiling, decoding, modification or other alternation of the source code of this software). You will use Confidential Information only for the Facility and to perform under your Franchise Agreement. We will respond to any inquiry from you about continued protection of Confidential Information.

All Copyrighted Materials and Confidential Information are owned exclusively by us. Your right to use Copyrighted Materials and Confidential Information is derived solely from the Franchise Agreement and is limited to the conduct of the business under and in compliance with the Franchise Agreement and all applicable specifications, standards, and operating procedures we prescribe during the term of the Franchise Agreement. Any unauthorized use of our Copyrighted Materials or any unauthorized use or disclosure of Confidential Information will constitute an infringement of our rights in and to the Copyrighted Materials and Confidential Information.

There is currently no litigation pending involving the Copyrighted Materials or Confidential Information. We do not know of any effective material determinations of the U.S. Copyright Office or any court regarding any of the Copyrighted Materials or Confidential Information. There are no agreements in effect that significantly limit our right to use or license the Copyrighted Materials or Confidential Information.

You must notify us promptly of (i) any adverse or infringing uses of the Copyrighted Materials, Confidential Information or other System intellectual property, or (ii) any threatened or pending litigation related to the System against (or naming as a party) you or us of which you become aware. We alone handle disputes with third parties concerning use of all or any part of the System. You will cooperate with our efforts to resolve these disputes. We need not initiate suit against imitators or infringers who do not have a material adverse impact on your Facility, or any other suit or proceeding to enforce or protect the System in a matter we do not believe to be material. We also have the right to keep all sums obtained in settlement or as a damages award in any proceeding or litigation without any obligation to share any portion of the settlement sums or damages award with you. You will cooperate with our efforts to resolve these disputes.

We will indemnify, defend and hold you harmless, to the fullest extent permitted by law, from and against all Losses and Expenses, you incur in any action or claim alleging that your proper use of the System and any property we license to you, including the Copyrighted Materials or Confidential Information, is an infringement of a third party's rights to any trade secret, patent, copyright, trademark, service mark or trade name for as long as the Franchise Agreement is in full force and effect. You will cooperate with the defense and resolution of the claim. We may resolve the matter by obtaining a license of the property for you at our expense, or by requiring that you discontinue using the infringing property or modify your use to avoid infringing the rights of others.

#### **ITEM 15. OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

You do not have to participate personally in the direct operation of your Facility although we recommend that you do so. If you do not personally manage the Facility, you must hire a management company or individual manager with significant training and experience in general management of similar lodging facilities to manage the Facility. The manager must successfully complete our training program. You are solely responsible for all employment decisions for your Facility, including recruitment, hiring, firing, scheduling, remuneration, personnel policies, training, benefits, safety, security, supervision, discipline and termination, regardless of whether

you received advice from us on any of these subjects. The management company or individual manager does not have to own an equity interest in the franchisee or the Facility.

We reserve the right to require you to retain a third-party manager or management company approved by us if you do not have significant experience managing a hotel or are receiving a Development Incentive (see Item 10). If we require you to retain a third-party manager or management company, we reserve the right to approve any management agreement between the owner and any approved management company.

You, or your manager/management company, must not divert any business of customer of the Facility to any competitor, or do any other act which may cause harm to the goodwill associated with the Marks and the Chain.

If you are an entity, your owners, general partners, or controlling shareholders or members must guarantee your obligations under the Franchise Agreement. If you or the owners of the Facility are located in a community property or tenancy by the entirety – no severance state, your owners' spouses must also sign the guaranty. We may make exceptions to the obligation to provide a guaranty when business circumstances warrant. For a Dual Brand Operation, the entity, your owners, general partners, or controlling shareholders or members must also guarantee your obligations under the Hawthorn Agreement. If you or the owners of the Facility are located in a community property or tenancy by the entirety – no severance state, your owners' spouses must also sign the guaranty for the Hawthorn Agreement.

#### **ITEM 16. RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You may not offer goods or services in your Facility that we do not authorize. You must operate the Facility in strict conformity with the standards we specify in the Franchise Agreement, our Manual, or otherwise.

You must use the Facility premises solely for the operation of a Chain Facility. You may not share the Facility's swimming pool (if any), front desk, telephone system, parking lot and other guest service facilities with another lodging or housing facility. You may not develop or operate a timeshare or vacation ownership resort that is integrated into, or that shares amenities or services with, the Facility without our advance written consent. You may not use the Facility for gaming purposes without our consent or install any electronic or video games, vending machines or similar items that we have not approved. You may not permit any activity at the Facility which would negatively impact the goodwill of the System.

You may not provide any guest service or offer any product except as described in the Manual or otherwise in writing, and you must offer all System-wide products, services and programs we establish or that we determine to be in the best interest of the System. These may include guest-accessible high speed Internet service, guest recognition programs such as "Wyndham Rewards," complimentary services for senior citizens, children, veterans and frequent guests, travel agent and other programs.

We may add to or modify any of the programs, products or services we require you to offer, and

you must comply with the changes we adopt. There are no contractual limitations on the frequency and cost of your obligation to adopt our changes.

You must participate in our Best Rate Guarantee program and may not make available room rates through any publicly available channel which are lower than the rates you offer through our brand channels.

We grant this franchise only for the number of guest rooms specified in the Franchise Agreement. You may not change the number of guest rooms or make other structural changes to the Facility without our advance written consent.

**ITEM 17. RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**

**This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this Disclosure Document.**

Provision	Section in Franchise Agreement	Section in Revenue Management Agreement	Section in Remote Sales and Services Agreement	Section in Signature Reservation Services Agreement	Section in Master Information Technology Agreement	Summary
a. Length of the franchise term	5	4.	4.	2.	13; Oracle Schedule 7; MOP Schedule 7.1	20 years, beginning on the first day of the month after the Opening Date of the Facility; right to use OPERA PMS software, CRISP and HTCS services, RMS, RSS and SRS is concurrent with the franchise under the Franchise Agreement, subject to early termination for obsolescence or any other basis for early termination. We may extend the Term to 25 years to satisfy SBA lending standards if your lender requires.
b. Renewal or extension of the term	5, DBA 2	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No renewal or extension rights. For a Dual Brand Operation, if an application for a renewal is granted, you must also renew the La Quinta Agreement if the Facility

						is to remain dual-branded.
c. Requirements for franchisee to renew or extend	5, DBA 2	Not Applicable	Not Applicable	Not Applicable	Not Applicable	If we and you elect to renew the franchise, you must (i) sign our then in effect Franchise Agreement, which may have materially different terms and conditions than your original Franchise Agreement, and (ii) pay the then in effect Relicense Fee, which is currently calculated under the same formula as the Initial Fee. For a Dual Brand Operation, if you must apply to renew the Hawthorn Agreement and the La Quinta Agreement if the Facility is to remain dual-branded. The renewal of the Hawthorn Agreement and La Quinta Agreement is subject to the consent of each franchisor, each in its sole discretion.
d. Termination by franchisee	11.3	Not Applicable	Not Applicable	Not Applicable	13.1, 13.3; MOP Schedule 7.2	You may terminate if the Facility suffers a casualty or is condemned; certain notice periods must be observed. If the Facility is taken by the condemning authority before the end of the notice period, you must pay us your average daily Recurring Fees for the number of days remaining in the notice period. You may terminate MOP with 30 days' notice. If we grant you a Franchise Agreement with a 25-year term, you can terminate without cause after 20 years. Any provision regarding termination in the Franchise Agreement



						is subject to state law.
e. Termination by franchisor without cause	Not Applicable	5.	5.	Not Applicable	13.2; MOP Schedule 7.2	We may terminate the MITA and its Schedules, RMS or RSS for convenience upon 60 days' advance notice. If we grant you a Franchise Agreement with a 25-year term, we can terminate without cause after 20 years.
f. Termination by franchisor with cause	11.2, 17.1, Schedule D, DBA 4.d	5.	5.	Not Applicable	13.2, 13.3	We may terminate if you default, fail to meet improvement deadlines or provide the Certification, certain events occur, or a material term of the Franchise Agreement is held invalid. For a Dual Brand Operation, we may also terminate if you default under the La Quinta Agreement or if the La Quinta Agreement terminates and you fail to convert the guest rooms previously operated under the La Quinta Agreement to be operated under the Hawthorn Agreement.
g. "Cause" defined – curable defaults	11.1, Schedule D, DBA 4.b	5.	5.	Not Applicable	13.2	10 days to cure monetary, reporting and confidentiality defaults; 30 days to cure other breaches of the Franchise Agreement; Quality Assurance defaults must cure within 90 days if written plan approved and 30 day cure is not feasible. For a Dual Brand Operation, you will also be in default if you default under the La Quinta Agreement.
h. "Cause" defined – non-curable	11.2, 17.1, Schedule D	Not Applicable	Not Applicable	Not Applicable	13.2	You discontinue operation, lose possession or the right to possession of the

defaults						Facility, you maintain false books, fail to pay debts, misstate or omit a material fact, default twice in one year, contest the marks, act or fail to act in a manner that could be injurious or prejudicial to the goodwill of the marks, an unauthorized transfer occurs, guest health or safety is endangered, a receivership occurs.
i. Franchisee’s obligations on termination / nonrenewal	12, 13, 15.4	Not Applicable	Not Applicable	Not Applicable	13.5,15.9,15.16	Complete de-identification, return Manual, pay fees and liquidated damages, repay any Development Incentive loan, honor reservations. Right to use PMS system ceases.
j. Assignment of contract by franchisor	10	11.	11.	8.	15.14	No restriction on assignments and subcontracts by us, no new obligations to you after we notify you of the assignment.
k. “Transfer” by franchisee – defined	9, Appendix A	Not Applicable	Not Applicable	Not Applicable	4.1, 13.2; Oracle Schedule 4.1; MOP Schedule 4.1	Sale or lease of Facility, change in majority equity ownership, new general partner, public tender offer.
l. Franchisor approval of transfer by franchisee	9	Not Applicable	Not Applicable	Not Applicable	Not Applicable	We have right to approve all Transfers and qualify all transferees in our sole discretion.
m. Conditions for franchisor approval of a transfer	9.3, DBA 3	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Transferee must submit Franchise Application, pay Relicense and Application Fees, sign then current form of Franchise Agreement, and improve Facility to meet standards for conversion Facilities entering the System. You and your owners sign general releases unless restricted by law. You may

						be obligated to repay a Development Incentive loan or other benefit unless we consent to the transferee assuming the repayment obligation. See Item 10. For a Dual Brand Operation, the Transfer will not be approved unless the same transferee acquires the same interest in the La Quinta Facility as the Hawthorn Facility. The transferee must satisfy all of the same conditions to a Transfer as described in both the Hawthorn Agreement and the La Quinta Agreement.
n. Franchisor's right of first refusal to acquire franchisee's business	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
o. Franchisor's option to purchase franchisee's business	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
p. Death or disability of franchisee	9.4, Appendix A	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Your estate or guardian and their transferees are Permitted Transferees who submit a Franchise Application and sign then current Franchise Agreement, but pay no Relicense or Application Fees and need not improve the Facility.
q. Non-competition covenants during the term of the franchise	2, 3.11	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Neither you nor your owners, officers or directors may own, lease, manage or franchise a timeshare resort, vacation or residence club, fractional ownership residence, condominium/apartment

						leasing or rental business, or the like, for any facility or business that shares common areas, amenities, recreation facilities, services, supplies or support activities with the Facility. You are also prohibited from promoting a different or competing business at the Facility. In addition, the Facility must not book reservations through any other channel other than our CRS or through approved consumer website(s) or third-party distribution sites.
r. Non-competition covenants after the franchise terminates or expires	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
s. Modification of the Agreement <sup>4</sup>	4.5, 17.2, Schedule C	3., Exhibit A	3., Exhibit A	3.,8.	15.7; 2.2; Oracle Schedule 1.1	System and Manual may be modified; no modifications unless in writing. Marketing/Reservation Contributions, including fees listed in the Franchise Agreement - Schedule C, may change upon 30 days' written notice to you. We may modify certain schedules of the MITA but not to eliminate software maintenance. RMS, RSS and SRS fees may be increased on 30 days' notice.
t. Integration merger clause	17.7.4	11.	11.	8.	15.2	Only the Franchise Agreement and representations included in this Franchise Disclosure Document are binding (subject to state law). Any other promises may not be

						enforceable. Notwithstanding the foregoing, no provision in any Franchise Agreement is intended to disclaim the express representations made in this Franchise Disclosure Document.
u. Dispute resolution by arbitration or mediation	17.6.2	6.	6.	4.	15.15	Disputes arising under the Franchise Agreement, the MITA, the RMS, RSS, and the SRS Agreement may be submitted to non-binding mediation.
v. Choice of forum	17.6.3	6.	6.	4.	15.8	Non-exclusive venue and jurisdiction in Morris County, New Jersey and U.S. District Court for New Jersey (subject to state law).
w. Choice of law	17.6.1	6.	6.	4.	15.8	New Jersey law applies, except New Jersey Franchise Practices Act doesn't apply to Facilities outside New Jersey (subject to state law).

## ITEM 18. PUBLIC FIGURES

We do not use any public figure to promote the sale of the franchise.

## ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in this Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

Facilities report performance for a time period on the basis of Average Daily Room Rate ("ADR") (gross room revenue divided by the number of occupied guest rooms), "Occupancy Rate" (the percentage of available guest rooms actually occupied by guests), and "RevPAR" or gross room revenue per available room (Average Occupancy Rate multiplied by Average Daily Room Rate). Our Chain also reports on central reservation system activity, such as the percentage of gross room revenue generated from reservations booked through the Central Reservation System or by

members of our loyalty program. In calculating gross room revenue in this Item 19, we take the price paid by the consumer for the room, after all discounts, credits and allowances, and subtract all applicable taxes.

The information contained in this Item 19 is a historic financial performance representation about our Chain’s existing Facilities in the United States (including the continental United States, Alaska, and Hawaii). The Chain Facilities included in the samples in this Item 19 do not differ materially from those of prospective franchisees to whom we may offer franchises under this Disclosure Document. All the Chain Facilities whose information is represented in this Item 19 were operated by franchisees during the period reflected in this Item 19. This Item 19 contains financial performance representations relating to 2023. The financial performance representations do not include information from any Chain Facilities that were open on January 1, 2023 but left the System on or before December 31, 2023. During 2023, 5 franchised Chain Facilities left the System; none of the 5 Chain Facilities that left the System during 2023 were open in the System less than 12 months.

**Some facilities have earned this amount. Your individual results may differ. There is no assurance that you’ll earn as much.**

**Average and Median ADR, Occupancy Rate, and RevPAR<sup>1</sup>**

The table below sets forth the average and median ADR, Occupancy Rate, and RevPAR for Qualified Chain Facilities for the period from January 1, 2023 through December 31, 2023. “Qualified Chain Facilities” means those Chain Facilities in the United States that were part of the system on December 31, 2023 and achieved a “Comparable Social Review Score<sup>2</sup>.” The total number of Chain Facilities in the United States as of December 31, 2023 was 68. Of those 68 franchised Chain Facilities, 30 were Qualified Chain Facilities.

2023		Average Daily Room Rate				Occupancy Rate				RevPAR			
	# of Qualified Chain Facilities	Avg.	# Meet or Exceed Avg.	% Meet or Exceed Avg.	Median	Avg.	# Meet or Exceed Avg.	% Meet or Exceed Avg.	Median	Avg.	# Meet or Exceed Avg.	% Meet or Exceed Avg.	Median
Total	30	\$110.96	10	33.3%	\$104.32	69.0%	13	43.3%	65.6%	\$76.61	13	43.3%	\$71.73

The information above was obtained from the monthly revenue reports of Chain Facilities submitted by franchisees and represents the most reliable information available to us. For any months in which Chain Facilities did not submit revenue reports, Occupancy Rate and ADR were computed based upon actual data sent to us each night by the Facility’s property management system. You set your own room rates.

**Average and Median RevPAR Index**

RevPAR Index measures a hotel’s RevPAR performance relative to an aggregated grouping of

<sup>1</sup> If a Chain Facility changed ownership during 2023, then the ADR, Occupancy Rate and RevPAR information contained in this section for the Facility is only reflected from the date of the subsequent owner’s acquisition of the Facility through the end of the year.

<sup>2</sup> A “Comparable Social Review Score” means that, during 2023, a Chain Facility (i) received at least ten total reviews via Medallia, which aggregates reviews from Tripadvisor, major online travel agencies, and other online social review sites, and (ii) achieved an average score from such reviews of 4.0 or above (out of a possible maximum score of 5.0).

facilities (e.g., competitive set, market, or chain scale). The average and median RevPAR index information presented in this Item 19 reflects RevPAR information relative to a Chain Facility’s competitive set obtained from monthly data provided by Smith Travel Research, Inc., an independent research firm that provides information to the hotel industry. A competitive set is a peer group of hotels that competes for business and is selected to benchmark the subject property’s performance. An index of 100 represents that a hotel is capturing its “fair share” compared to the hotel’s competitive set. An index greater than 100 represents that a hotel is capturing more than its “fair share” compared to the hotel’s competitive set; an index less than 100 represents that a hotel is capturing less than its “fair share” compared to the hotel’s competitive set. We have not audited or independently verified the information provided by Smith Travel Research.

The following table sets forth the Average RevPAR Index and Median RevPAR Index for the period January 1, 2023 through December 31, 2023 for Qualified Chain Facilities.

2023		RevPAR Index			
	# of Qualified Chain Facilities	Avg.	# Meet or Exceed Avg.	% Meet or Exceed Avg.	Median
Total Sample	30	101%	16	53.3%	105%

### **Central Reservation System and Wyndham Rewards Activity**

The following section provides revenue contribution information for Chain Facilities from reservations generated by the Central Reservation System and the Wyndham Rewards loyalty program. The “Central Reservation System” means reservations processed via our and the Lodging Affiliates’ call centers (“Call Centers”), our and the Lodging Affiliates’ brand websites (“Brand Websites”), other electronic channels such as the global distribution systems (“GDS”), the Wyndham Rewards loyalty program, third party websites, and certain reservations by the Global Sales Organization. Reservations by Wyndham Rewards members were made through the Call Centers, the Brand Websites, other electronic channels and directly with Chain Facilities. Contribution information is reported to us by all franchised Chain Facilities in the System.<sup>3</sup>

The following table sets forth “Central Reservation System Contribution” and “Wyndham Rewards Contribution” for all 68 Chain Facilities in the United States that were part of the System as of December 31, 2023 (the “Contribution Group”). The Central Reservation System Contribution is calculated by dividing the gross room revenue from reservations generated by the Central Reservation System (including by Wyndham Rewards members) at the Contribution Group from January 1, 2023 through December 31, 2023<sup>4</sup> by all gross room revenue at the Contribution Group from the same period, expressed as a percentage. The Wyndham Rewards Contribution is calculated by dividing the gross room revenue from reservations generated by members of the Wyndham Rewards loyalty program at the Contribution Group from January 1,

<sup>3</sup> If a Chain Facility was operated pursuant to an agreement with one of the Lodging Affiliates on January 1, 2023 but converted to our Chain during 2023, then the totals in this section include contribution information for that Chain Facility for all of 2023.

<sup>4</sup> As used in this paragraph, reservations in 2023 include room nights from stays with an arrival between January 1, 2023 and December 31, 2023. For greater clarity, these reservations may include room nights after December 31, 2023, provided the first night of occupancy for such stays occurred on or before December 31, 2023.

2023 through December 31, 2023 by all gross room revenue at the Contribution Group from the same period, expressed as a percentage.

2023 Contribution		Total Central Reservation System				Wyndham Rewards (included in Total)			
	# of Chain Facilities	Average	# Meeting or Exceeding Avg.	% Meeting or Exceeding	Median	Average	# Meeting or Exceeding Avg.	% Meeting or Exceeding	Median
Total	68	75.0%	39	57.4%	80.2%	46.0%	38	55.9%	48.0%

We have written substantiation for the historical performance representations contained in this Item 19, which we will make available to you upon reasonable request. We will not disclose the performance data of a specific Chain Facility and its identity without the franchisee's prior written consent.

Other than the preceding financial performance representations, we do not make any representations about a franchisee's future performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing or former outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to our management by contacting Paul F. Cash, Executive Vice President and General Counsel, Hawthorn Suites Franchising, Inc., 22 Sylvan Way, Parsippany, NJ 07054, (973) 753-6333; the Federal Trade Commission; and the appropriate state regulatory agencies.

## ITEM 20. OUTLETS AND FRANCHISEE INFORMATION<sup>5</sup>

**Table No. 1**  
**Systemwide Outlet Summary**  
**For Years 2021 to 2023 (U.S. Only)**

Outlet Type	Year	Outlet at the Start of the Year	Outlet at the End of the Year	Net Change
Franchised	2021	84	72	-12
	2022	72	67	-5
	2023	67	68	1
Managed <sup>6</sup>	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Company-Owned	2021	0	0	0

<sup>5</sup> For purposes of this Item 20, U.S. includes the continental United States, Alaska, Hawaii, and Puerto Rico.

<sup>6</sup> Managed facilities are operated pursuant to a Management Agreement between an affiliate of ours and the owner of the facility. Franchised facilities are independently owned and operated.



Outlet Type	Year	Outlet at the Start of the Year	Outlet at the End of the Year	Net Change
	2022	0	0	0
	2023	0	0	0
<b>Total Outlets</b>	<b>2021</b>	<b>84</b>	<b>72</b>	<b>-12</b>
	<b>2022</b>	<b>72</b>	<b>67</b>	<b>-5</b>
	<b>2023</b>	<b>67</b>	<b>68</b>	<b>1</b>

**Table No. 2<sup>7</sup>**  
**Transfers of Franchised Outlets from Franchisors to New Owners**  
**(Other than the Franchisor)**  
**For Years 2021 to 2023 (U.S. Only)**

State	Year	Number of Transfers
California	2021	1
	2022	1
	2023	0
Colorado	2021	0
	2022	1
	2023	0
Florida	2021	0
	2022	1
	2023	0
Illinois	2021	0
	2022	1
	2023	0
Missouri	2021	1
	2022	0
	2023	0
Texas	2021	1
	2022	1
	2023	0
Virginia	2021	1
	2022	0
	2023	0
<b>Totals</b>	<b>2021</b>	<b>4</b>

<sup>7</sup> Excluded from these tables are any (i) assignments by initial franchisees to affiliated entities using our Assignment and Assumption Agreement form, and (ii) temporary operating agreements with financial institutions or others and agreements with receivers.

State	Year	Number of Transfers
	2022	5
	2023	0

**Table No. 3<sup>8</sup>**  
**Status of Franchised Outlets**  
**For Years 2021 to 2023 (U.S. Only)**

State <sup>9</sup>	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations -Other Reasons	Outlets at End of the Year
Arizona	2021	2	0	0	0	0	2	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
California	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	0	5
	2023	5	0	0	0	0	0	5
Colorado	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Connecticut	2021	1	0	0	0	0	1	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
Florida	2021	5	0	0	0	0	1	4
	2022	4	0	0	0	0	0	4
	2023	4	0	0	0	0	0	4
Georgia	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	2	3
	2023	3	0	0	0	0	0	3
Illinois	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Indiana	2021	3	0	0	0	0	1	2
	2022	2	0	0	0	0	1	1
	2023	1	0	0	0	0	0	1
Kansas	2021	2	1	0	0	0	1	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Kentucky	2021	1	0	0	0	0	0	1

<sup>8</sup> The numbers in Columns 5 and 8 do not include any franchises that were terminated for any reason before the outlet opened as part of our System.

<sup>9</sup> If a state is not listed in the above table, there were no Hawthorn franchised facilities transferred in that state either as of the start or end of the years listed in the table.

State <sup>9</sup>	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations -Other Reasons	Outlets at End of the Year
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Louisiana	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	1
	2021	5	0	0	0	0	1	4
Michigan	2022	4	0	0	0	0	3	1
	2023	1	0	0	0	0	1	0
Missouri	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	1	1
	2023	1	0	0	0	0	0	1
Nevada	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
New Jersey	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	1	0	0	0	0	2
New Mexico	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	1	0	0	0	0	2
New York	2021	2	0	0	0	0	1	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
North Dakota	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
Ohio	2021	8	0	0	0	0	0	8
	2022	8	0	0	0	0	1	7
	2023	7	0	0	0	0	0	7
Oklahoma	2021	1	1	0	0	0	0	2
	2022	2	1	0	0	0	0	3
	2023	3	0	0	0	0	0	3
Pennsylvania	2021	4	0	1	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
South Carolina	2021	3	0	0	0	0	1	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Texas	2021	17	0	0	0	0	2	15
	2022	15	2	0	0	0	0	17
	2023	17	2	0	0	0	1	18

State <sup>9</sup>	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
Vermont	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	1
Virginia	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	2	0
Washington	2021	1	0	0	0	0	1	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
West Virginia	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Wisconsin	2021	4	0	0	0	0	1	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	1	2
<b>Totals</b>	<b>2021</b>	<b>84</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>13</b>	<b>72</b>
	<b>2022</b>	<b>72</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>67</b>
	<b>2023</b>	<b>67</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>68</b>

**Table No. 4  
Status of Managed and Company-Owned Outlets  
For Years 2021 to 2023 (U.S. Only)**

State <sup>10</sup>	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
All States	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
	2023	0	0	0	0	0	0
<b>Total</b>	<b>2021</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2022</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2023</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Table No. 5  
Projected Openings as of December 31, 2023 (U.S. Only)**

<sup>10</sup> If a state is not listed in the above table, there were no managed or company-owned Hawthorn facilities located in that state either as of the start or end of the years listed in the table and no managed or company-owned Hawthorn facilities were opened in that state during these years.

State <sup>11</sup>	Franchise Agreements Signed but Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Alabama	4	0	0
Arizona	5	1	0
California	8	1	0
Colorado	3	0	0
Connecticut	2	0	0
Florida	3	1	0
Georgia	10	1	0
Idaho	1	0	0
Illinois	2	0	0
Kentucky	2	0	0
Minnesota	1	0	0
Missouri	1	0	0
Nebraska	1	0	0
Nevada	3	0	0
New Jersey	3	0	0
New Mexico	1	0	0
New York	3	1	0
North Carolina	5	1	0
Ohio	4	0	0
Oklahoma	2	0	0
Oregon	1	0	0
Pennsylvania	2	0	0
South Carolina	1	0	0
Tennessee	6	0	0
Texas	28	2	0
Utah	4	0	0
Virginia	3	1	0
Washington	3	0	0
<b>Totals</b>	<b>112</b>	<b>9</b>	<b>0</b>

The name, address and telephone number of all franchisees in the United States as of December 31, 2023 are shown in Exhibit E-1. Included in Exhibit E-2 are the name, last known address and telephone number of the 5 franchisees in the United States who terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement from January 1, 2023 until December 31, 2023. There were no franchisees who did not

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<sup>11</sup> If a state is not listed in the above table we do not project entering into a Franchise Agreement for a Hawthorn facility to be located in that state during our next fiscal year.

communicate with us during the ten-week period preceding the date of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the Hawthorn Chain. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

As a standard practice, when we enter into settlement agreements with a franchisee or former franchisee, we require them to agree to maintain as confidential all information that the franchisee or former franchisee has about us.

We have established the FAC, as defined in Item 11, to use as a sounding board on issues that affect the franchise system. The FAC does not maintain a separate telephone number, e-mail address or website. The address for the FAC is:

FAC  
c/o Hawthorn Suites Franchising, Inc.  
22 Sylvan Way  
Parsippany, New Jersey 07054  
(800) 758-8999  
<https://development.wyndhamhotels.com>

## **ITEM 21. FINANCIAL STATEMENTS**

Exhibit D includes the audited financial statements of Wyndham Hotels & Resorts, Inc. and its subsidiaries (the “Company”). These financial statements contain the consolidated balance sheets of the Company as of December 31, 2023 and 2022, the related consolidated statements of income, comprehensive income, equity, and cash flows, for each of the three years in the period ended December 31, 2023, and the related notes (collectively referred to as the “financial statements”).

WHR guarantees our performance; See Exhibit D for a copy of the guaranty. We file state specific guarantees of performance with the appropriate agencies in the states where our franchises are registered to be offered and sold.

## **ITEM 22. CONTRACTS**

Copies of all proposed agreements regarding the franchise offering are included in the following exhibits to this Disclosure Document:

Exhibit C-1 Franchise Agreement; Guaranty; Initial Fee Note; Development Incentive Note; Dual Brand Addendum; Assignment and Assumption Agreement; State Addenda and Franchise Application

Exhibit C-2 Master Information Technology Agreement

- Exhibit C-3 Elavon Hosted Services Agreement for Hosted Gateway Services
- Exhibit C-4 Three Party Agreement; Request For Three Party Agreement; Lender Notification Agreement; Request For Lender Notification Agreement
- Exhibit C-5 Termination and Release Agreement
- Exhibit C-6 Signature Reservation Service Agreement
- Exhibit C-7 Hotel Revenue Management Agreement
- Exhibit C-8 Hotel Connectivity Solutions Support Agreement
- Exhibit C-9 Remote Sales Services Agreement
- Exhibit C-10 Sculptor Loan Agreement; Wyndham Loan Agreement

### **ITEM 23. RECEIPT**

You will find the state effective dates and copies of a detachable receipt in Exhibit G at the very end of this Disclosure Document.

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# **EXHIBIT A**

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## **STATE ADDENDA**

Following this page are addenda for the states of California, Hawaii, Illinois, Indiana, Maryland, Minnesota, New York, North Dakota, Rhode Island, Virginia, Washington and Wisconsin. If you or your Facility are located in one of these states, please read the addendum for your state and the addendum to the Franchise Agreement that may apply to your transaction with us.

The regulatory authorities and registered agents for service of process in each state are listed in Exhibit B.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
CALIFORNIA FRANCHISE INVESTMENT LAW**

The following provisions supersede the Franchise Disclosure Document and apply to all licenses or franchises offered and sold in the State of California:

1. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).
2. The Franchise Agreement requires application of the laws of New Jersey. This provision may not be enforceable under California law.
3. If the Franchise Agreement requires you to execute a general release of claims upon renewal or transfer of the Franchise Agreement, California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order thereunder is void. Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Section 31000- 31516). California Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000-20043).
4. The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.
5. The Franchise Agreement contains a waiver of punitive damages provision and a waiver of jury trial provision, which may not be enforceable.
6. We have or will comply with all of the requirements under California Corporations Code, Section 31109.1, with respect to negotiated sales.
7. PROSPECTIVE FRANCHISEES ARE ENCOURAGED TO CONSULT PRIVATE LEGAL COUNSEL TO DETERMINE THE APPLICABILITY OF CALIFORNIA AND FEDERAL LAWS (SUCH AS BUSINESS AND PROFESSIONS CODE SECTION 20040.5, CODE OF CIVIL PROCEDURE SECTION 1281, AND THE FEDERAL ARBITRATION ACT) TO ANY PROVISIONS OF A FRANCHISE AGREEMENT RESTRICTING VENUE TO A FORUM OUTSIDE THE STATE OF CALIFORNIA.
8. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.
9. THESE FRANCHISES WILL BE/HAVE BEEN REGISTERED (OR EXEMPT FROM REGISTRATION) UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF CALIFORNIA. SUCH REGISTRATION (OR EXEMPTION) DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION NOR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE, AND NOT MISLEADING.
10. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

11. SECTION 31125 OF THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES US TO GIVE YOU A DISCLOSURE DOCUMENT APPROVED BY THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION BEFORE WE ASK YOU TO CONSIDER A MATERIAL MODIFICATION OF YOUR FRANCHISE AGREEMENT.

12. Item 17 of the Disclosure Document is amended by the insertion of the following:

The California Franchise Relations Act (Business and Professions Code Section 20000 through 20043) provides rights to you concerning termination, transfer, or nonrenewal of a franchise. If the Franchise Agreement is inconsistent with the law, the law will control.

13. The highest interest rate allowed by law in California is currently 10% annually.

14. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

15. Each provision of this Addendum to the Franchise Disclosure Document shall be effective only to the extent that with respect to such provision, the jurisdictional requirements of the California Franchise Investment Law are met independently without reference to this Addendum.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
HAWAII FRANCHISE INVESTMENT LAW**

**THESE FRANCHISES HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.**

**THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE OR SUBFRANCHISOR, AT LEAST SEVEN (7) DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE, OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN (7) DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.**

**THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.**

1.
  - A. Hawthorn Suites Franchising, Inc.'s Disclosure Document is currently registered in the states of: Hawaii, Minnesota, South Dakota, Virginia, Washington and Wisconsin.
  - B. This registration or an exemption application is on file in the States of California, Florida, Hawaii, Maryland, Michigan, Minnesota, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.
  - C. No states have refused, by order or otherwise, to register these franchises.
  - D. No states have revoked or suspended the right to offer these franchises.
  - E. The proposed registration of these franchises has not been withdrawn in any state.
2. No release language set forth in the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising in the State of Hawaii.
3. The Franchisor's registered agent in the state authorized to receive service of process is:

Commissioner of Securities of Department of Commerce and Consumer Affairs  
335 Merchant Street  
Honolulu, Hawaii 96813
4. Item 17(m) of the FDD is amended by adding the following information:

In connection with a transfer, you must sign a release of any claims you may have against Hawthorn Suites Franchising, Inc. However, the release will not apply to any claim you may have under Hawaii law.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Each provision of this Addendum to the Disclosure Document is effective only to the extent with respect to such provision that the jurisdictional requirements of the Hawaii Franchise Investment Law are met independently without reference to this Disclosure Document.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
ILLINOIS FRANCHISE DISCLOSURE ACT**

The following provisions supersede the Franchise Disclosure Document and apply to all licenses or franchises offered and sold in the State of Illinois:

1. Illinois law governs the franchise agreements.
2. In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.
3. Franchisees' rights upon termination and non-renewal are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.
4. In conformance with Section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.
5. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.
6. Each provision of this Addendum to the Franchise Disclosure Document shall be effective only to the extent that with respect to such provision, the jurisdictional requirements of the Illinois Franchise Disclosure Act of 1987 are met independently without reference to this Addendum.



**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
INDIANA DECEPTIVE FRANCHISE PRACTICES LAW**

The following provisions supersede the Franchise Disclosure Document and apply to all licenses or franchises offered and sold in the State of Indiana:

To the extent the provisions of the Franchise Disclosure Document or Franchise Agreement are inconsistent with the Indiana Deceptive Franchise Practices Law, Indiana Code § 23-2-2.7-1 to 23-2-2.7- 7, that law will control.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Each provision of this Addendum to the Disclosure Document shall be effective only to the extent that, with respect to such provision, the jurisdictional requirements of the Indiana Franchise Act are met independently without reference to this Addendum.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

The following provisions supersede the Franchise Disclosure Document and apply to all licenses or franchises offered and sold in the State of Maryland:

1. Notwithstanding any provision in the Franchise Disclosure Document or the Franchise Agreement to the contrary, a franchisee may bring a lawsuit in Maryland against us for claims arising under the Maryland Franchise Registration and Disclosure Law.
2. The fourth sentence of the third paragraph under the caption “D. Marketing and Advertising” in Item 11 is deleted and replaced with the following:

Franchisees who are Maryland residents or will operate a Facility in Maryland may receive an accounting of expenditures from the Fund by contacting the Senior Vice President of Financial Planning and Analysis in writing.
3. Item 17 of the Franchise Disclosure Document states that the Franchise Agreement will automatically terminate upon the bankruptcy of franchisee. This provision may not be enforceable under current Federal bankruptcy law (11 U.S.C. Section 101 et seq.).
4. Items 17(c) and 17(m) are revised to provide that, pursuant to COMAR 02.02.08.16L, the general release required as a condition to renewal, sale or consent to assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
5. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.
6. The Franchise Agreement states that New Jersey law generally applies. However, the conditions under which your franchise can be terminated and your rights upon nonrenewal may be affected by Maryland laws, and we will comply with that law in Maryland.
7. Each provision of this Addendum to the Disclosure Document shall be effective only to the extent that, with respect to such provision, the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently without reference to this Addendum.
8. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
MINNESOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede the Franchise Disclosure Document and apply to all licenses or franchises offered and sold in the State of Minnesota:

1. Minnesota law provides franchisees with certain termination, non-renewal and transfer rights. Minnesota Statutes, Section 80C.14, Subdivisions 3, 4 and 5 require, except in certain specified cases, that the franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement and that consent to the transfer of the franchise will not be unreasonably withheld.
2. Minnesota Rules 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release from liability imposed by Minnesota Statutes, Chapter 80C; provided, that this shall not bar the voluntary settlement of disputes.
3. The following language is added at the end of Item 17 of the Franchise Disclosure Document:

Minnesota Statutes, Section 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside of Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. Nothing in the Franchise Disclosure Document or the Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of Minnesota.
4. Item 13 is revised to include the following language:

To the extent required by the Minnesota Franchise Act, we will protect your rights to use the trademarks, service marks, trade names, logo types or other commercial symbols related to the trademarks or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the trademarks, provided you are using the names and marks in accordance with the Franchise Agreement.
5. Item 17(c) and 17(m) are revised to provide that we cannot require you to sign a release of claims under the Minnesota Franchise Act as a condition to renewal or assignment.
6. With respect to franchises governed by Minnesota law, we will comply with Minnesota Statutes, Section 80C.17, Subd. 5 with respect to limitation of claims.
7. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.
8. Each provision of this Addendum shall be effective only to the extent that, with respect to such provision, the jurisdictional requirements of Minnesota Statutes, Chapter 80C are met independently without reference to this Addendum.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
NEW YORK STATE FRANCHISE ACT**

The following provisions supersede the Franchise Disclosure Document and apply to all licenses or franchises offered and sold in the State of New York:

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT B OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS, APPROVES OR ENDORSES IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 28 LIBERTY STREET, 21ST FLOOR, NEW YORK, NEW YORK 10005. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is

subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of Item 4:

Neither the franchisor, its affiliate, its predecessor, officers, or general partner during the 10-year period immediately before the date of the offering circular: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after that officer or general partner of the franchisor held this position in the company or partnership.

4. The following is added to the end of Item 5:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

5. The following is added to the end of the “Summary” sections of Item 17(c), titled “Requirements for franchisee to renew or extend,” and Item 17(m), entitled “Conditions for franchisor approval of transfer”:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

6. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”:

You may terminate the agreement on any grounds available by law.

7. The following is added to the end of the “Summary” section of Item 17(j), titled “Assignment of contract by franchisor”:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.

8. The following is added to the end of the “Summary” sections of Item 17(v), titled “Choice of forum”, and Item 17(w), titled “Choice of law”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

9. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
NORTH DAKOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede the Franchise Disclosure Document and apply to all licenses or franchises offered and sold in the State of North Dakota:

**THE NORTH DAKOTA SECURITIES COMMISSIONER HAS HELD THE FOLLOWING TO BE UNFAIR, UNJUST OR INEQUITABLE TO NORTH DAKOTA FRANCHISEES (NDCC SECTION 51-19-09):**

- A. Restrictive Covenants:** Franchise disclosure documents that disclose the existence of covenants restricting competition contrary to NDCC Section 9-08-06, without further disclosing that such covenants will be subject to the statute.
- B. Restrictions on Forum:** Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
- C. Liquidated Damages and Termination Penalties:** Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
- D. Applicable Laws:** Franchise Agreements that specify that they are to be governed by the laws of a state other than North Dakota.
- E. Waiver of Trial by Jury:** Requiring North Dakota Franchises to consent to the waiver of a trial by jury.
- F. Waiver of Exemplary & Punitive Damages:** Requiring North Dakota Franchisees to consent to a waiver of exemplary and punitive damage.
- G. General Release:** Franchise Agreements that require the franchisee to sign a general release upon renewal of the franchise agreement.
- H. Limitation of Claims:** Franchise Agreements that require the franchisee to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
- I. Enforcement of Agreement:** Franchise Agreements that require the franchisee to pay all costs and expenses incurred by the franchisor in enforcing the agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.

Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the North Dakota Franchise Investment Law are met independently without reference to this Addendum.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

To the extent this Addendum is inconsistent with any terms or conditions of the Franchise Agreement or exhibits or attachments thereto, or the Franchise Disclosure Document, the terms of this Addendum shall govern.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
RHODE ISLAND FRANCHISE INVESTMENT ACT**

The following provisions supersede the Franchise Disclosure Document and apply to all licenses or franchises offered and sold in the State of Rhode Island:

1. The Franchise Agreement shall be governed by Rhode Island Law with respect to any claim enforceable under the Rhode Island Franchise Investment Act (the “Act”).
2. Section 19-28.1-14 of the Act provides that a provision in a license or franchise agreement restricting jurisdiction or venue to a forum outside the State of Rhode Island is void with respect to a claim otherwise enforceable under the Act.
3. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.
4. Each provision of this Addendum shall be effective only to the extent that, with respect to such provision, the jurisdictional requirements of the Rhode Island Franchise Investment Act (§§ 19- 28.1-1 through 19-28.1-34) are met independently without reference to this Addendum.

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
VIRGINIA RETAIL FRANCHISING ACT**

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Hawthorn Suites Franchising, Inc. for use in the Commonwealth of Virginia shall be amended as follows:

The following statements are added to Item 17.h of the Franchise Disclosure Document and Section 11 of the Franchise Agreement.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a licensor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute “reasonable cause,” as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Each provision of this Addendum shall be effective only to the extent that, with respect to such provision, the jurisdictional requirements of the Virginia Retail Franchising Act are met independently without reference to this Addendum.



## **ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE WASHINGTON FRANCHISE INVESTMENT PROTECTION ACT**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

**Use of Franchise Brokers.** The franchisor [uses/may use] the services of franchise brokers to assist it in selling franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. Do not rely only on the information provided by a franchise broker about a franchise. Do your own investigation by contacting the franchisor's current and former franchisees to ask them about their experience with the franchisor.

Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act (Wash. Rev. Code §§ 19.100.010 through 19.100.940) are met independently without reference to this Addendum.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any

applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Nothing in the Franchise Disclosure Document is intended to waive any liability we may have under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder, including under RCW 19.100.180(2)(d), which states that it is a violation of the Washington Franchise Investment Protection Act for any person to “sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.”

**ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT PURSUANT TO THE  
WISCONSIN FRANCHISE INVESTMENT LAW**

The following provisions supersede the Franchise Disclosure Document and apply to all franchises offered and sold in the State of Wisconsin:

The Wisconsin Fair Dealership Law applies to most franchise agreements in the state and prohibits termination, cancellation, non-renewal or substantial change in competitive circumstances of a dealership agreement without good cause. The law further provides that 90 days prior written notice of the proposed termination, etc. must be given to the dealer. The dealer has 60 days to cure the deficiency and if the deficiency is so cured the notice is void. The Disclosure Document and Franchise Agreement are hereby modified to state that the Wisconsin Fair Dealership Law, to the extent applicable, supersedes any provisions of the Franchise Agreement that are inconsistent with the Wisconsin Fair Dealership Law, Wis. Stat. Ch. 135.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

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## **EXHIBIT B**

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**FEDERAL AND STATE REGULATORY AUTHORITIES  
AND  
REGISTERED AGENTS FOR SERVICE OF PROCESS**

**CALIFORNIA**

Commissioner of Financial Protection and Innovation  
California Department of Financial Protection and  
Innovation  
2101 Arena Blvd.  
Sacramento, CA 95834  
(866) 275-2677

**Agent:**

Commissioner of Financial Protection and Innovation  
California Department of Financial Protection and  
Innovation  
2101 Arena Blvd.  
Sacramento, CA 95834  
(866) 275-2677

**HAWAII**

Commissioner of Securities  
Department of Commerce and Consumer Affairs  
Business Registration Division  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
(808) 586-2722

**Agent:**

Commissioner of Securities  
Department of Commerce and Consumer Affairs  
Business Registration Division  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
(808) 586-2722

**ILLINOIS**

Office of Attorney General  
Franchise Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-4465

**Agent:**

Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-4465

**INDIANA**

Indiana Secretary of State  
Securities Division  
302 West Washington Street  
Room E-111  
Indianapolis, Indiana 46204  
(317) 232-6681

**Agent:**

Indiana Secretary of State  
Securities Division  
302 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-6681

**MARYLAND**

Office of Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202-2020  
(410) 576-6360

**Agent:**

Maryland Securities Commissioner  
200 St. Paul Place  
Baltimore, MD 21202-2020  
(410) 576-6360

**MICHIGAN**

Michigan Office of Attorney General  
Consumer Protection Division  
Franchise Section  
525 W. Ottawa St.  
G. Mennen Williams Building, 1<sup>st</sup> Floor  
Lansing, Michigan 48933  
(517) 373-7117

**Agent:**

Michigan Office of Attorney General  
Consumer Protection Division  
Franchise Section  
525 W. Ottawa St.  
G. Mennen Williams Building, 1<sup>st</sup> Floor  
Lansing, Michigan 48933  
(517) 373-7117

## **MINNESOTA**

Minnesota Department of Commerce  
Securities – Franchise Registration  
85 7<sup>th</sup> Place East, Ste. 280  
St. Paul, Minnesota 55101-2198  
(651) 539-1500

### **Agent:**

Commissioner of Commerce  
85 7<sup>th</sup> Place East, Ste. 280  
St. Paul, Minnesota 55101-2198  
(651) 539-1500

## **NEW YORK**

NYS Department of Law  
Investor Protection Bureau  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, New York 10005  
(212) 416-8222

### **Agent:**

New York Secretary of State  
New York Department of State  
Once Commerce Plaza  
99 Washington Ave, 6<sup>th</sup> Fl  
Albany, NY 12231-0001  
(518) 473-2492

## **NORTH DAKOTA**

North Dakota Securities Department  
600 East Boulevard Avenue  
State Capitol - 5th Floor  
Bismarck, North Dakota 58505-0510  
(701) 328-4712

### **Agent:**

North Dakota Securities Department  
600 East Boulevard Avenue  
State Capitol - 5th Floor  
Bismarck, North Dakota 58505-0510  
(701) 328-4712

## **RHODE ISLAND**

Rhode Island Department of Business Regulations  
Securities Division  
John O. Pastore Center  
1511 Pontiac Avenue, Building 68-2  
Cranston, Rhode Island 02920  
(401) 462-9527

### **Agent:**

Director of Department of Business Regulation  
Securities Division  
John O. Pastore Center

1511 Pontiac Avenue, Building 68-2  
Cranston, Rhode Island 02920  
(401) 462-9527

## **SOUTH DAKOTA**

South Dakota Department of Labor & Regulation  
Division of Insurance  
Securities Regulation  
124 S. Euclid Suite 104  
Pierre, South Dakota 57501  
(605) 773-3563

### **Agent:**

Director of Division of Insurance  
Securities Regulation  
124 S. Euclid Suite 104  
Pierre, South Dakota 57501  
(605) 773-3563

## **VIRGINIA**

State Corporation Commission Division of Securities  
and Retail Franchising  
1300 East Main Street, 9th Floor  
Richmond, Virginia 23219  
(804)371-9051

### **Agent:**

Clerk of the State Corporation Commission  
1300 East Main Street, 1st Floor  
Richmond, Virginia 23219  
(804) 371-9733

## **WASHINGTON**

Department of Financial Institutions  
Securities Division  
P.O. Box 41200  
Olympia, WA 98504  
(360) 902-8760

### **Agent:**

Director of Department of Financial Institutions  
Securities Division – 3<sup>rd</sup> Floor  
150 Israel Road SW  
Tumwater, WA 98501  
(360) 902-8760

## **WISCONSIN**

Department of Financial Institutions  
Division of Securities  
4822 Madison Yards Way, North Tower  
Madison, Wisconsin 53705  
(608) 266-8557



**Agent:**

Commissioner of Securities  
Department of Financial Institutions  
4822 Madison Yards Way, North Tower  
Madison, Wisconsin 53705  
(608) 266-8557

There may be states in addition to those listed above in which Franchisor has appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

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**EXHIBIT C-1**

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Location: \_\_\_\_\_  
Unit No.: \_\_\_\_\_

## HAWTHORN SUITES FRANCHISING, INC. FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”), dated \_\_\_\_\_, 20\_\_\_\_, is between HAWTHORN SUITES FRANCHISING, INC., a Georgia corporation (“we,” “our,” “us,” or “Franchisor”), and \_\_\_\_\_, a \_\_\_\_\_ (“you” or “Franchisee”). The definitions of capitalized terms not defined below are found in Appendix A. In consideration of the following mutual promises, the parties agree as follows:

**1. Franchise.** We have the exclusive right to franchise to you the distinctive “Hawthorn” System for providing transient guest lodging services. We grant to you and you accept the Franchise, effective and beginning on the Opening Date and ending on the earlier to occur of the Term’s expiration or a Termination. The Franchise is effective only at the Location and may not be transferred or relocated. You will call the Facility a “Hawthorn,” “Hawthorn Suites,” “Hawthorn Suites by Wyndham,” “Hawthorn Extended Stay,” or a “Hawthorn Extended Stay by Wyndham,” as appropriate and instructed by us. You may adopt additional or secondary designations for the Facility with our prior written consent, which we may withhold, condition, or withdraw on written notice in our sole discretion. You shall not affiliate or identify the Facility with another franchise system, reservation system, brand, cooperative or registered mark during the Term.

**2. Protected Territory.** We will not own, operate, lease, manage, franchise or license any party but you to operate a Chain Facility in the “Protected Territory”, as defined below, while this Agreement is in effect. We may own, operate, lease, manage, franchise or license anyone to operate any Chain Facility located anywhere outside the Protected Territory without any restriction or obligation to you. We may grant protected territories that overlap your Protected Territory to other Chain Facilities. While this Agreement is in effect, neither you, any of your affiliates, nor any of your officers, directors, general partners or owners of 25% or more of your Equity Interests, may own, operate, lease, manage or franchise any timeshare resort, vacation club, residence club, fractional ownership residence, condominium/apartment leasing or rental business, or the like, for any facility or business that shares directly or indirectly, common areas, amenities, recreation facilities, services, supplies or support activities with the Facility. This Section does not apply to any Chain Facility located in the Protected Territory on the Effective Date, which we may renew, relicense, allow to expand, or replace with a replacement Facility located within the same trading area having not more than 120% of the guest rooms of the replaced Chain Facility if its franchise with us terminates or is not renewed. You acknowledge that the Protected Territory fairly represents the Facility's trading area, and that there are no express or implied territorial rights or agreements between the parties except as stated in this Section. You irrevocably waive any right to seek or obtain the benefits of any policy we now follow or may in the future follow to notify you about proposed Chain Facilities in the general area of the Facility, solicit information about the effect of the proposed Chain Facility on the revenue or occupancy of the Facility or decide whether to add the proposed Chain Facility to the Chain based on the potential effect of the proposed Chain Facility on the Facility or its performance. You further acknowledge and agree that notwithstanding

the foregoing, we may operate, lease, manage, or license any other party to operate a Chain Facility in the Protected Territory beginning (a) six months prior to the expiration of this Agreement, or (b) as of the date that a date for the premature Termination of this Agreement has been confirmed in writing by us. The covenants in this Section are mutually dependent; if you breach this Section, your Protected Territory will be the Location only. The Protected Territory means \_\_\_\_\_.

### **3. Your Improvement and Operating Obligations.**

**3.1 Pre-Opening Improvements.** You must select, acquire, construct and/or renovate the Facility as provided in Schedule D.

#### **3.2 Operation.**

3.2.1 You will operate and maintain the Facility continuously after the Opening Date on a year-round basis as required by System Standards and offer transient guest lodging and other related services of the Facility (including those required by System Standards or as specified on the PIP) to the public in compliance with all federal, state, and local laws, regulations and ordinances as well as System Standards. You will keep the Facility in a clean, neat, and sanitary condition. You will clean, repair, replace, renovate, refurbish, paint, and redecorate the Facility and its FF&E as and when needed to comply with System Standards.

3.2.2 The Facility will be managed by either a management company or an individual manager with significant training and experience in general management of similar lodging facilities. If the Facility is managed by a management company, the management agreement between you and the management company for the Facility shall be subject and subordinate to this Agreement and in the event of any conflict between the management agreement and this Agreement, the controlling contract shall be this Agreement. The management agreement shall not release you of any obligations set forth in this Agreement.

3.2.3 The Facility will accept payment from guests by all credit and debit cards or other forms of payment we designate in the System Standards Manual. The Facility will comply with the Payment Card Industry Data Security Standard (PCI DSS) concerning cardholder information, as well as applicable laws and regulations, and such other requirements as we may include in the System Standards Manual or as we may otherwise communicate from time to time for such purpose.

3.2.4 You may add to or discontinue the amenities, services, or facilities as required by System Standards or as specified on the PIP, or lease or subcontract any service or portion of the Facility, only with our prior written consent which we will not unreasonably withhold or delay. Your front desk operation, telephone system, parking lot, swimming pool and other guest service facilities may not be shared with or used by guests of another lodging or housing facility. You acknowledge that any breach of System Standards for the Facility, its guest amenities, and your guest service performance is a material breach of this Agreement.

3.2.5 Upon our reasonable request, you will provide us with then-current copies of the documents evidencing your ownership of, or right to possess, the Facility and/or the real property

upon which the Facility is located, and a complete and accurate list of all of your owners and their Equity Interests.

**3.3 Training.** You (or a person with executive authority if you are an entity) and the Facility's general manager (or other representative who exercises day to day operational authority) will attend the training programs described in Section 4.1 we designate as mandatory for franchisees and general managers, respectively. You will train or cause the training of all Facility personnel as and when required by System Standards and this Agreement. You will pay for all travel, lodging, meals and compensation expenses of the people you send for training programs, the cost of training materials and other reasonable charges we may impose for training under Section 4.1, and all travel, lodging, meal and facility and equipment rental expenses of our representatives if training is provided at the Facility.

### **3.4 Marketing.**

3.4.1 You will participate in System marketing programs, including the Chain Websites, if any, the Reservation System, and guest loyalty programs. You will obtain and maintain the computer and communications service and equipment we specify to participate in the Reservation System. You will comply with our rules and standards for participation, and will honor reservations and commitments to guests and travel industry participants. You authorize us to offer and sell reservations for rooms and services at the Facility according to the rules of participation and System Standards. You may implement, at your option and expense, your own local advertising. Your advertising materials must use the Marks correctly, and must comply with System Standards or be approved in writing by us prior to publication. You will stop using any non-conforming, outdated or misleading advertising materials if we so request.

3.4.2 You may participate in any supplemental marketing, training or management alliance or cooperative of Chain franchisees formed to serve the Chain Facilities in your area or in a similar market segment. We may assist the cooperative with collecting contributions. You may be excluded from cooperative programs and benefits if you do not participate in all cooperative programs according to their terms, including making payments and contributions when due.

3.4.3 The Facility must participate in all mandatory Internet and distribution marketing activities and programs in accordance with the System Standards Manual, including any arrangements we make with third-party distribution channels. You must provide us with information about the Facility and use our approved photographer for taking photographs of the Facility for posting on the Chain Websites, third-party travel websites and various marketing media. The content you provide us or use yourself for any Internet or distribution marketing activities must be true, correct and accurate, and you will promptly notify us in writing, in accordance with our processes that are then in effect, when any correction to the content becomes necessary. You must promptly modify at our request the content of any Internet or distribution marketing materials for the Facility you use, authorize, display or provide to conform to System Standards. You will discontinue any Internet or distribution marketing activities that conflict, in our reasonable discretion, with Chain-wide Internet or distribution marketing activities. You must honor the terms of any participation agreement you sign for Internet or distribution marketing activities. You will pay when due any fees, commissions,

charges and reimbursements relating to Internet or distribution marketing activities (i) in which you agree to participate, or (ii) that we designate as mandatory on a Chain-wide basis. You must participate in any OTA commission reconciliation program we implement from time to time. We may suspend the Facility's participation in Internet and/or distribution marketing activities if you default under this Agreement.

3.4.4 You will participate in the Wyndham Rewards program or any successor guest rewards or loyalty program we determine is appropriate and pay the Loyalty Program Charge associated with the program as set forth in Schedule C. The Wyndham Rewards Front Desk Guide sets forth additional standards, which you agree to follow. The Front Desk Guide, including fees assessed and reimbursements rates, may be revised by us or our affiliates at any time upon thirty (30) days' prior notice.

3.4.5 As a requirement of your participation in the Reservation System, you must participate in our Signature Reservation Service ("SRS") program during the Term of the Agreement. Under the SRS program, certain calls and messages will be routed to our agents and digital agents to respond to on behalf of the Facility. You will pay the fees associated with the SRS program. The program terms and fees associated with the program are described in the SRS agreement that you will sign and deliver to us at the same time as you sign this Agreement.

3.4.6 You must participate in our Remote Sales Services ("RSS") program during the Term of the Agreement. Under the RSS program, we will assign a designated representative to support your Facility who will respond to group sales leads (within certain parameters authorized by you) and solicit new business for your Facility. The program terms and fees associated with the program are described in the RSS agreement that you will sign and deliver to us at the same time as you sign this Agreement. Alternatively, you may satisfy this requirement by meeting certain criteria we establish from time to time in System Standards.

**3.5 Governmental Matters.** You will obtain as and when needed all governmental permits, licenses and consents required by law to construct, acquire, renovate, operate and maintain the Facility and to offer all services you advertise or promote. You will pay when due or properly contest all federal, state and local payroll, withholding, unemployment, beverage, permit, license, property, ad valorem and other taxes, assessments, fees, charges, penalties and interest, and will file when due all governmental returns, notices and other filings. You will comply with all applicable federal, state and local laws, regulations and orders applicable to you or the Facility, including those combating terrorism such as the USA Patriot Act and Executive Order 13224.

### **3.6 Financial Books & Records; Audits.**

3.6.1 The Facility's transactions must be timely and accurately recorded in accounting books and records prepared on an accrual basis compliant with generally accepted accounting principles of the United States ("GAAP") and consistent with the most recent edition of the Uniform System of Accounts for the Lodging Industry published by the American Hotel & Lodging Association, as modified by this Agreement and System Standards. You acknowledge that your accurate and timely accounting for and reporting of Gross Room Revenues is a material



obligation you accept under this Agreement.

3.6.2 Upon our request, you will send to us copies of financial statements, tax returns, and other records relating to the Facility for the applicable accounting period that we require under this Agreement and System Standards. We may notify you of a date on which we propose to audit the Facility's books and records at the Facility but such notice is not required. You will be deemed to have confirmed our proposed date unless you follow the instructions with the audit notice for changing the date. You need to inform us where the books and records will be produced. You need to produce for our auditors at the confirmed time and place for the audit the books, records, tax returns and financial statements for the Facility. We may require access to the property including guest rooms. We also may perform an audit of the Facility's books and records remotely or electronically without advance notice or your knowledge. Your staff must cooperate with and assist our auditors to perform any audit we conduct.

3.6.3 We will notify you in writing if you default under this Agreement because (i) you do not cure a violation of Section 3.6.2 within 30 days after the date of the initial audit; (ii) you cancel two or more previously scheduled audits; (iii) you refuse to admit our auditors during normal business hours at the place where you maintain the Facility's books and records, or refuse to produce the books and records at the audit or send them to us as required under this Agreement and System Standards for the applicable accounting periods; (iv) our audit determines that the books and records you produced are incomplete or show evidence of tampering or violation of generally accepted internal control procedures; or (v) our audit determines that that you have reported to us less than 97% of the Facility's Gross Room Revenues for any fiscal year preceding the audit. Our notice of default may include, in our sole discretion and as part of your performance needed to cure the default under this Section 3.6, an "Accounting Procedure Notice." The Accounting Procedure Notice requires that you obtain and deliver to us, within 90 days after the end of each of your next three fiscal years ending after the Accounting Procedure Notice, an audit opinion signed by an independent certified public accountant who is a member of the American Institute of Certified Public Accountants addressed to us that the Facility's Gross Room Revenues you reported to us during the fiscal year fairly present the Gross Room Revenues of the Facility computed in accordance with this Agreement for the fiscal year. You also must pay any deficiency in Recurring Fees, any Audit Fee as defined in Section 4.8, we assess you for your default of Section 3.6 as described in Section 4.8 and/or other charges we identify and invoice as a result of the audit.

3.6.4 You will, at your expense, prepare and submit to us by the third day of each month, a statement in the form prescribed by us, accurately reflecting for the immediately preceding month all Gross Room Revenues and such other data or information as we may require. You must submit your statements to us using our on-line reporting and payment tool or through such other technology or means as we may establish from time to time.

**3.7 Inspections.** You acknowledge that the Facility's participation in our quality assurance inspection program (including unannounced inspections) is a material obligation you accept under this Agreement. You will permit our representatives to perform quality assurance inspections of the Facility at any time with or without advance notice. The inspections will commence during normal business hours although we may observe Facility operation at any

time. You and the Facility staff will cooperate with the representative performing the inspection. If the Facility fails an inspection, you refuse to cooperate with our representative, or you refuse to comply with our published inspection System Standards, then you will pay us when invoiced for any Reinspection Fee specified in the System Standards Manual plus the reasonable travel, lodging and meal costs our representative incurs for a reinspection. You also will be charged the Reinspection Fee if we must return to the Facility to inspect it as a result of your failure to complete any Improvement Obligation by the deadline established in the PIP, as set forth in Schedule D. We also may include the results of paper and electronic customer satisfaction surveys of your guests as well as unsolicited feedback received from your guests in your final quality assurance score. We may publish and disclose the results of quality assurance inspections and guest surveys. At our discretion, we may implement a Chain-wide quality assurance/mystery shopper inspection program to be performed by a reputable third party. You must provide free lodging for the inspector(s) when he/she visits your Facility.

**3.8 Insurance.** You will obtain and maintain during the Term of this Agreement the insurance coverage required under the System Standards Manual from insurers meeting the standards established in the System Standards Manual. Unless we instruct you otherwise, your liability insurance policies will name as additional insureds Hawthorn Suites Franchising, Inc.; U.S. Franchise Systems, Inc.; Wyndham Hotels & Resorts, Inc.; Wyndham Hotel Group, LLC; and their current and former subsidiaries, affiliates, successors, and assigns as their respective interests may appear. All policies must be primary and non-contributory with or excess of any insurance coverage that may be available to an additional insured. You must submit to us, annually, a copy of the certificate of or other evidence of renewal or extension of each such insurance policy as required by the System Standards. If you fail to procure or maintain the required insurance, then we will have the right (without any obligation) to procure such insurance at your cost plus a reasonable fee.

**3.9 Conferences.** You (or your representative with executive authority if you are an entity) and your general manager will attend each Chain conference and regional meeting and pay the Conference Fee we set for Chain Facilities, if and when we determine to hold a Chain conference. These conferences and meetings may be held as part of a Wyndham Hotel Group, LLC multi-brand conference, which may include special sessions and programs for the Chain only. Mandatory recurrent training for franchisees and managers described in Section 4.1 may be held at a conference. The Conference Fee will be the same for all Chain Facilities that we franchise in the United States. We will invoice and charge you for, and you will pay, the Conference Fee even if you do not attend the Chain conference. You will receive reasonable notice of a Chain conference.

**3.10 Purchasing.** You will purchase or obtain certain goods and services we designate from time to time, such as those that are proprietary; that bear or depict the Marks, such as signage; that potentially may impact life/safety; or that are or are related technology required by System Standards, only from suppliers we approve. You may purchase other items for the Facility from any competent source you select, so long as the items meet or exceed System Standards.

**3.11 Good Will.** You will use reasonable efforts to protect, maintain and promote the name “Hawthorn” the other Marks, and the System’s distinguishing characteristics. You will not permit

or allow your officers, directors, principals, employees, representatives, or guests of the Facility to engage in conduct that is unlawful or damaging to the good will or public image of the Chain or System. You agree that, in event that you or any of your principals or guarantors is or is discovered to have been, convicted of a felony or any other offense likely to reflect adversely upon us, the System or the Marks, such conviction is material breach of this Section. You will follow System Standards for identification of the Facility and for you to avoid confusion on the part of guests, creditors, lenders, investors and the public as to your ownership and operation of the Facility, and the identity of your owners. You will participate in good faith in all Chain-wide guest service and satisfaction guarantee programs we require for all Chain Facilities. You shall use your best efforts to promote usage of other Chain Facilities by members of the public. You shall ensure that no part of the Facility or the System is used to further or promote a different or competing business, without our prior written consent, which may be withheld in our sole discretion, including without limitation, advertising or promotion for guest lodging facilities other than those franchised by us or our affiliates and marketing, advertising or promoting any timeshare or vacation ownership resort not affiliated with us, our affiliates, or Travel + Leisure Co., formerly known as Wyndham Destinations, Inc., and its affiliates.

**3.12 Facility Modifications.** You may not materially modify, diminish or expand the Facility (or change its interior design, layout, FF&E, or facilities) until you receive our prior written consent, which we will not unreasonably withhold or delay. You will pay our Rooms Addition Fee then in effect for each guest room you add to the Facility before you begin construction of any expansion. If we so request, you will obtain our prior written approval of the plans and specifications for any material modification, which we will not unreasonably withhold or delay. You will not open to the public any material modification until we inspect it for compliance with the Approved Plans and System Standards.

**3.13 Courtesy Lodging.** You will provide lodging at the “Employee Rate” established in the System Standards Manual from time to time (but only to the extent that adequate room vacancies exist) to our representatives and members of their immediate family. You are not required to provide more than two standard guest rooms at this rate on any given night.

**3.14 Material Renovation.** Beginning five years after the Opening Date, we may issue a “Material Renovation Notice” to you that will specify reasonable Facility upgrading and renovation requirements (a “Material Renovation”) to be commenced no sooner than 90 days after the notice is issued. You will perform the Material Renovations as and when the Material Renovation Notice requires. We will not issue a Material Renovation Notice within five years after the date of a prior Material Renovation Notice.

### **3.15 Technology Standards & Communications.**

**3.15.1** You recognize that the System requires you to acquire, operate and maintain a computer-based property management system and provide guests with innovative technology, including communications and entertainment. You must purchase, acquire, or subscribe to the computer system and other equipment and software that we specify, including preventative maintenance software. We may modify System Standards to require new or updated technology at all Chain Facilities. At our request, you shall participate in any intranet or extranet system developed for use

in connection with the System. Such intranet or extranet system may be combined with that of our affiliates. You shall agree to such terms and conditions for the use of such intranet or extranet system as we may prescribe, which may include, but are not limited to: (a) confidentiality requirements for materials transmitted via such system; (b) password protocols and other security precautions; (c) grounds and procedures for our suspension or revocation of access to the system by you and others; and (d) a privacy policy governing the parties' access to and use of electronic communications posted on electronic bulletin boards or transmitted via the system. You shall pay any fee imposed from time to time by us or a third-party service provider in connection with hosting such system.

3.15.2 You must ensure at all times that we have from you, in writing, current and accurate information about the name and contact information, including e-mail address, for the person who is designated by you to (a) represent you in dealings with us pertaining to the Facility, including authority to make decisions regarding and sign ancillary agreements related to day-to-day operations of the Facility, and (b) receive all legal notices pertaining to this Agreement, including all matters pertaining to the Chain's franchise advisory council or similar body, if any (to whom we may refer as the "Site Principal Contact"). Your initial Site Principal Contact is the person you indicate in Section 17.3. Notwithstanding the foregoing, if we provide you with an e-mail address to be used for receiving communications from us, you acknowledge that delivery of such communications to this e-mail address shall be deemed sufficient notice of the communications' content.

**4. Our Operating and Service Obligations.** We will provide you with the following services and assistance:

**4.1 Training.** We may offer (directly or indirectly by subcontracting with an affiliate or a third party) general manager training, re-certification training, remedial training, and supplemental training.

**4.1.1 General Manager Training.** We will offer general manager certification training for your general manager in our Hospitality Management Program, which may be held in i) a hybrid, in-person and virtual format or ii) a virtual-only format. The program will cover such topics as operating a Chain Facility, marketing and sales, financial management, guest services and people management. Your initial general manager (or other representative who exercises day to day operational authority) for the Facility must complete this program to our satisfaction no later than 90 days after the Opening Date. Any replacement general manager must complete the training program to our satisfaction within 90 days after he/she assumes the position. If we do not offer a place in the training program within the above time frame, your replacement general manager must complete the next program held at which we offer a place. Your general manager for the Facility must complete the training even if you employ managers at other Chain Facilities who already have received this training. We charge you tuition for our Hospitality Management Program which is set forth on Schedule D. If he/she does not complete the training within 90 days after the Opening Date, and for any replacement general manager, you must pay a separate tuition at the rate then in effect for the program when your manager attends the program. If you, or any other employee at the Facility wishes to participate in the training in addition to your general manager, you can do so and you must pay the Additional Attendee Fee, currently \$1,400, which is payable

by the scheduled date for the program and is in addition to the tuition due for your general manager. We may charge you full or discounted tuition for “refresher” training for your general manager or for additional staff members who complete the training program with your general manager. You also must pay for your, your general manager and/or additional staff member’s travel, lodging, meals, incidental expenses, compensation and benefits for any in-person components.

**4.1.2 Remedial Training.** We may require you, your general manager and/or your staff to participate in remedial training if the Facility receives a failing score on a quality assurance inspection, a failing score on a quality assurance electronic guest survey (or equivalent evaluation system), or experiences significant complaints to our customer care department or posted on third-party travel websites, distribution channels, blogs, social networks and other forums, as determined by us in our sole discretion. This training may be offered at our corporate offices, at a regional location, on-line or at the Facility. The training may be in the form of one or more classes held at different times and locations as we may require. You must pay the tuition in effect for this program when it is offered to you. If the training is provided at the Facility, you must provide lodging for our trainers. In addition, if at the time of your quality assurance inspection, you receive (i) a failure rating on guest room cleanliness and (ii) an average quality assurance score of F on cleanliness of guestroom category or cleanliness of bathroom category (based on a minimum of 10 electronic quality assurance guest surveys), then we may require you to take a one day remedial class on housekeeping within 60 days after the inspection. The tuition for an on-line class is currently up to \$250, but is subject to increase in the future. The fee for an on-site customer experience assessment or training class is currently \$1,250, but is subject to increase in the future.

**4.1.3 Ongoing Training and Support.** You must subscribe and pay an annual fee for access to our learning management system, Wyndham University, which includes training via live workshops, e-learning modules, webinars, online courses, videos and other educational resources, accessible by you and your staff via the Internet, including the Chain’s intranet website. All general managers must complete recertification training at such intervals as we may establish in the System Standards Manual. You must pay us the tuition then in effect for any such program. We may offer other mandatory or optional training programs for reasonable tuition or without charge. The above training could be offered as i) a hybrid, in-person and virtual format or ii) a virtual-only format. If in person, training will be held in our corporate offices or other locations, or held in conjunction with a Chain conference. If you are attending a hybrid training, you will pay for your representative’s travel, lodging, meals, incidental expenses, compensation and benefits and any tuition charge we establish for this training. We may offer, rent or sell to you other on-site training aids and materials, or require you to buy them at reasonable prices.

**4.1.4 No-Show and Cancellation Fees.** If you or your general manager, or any other member of your staff you designate, fails to register for a required training program within the required time period, or registers for a training program but fails to attend such program as scheduled without, notifying us in advance, whether such attendance is required or optional, we may charge you a no-show fee of up to 100% of the tuition for the program. If you, your general manager or any other member of your staff cancels participation in any training program less than fourteen (14) days before it is scheduled to be held, we may charge you a cancellation fee of up to 50% of

the tuition for the program. No-show and cancellation fees are in addition to the tuition you will have to pay at the then offered rate when you or your general manager attends the program. We may assess you additional no-show or cancellation fees for continued failures by you under this Section 4.1.

**4.2 Reservation System.** We will operate and maintain (directly or by subcontracting with an affiliate or one or more third parties) a computerized Reservation System or such technological substitute(s) as we determine, in our discretion. We will use the Marketing/Reservation Contribution for the acquisition, development, support, equipping, maintenance, improvement and operation of the Reservation System. We or our Approved Supplier will provide software maintenance and support for any software we or an Approved Supplier license to you to connect to the Reservation System if you are up to date in your payment of Recurring Fees and all other fees you must pay under any other agreement with us, an affiliate or the supplier, as applicable. During the Term, the Facility will participate in the Reservation System on an exclusive basis, including entering into all related technology agreements and complying with all terms and conditions which we establish from time to time for participation. The Facility may not book any reservations through any other electronic reservation system, booking engine, unapproved third-party distribution system or other technology. You will use any information obtained through the Reservation System to refer guests, directly or indirectly, only to Chain Facilities. You shall own and be responsible for compliance with all applicable laws, regulations or standards concerning all Guest Information within your possession or any service provider holding such information on your behalf, and we shall own and be responsible for compliance with all applicable laws, regulations or standards concerning all Guest Information within our possession or any service provider holding such information on our behalf. To the extent that you and we both possess identical Guest Information, your and our respective ownership rights and related compliance obligations with regard to such Guest Information shall be separate and independent from one another. We have the right to provide reservation services to lodging facilities other than Chain Facilities or to other parties.

#### **4.3 Marketing.**

4.3.1 We will promote public awareness and usage of Chain Facilities by implementing advertising, promotion, publicity, market research, loyalty marketing and other marketing programs, training programs and related activities as we deem appropriate. We will determine in our discretion: (i) the nature and type of media placement; (ii) the allocation (if any) among international, national, regional and local markets; and (iii) the nature and type of advertising copy, other materials and programs. We or an affiliate may be reimbursed from the Marketing Fund for the reasonable direct and indirect costs, overhead or other expenses of providing marketing services. We are not obligated to supplement or advance funds available from System franchisees to pay for marketing activities. We do not promise that the Facility or you will benefit directly or proportionately from marketing activities and we have no fiduciary duty regarding the management of marketing activities or the Marketing Fund.

4.3.2 We may, at our discretion, implement special international, national, regional or local promotional programs (which may or may not include the Facility) as we deem appropriate and may make available to you (to use at your option) media advertising copy and other marketing materials

at prices that are designed to reasonably cover the materials' direct and indirect costs.

4.3.3 We may, at our discretion, implement “group booking” programs created to encourage use of Chain Facilities for tours, conventions and the like, possibly for an additional fee.

**4.4 Purchasing and Other Procurement Services.** We may offer to you, for a reasonable fee, other optional assistance with purchasing goods or services used at or in the Facility. Our affiliates may offer this service on our behalf. We may restrict the vendors authorized to sell proprietary or Mark-bearing items in order to control quality, provide for consistent service or obtain volume discounts. We will maintain and provide to you lists of suppliers approved to furnish Mark-bearing items, or whose products conform to System Standards.

**4.5 The System.** We will control and establish requirements for all aspects of the System. In our discretion, we may change, delete from, or add to the System, including any of the Marks or System Standards, in response to changing market conditions. In our discretion, we may permit deviations from System Standards, based on local conditions and our assessment of the circumstances. In our discretion, we may change the designation standards for the Chain and then require that you change the designation of the Facility and related presentation of that designation where it appears. We will not be liable to you for any expenses, losses, or damages you may sustain as a result of any Mark addition, modification, substitution, or discontinuation.

**4.6 Consultations and Standards Compliance.** We will assist you to understand your obligations under System Standards by telephone, e-mail, during any visits by our employees to the Facility, through the System Standards Manual, at training sessions and during conferences, meetings, and visits we conduct. We will provide telephone and e-mail consultation on Facility operation and marketing through our representatives. We will offer you access to any Internet website we may maintain to provide Chain franchisees with information and services, subject to any rules, policies and procedures we establish for its use and access and to this Agreement. We may limit or deny access to any such website while you are in default under this Agreement.

**4.7 System Standards Manual and Other Publications.** We will specify System Standards in the System Standards Manual, policy statements or other publications which we may make available to you via our Chain intranet, in paper copies or through another medium. You will at all times comply with the System Standards. You acknowledge that the System Standards and the System Standards Manual are designed to protect the System and the Marks, and not to control the day-to-day operation of your business. We will provide you with access to the System Standards Manual promptly after we sign this Agreement. We will notify you via our Chain intranet or another medium of any System Standards Manual revisions and/or supplements as and when issued as well as any other publications and policy statements in effect for Chain franchisees from time to time.

**4.8 Inspections and Audits.** We have the unlimited right to conduct unannounced quality assurance inspections of the Facility and its operations, records and Mark usage to test the Facility's compliance with System Standards and this Agreement, and the audits described in Section 3.6. We have the unlimited right to reinspect if the Facility does not achieve the score required on an inspection. We may impose a Reinspection Fee and will charge you for our costs as provided in

Section 3.7. In connection with an audit, you will pay us any understated amount plus interest under Section 3.6. If the understated amount is three percent (3%) or more of the total amount owed during a six-month period, you will also pay us an “Audit Fee” equal to the costs and expenses associated with the audit. Our inspections are solely for the purposes of checking compliance with System Standards.

**4.9 Revenue Management.** We offer revenue management services (“RMS”) for additional fees. RMS is currently offered at two levels of service each of which offers a different frequency of inventory management, strategic positioning, future demand strategy and targeted promotions and packages. We reserve the right to evaluate a variety of factors, including but not limited to, your Facility’s room count, occupancy rate, trends, and market to determine the most suitable level of service. Based on our assessment of your Facility and its performance, we may limit the levels of services available to your Facility. New construction, conversion, and transfer Facilities, must participate in Standard RMS at a minimum. Alternatively, you may satisfy this requirement by meeting certain criteria we establish from time to time in System Standards. You are required to sign a Hotel Revenue Management Agreement for the applicable level of service in order to participate in RMS.

**5. Term.** The Term begins on the date that we insert in the preamble of this Agreement after we sign it (the “Effective Date”) and expires at the end of the twentieth (20<sup>th</sup>) Franchise Year. NEITHER PARTY HAS RENEWAL RIGHTS OR OPTIONS. However, if applicable law requires us to offer renewal rights, and you desire to renew this Agreement, then you will apply for a renewal franchise agreement at least six months, but not more than nine months, prior to the expiration date, and subject to such applicable law, you will have to meet our then-current requirements for applicants seeking a franchise agreement, which may include (i) executing our then-current form of license and other agreements, which license and other agreements may contain materially different terms and provisions (such as operating standards and fees) from those contained in this Agreement; (ii) executing a general release of us and our affiliates, in form and substance satisfactory to us; (iii) completing a property improvement plan; and (iv) paying a standard renewal fee, if then applicable.

**6. Application and Initial Fees.** You must pay us a non-refundable Application Fee of \$2,500 which shall be applied to your Initial Fee or Relicense Fee. If your franchise is for a new construction or conversion Facility, you must pay us an Initial Fee. If you are a transferee of an existing Facility or are renewing an existing franchise, you will pay us a Relicense Fee. The amount of your Initial Fee or Relicense Fee is \$\_\_\_\_\_, \$2,500 of which shall be applied from your Application Fee, and the remainder paid when you sign this Agreement and is fully earned and non-refundable when we sign this Agreement.

**7. Recurring Fees, Taxes and Interest.**

7.1 You will pay us certain “Recurring Fees” each month of the Term payable in U.S. dollars (or such other currency as we may direct if the Facility is outside the United States). The Royalty and Marketing/Reservation Contribution described in Section 7.1 are payable three days after the month in which they accrue, without billing or demand. Other Recurring Fees are payable at the times set forth in the System Standards. Recurring Fees include the following:



7.1.1 A “Royalty” equal to five and five-tenths percent (5.5%) of Gross Room Revenues of the Facility accruing during the calendar month, which accrues from the earlier of the Opening Date or the date you identify the Facility as a Chain Facility or operate it under a Mark until the end of the Term.

7.1.2 A “Marketing/Reservation Contribution” as set forth in Schedule C for advertising, marketing, training, the Reservation System and other related services and programs, which accrues from the Opening Date until the end of the Term, including during reservation suspension periods. We may use the Marketing/Reservation Contribution fees we collect, in whole or in part, to reimburse our reasonable direct and indirect costs, overhead or other expenses of providing marketing, training and reservation services. You will also pay or reimburse us as described in Schedule C for “Additional Fees” such as commissions we pay to travel and other agents for certain reservation and marketing services to generate reservations at the Facility plus a reasonable service fee, fees levied to pay for reservations for the Facility originated or processed through the Global Distribution System, the Chain Websites and/or other reservation systems, distribution channels and networks, and fees for additional services and programs. We may charge Facilities using the Reservation System outside the United States for reservation services using a different formula. We may change, modify, add or delete the Marketing Reservation Contribution and/or Additional Fees in accordance with Schedule C.

7.2 You will pay to us Taxes equal to any federal, state or local sales, gross receipts, use, value added, excise or similar taxes assessed against us on the Recurring Fees and basic charges by the jurisdictions where the Facility is located, but not including any income tax, franchise or other similar tax for the privilege of doing business by us in your State. You will pay Taxes to us when due.

7.3 “Interest” is payable when you receive our invoice on any past due amount payable to us under this Agreement at the rate of 1.5% per month or the maximum rate permitted by applicable law, whichever is less, accruing from the due date until the amount is paid.

7.4 If a Transfer occurs, your transferee or you will pay us our then current Application Fee and a “Relicense Fee” equal to the Initial Fee we would then charge a new franchisee for the Facility.

7.5 You will report and pay to us all Recurring Fees and other fees and charges on-line via our self-service electronic invoice presentment and payment tool accessible through our Chain intranet. In the electronic on-line environment, payments can be made either through the electronic check payment channel or the credit card payment channel. We reserve the right to change, from time to time, the technologies or other means for reporting and paying fees to us, and associated charges, by amending the System Standards Manual.

## **8. Indemnifications.**

8.1 Independent of your obligation to procure and maintain insurance, you will indemnify, defend and hold the Indemnitees harmless, to the fullest extent permitted by law, from and against all Losses and Expenses incurred by any Indemnitee for any investigation, claim, action, suit, demand,

administrative, or alternative dispute resolution proceeding relating to or arising out of any transaction, occurrence or service at, or involving the operation of, the Facility; any payment you make or fail to make to us; any breach or violation of any contract or any law, regulation, or ruling; or any act, error, or omission (active or passive) by you, any party associated or affiliated with you, or any of the owners, officers, directors, employees, agents, contractors, or subcontractors of you or your affiliates, including when you are alleged or held to be the actual, apparent, or ostensible agent of the Indemnitee, or the active or passive negligence of any Indemnitee is alleged or proven. You have no obligation to indemnify an Indemnitee for damages to compensate for property damage or personal injury if a court of competent jurisdiction makes a final decision not subject to further appeal that the Indemnitee engaged in willful misconduct or intentionally caused such property damage or bodily injury. This exclusion from the obligation to indemnify however, shall not apply if the property damage or bodily injury resulted from the use of reasonable force by the Indemnitee to protect persons or property.

8.2 You will respond promptly to any matter described in the preceding paragraph, and defend the Indemnitee. You will reimburse the Indemnitee for all costs of defending the matter, including reasonable attorneys' fees, incurred by the Indemnitee if your insurer or you do not assume defense of the Indemnitee promptly when requested, or separate counsel is appropriate, in our discretion, because of actual or potential conflicts of interest. We must approve any resolution or course of action in a matter that could directly or indirectly have any adverse effect on us or the Chain, or could serve as a precedent for other matters.

8.3 We will indemnify, defend and hold you harmless, to the fullest extent permitted by law, from and against all Losses and Expenses incurred by you in any action or claim arising from your proper use of the System alleging that your use of the System and any property we license to you is an infringement of a third party's rights to any trade secret, patent, copyright, trademark, service mark or trade name. You will promptly notify us in writing when you become aware of any alleged infringement or an action is filed against you. You will cooperate with our defense and resolution of the claim. We may resolve the matter by obtaining a license of the property for you at our expense, or by requiring that you discontinue using the infringing property or modify your use to avoid infringing the rights of others.

## **9. Your Assignments, Transfers and Conveyances.**

**9.1 Transfer of the Facility.** This Agreement is personal to you (and your owners if you are an entity). We are relying on your experience, skill and financial resources (and that of your owners and the guarantors, if any) to sign this Agreement with you. You may finance the Facility and grant a lien, security interest or encumbrance on it (but not in or on this Agreement) without notice to us or our consent. If a Transfer is to occur, the transferee or you must comply with Section 9.3. Your Franchise is subject to Termination when the Transfer occurs. The Franchise is not transferable to your transferee, who has no right or authorization to use the System and the Marks when you transfer ownership or possession of the Facility. The transferee may not operate the Facility under the System, and you are responsible for performing the post-Termination obligations in Section 13. You and your owners may assign, pledge, transfer, delegate, or grant a security interest in all or any of your rights, benefits and obligations under this Agreement, as security or otherwise, only with our prior written consent and after you comply with Sections 9.3 and 9.6. As a condition of our

consent, if your interest in this Agreement is proposed as the collateral of a security interest, then we may require that you and your lender execute a comfort letter in the form described in our then-current disclosure document and that you pay our then-current fee for processing such a request. Transactions involving Equity Interests that are not Equity Transfers do not require our consent and are not Transfers.

**9.2 Financing Documents.** Neither you, nor any of your Equity Interest owners, shall represent in any proposed financing arrangement to any proposed lender or participant in a private or public investment offering that we or any of our affiliates are or shall be in any way responsible for your obligations or financial projections, if any, set forth in such financing arrangement or investment offering or that we or any of our affiliates are or shall be participating in such private or public investment offering. In addition, any proposed financing arrangement where the service mark “Hawthorn” appears, or a reference to this Agreement appears, shall contain a disclaimer in bold face type substantially as follows: THE BORROWER IS A PARTY TO AN AGREEMENT WITH HAWTHORN SUITES FRANCHISING, INC. TO OPERATE HOTELS USING THE SERVICE MARK “HAWTHORN AND VARIATIONS THEREOF. NEITHER HAWTHORN SUITES FRANCHISING, INC. NOR ITS AFFILIATES OWN ANY SUCH HOTELS OR ARE A PARTY TO THIS FINANCING AND HAVE NOT PROVIDED OR REVIEWED, AND ARE NOT RESPONSIBLE FOR, ANY DISCLOSURES OR OTHER INFORMATION SET FORTH HEREIN. Also, at least fifteen (15) days prior to closing such financing, you shall submit to us a written statement certifying that you have not misrepresented or overstated your relationship with us and our affiliates or your rights to use the Marks.

**9.3 Conditions.** We may condition and withhold our consent to a Transfer when required under this Section 9 until the transferee and you meet certain conditions; however, we will not unreasonably withhold, delay or condition our consent to a Transfer if the Facility is then financed under a program in which the United States Small Business Administration (“SBA”) guarantees the financing or its repayment. If a Transfer is to occur, the transferee (or you, if an Equity Transfer is involved) must first complete and submit our application; qualify to be a franchisee in our sole discretion, given the circumstances of the proposed Transfer; provide the same supporting documents as a new franchise applicant; pay the Application Fee and Relicense Fee then in effect; sign the form of Franchise Agreement we then offer in conversion transactions; and agree to renovate the Facility as if it were an existing facility converting to the System, as we reasonably determine. We will provide a required PIP after we receive the transferee’s Application. We may require structural changes to the Facility if it no longer meets System Standards for entering conversion facilities, or, in the alternative, condition our approval of the Transfer on limiting the transferee’s term to the balance of your Term, or adding a right to terminate without cause exercisable by either party after a period of time has elapsed. Our consent to the transaction will not be effective until these conditions are satisfied. If we do not approve the Transfer, we may, in our sole discretion, allow you to terminate the Franchise when you sell the Facility and pay us Liquidated Damages under Section 12.1. Such payment would be due and payable when you transfer possession of the Facility. We also must receive general releases from you and each of your owners, and payment of all amounts then owed to us and our affiliates by you, your owners, your affiliates, the transferee, its owners and affiliates, under this Agreement or otherwise. Our consent to a Transfer is not a waiver of (i) any claims we may have against you; or (ii) our right to demand strict compliance from the Transferee with the terms of its agreement.

**9.4 Permitted Transferee Transactions.** Provided that you comply with this Section 9.4 you may (i) transfer an Equity Interest to a Permitted Transferee or (ii) effect an Equity Transfer to a Permitted Transferee without obtaining our consent, renovating the Facility or paying a Relicense Fee or Application Fee. No Transfer will be deemed to occur. You must not be in default and you must comply with the application and notice procedures specified in Sections 9.3 and 9.6. Each Permitted Transferee first must agree in writing to be bound by this Agreement, or at our option, execute the Franchise Agreement form then offered prospective franchisees. No transfer to a Permitted Transferee shall release a living transferor from liability under this Agreement or any guarantor under any guaranty of this Agreement. A transfer resulting from a death may occur even if you are in default under this Agreement.

**9.5 Attempted Transfers.** Any transaction requiring our consent under this Section 9 in which our consent is not first obtained will be void, as between you and us. You will continue to be liable for payment and performance of your obligations under this Agreement until we terminate this Agreement, all your financial obligations to us are paid and all System identification is removed from the Facility.

**9.6 Notice of Transfers.** You will give us at least 30 days' prior written notice of any proposed Transfer or Permitted Transferee transaction. You will notify us when you sign a contract to Transfer the Facility and 10 days before you intend to close on the transfer of the Facility. You also will notify us in writing, within 10 days of each time you list the Facility for sale and provide us with all information we reasonably request with respect to any such proposed sale. We will respond to all requests for our consent and notices of Permitted Transferee transactions within a reasonable time not to exceed 30 days. You will notify us in writing within 30 days after a change in ownership of 25% or more of your Equity Interests that are not publicly held or that is not an Equity Transfer, or a change in the ownership of the Facility if you are not its owner. You will provide us with lists of the names, addresses, and ownership percentages of your owner(s) at our request.

**10. Our Assignments.** We may transfer, assign, delegate or subcontract all or any part of our rights and duties under this Agreement, including by operation of law, without notice and without your consent. You are not the third-party beneficiary of any contract with a third party to provide services to you under this Agreement. We may dissolve, terminate and wind up our business under applicable law but we will transfer the System and this Agreement to a party that will perform the franchisor's obligations and that will assume this Agreement in writing. We will have no obligations to you with respect to any assigned right or duty after you are notified that our transferee has assumed such rights or duties under this Agreement except those that arose before we assign this Agreement.

## **11. Default and Termination.**

**11.1 Default.** You will be in default under this Agreement if (a) you do not pay us when a payment is due under this Agreement or under any other instrument, debt, agreement or account with us related to the Facility; (b) you do not perform any of your other obligations when this Agreement and the System Standards Manual require; (c) you fail to provide us with current and accurate information about your Site Principal Contact, in violation of Section 3.15.2; or (d) if you

otherwise breach this Agreement. If your default is not cured within ten days after you receive written notice from us that you have not filed your monthly report, paid us any amount that is due or breached your obligations regarding Confidential Information, or within 30 days after you receive written notice from us of any other default (except as noted below), then we may terminate this Agreement by written notice to you, under Section 11.2. We will not exercise our right to terminate if you have completely cured your default during the time allowed for cure, or until any waiting period required by law has elapsed. In the case of a default resulting from the Facility's failure to meet Quality Standards as measured by a quality assurance inspection, if you have acted diligently to cure the default but cannot do so, and the default does not relate to health or safety, we may, in our discretion, enter into an improvement agreement with you provided you request such an agreement within 30 days after receiving notice of the failing inspection. If we have entered into an improvement agreement, you must cure the default within the time period specified in the improvement agreement which shall not exceed ninety days after the failed inspection. We may terminate this Agreement and any or all rights granted hereunder if you do not timely perform that improvement agreement.

**11.2 Termination.** We may terminate this Agreement, effective when we send written notice to you or such later date as required by law or as stated in the default notice, when (1) you do not cure a default as provided in Section 11.1 or we are authorized to terminate under Schedule D due to your failure to perform your Improvement Obligation; (2) you discontinue operating the Facility as a Chain Facility; (3) you do or perform, directly or indirectly, any act or failure to act that in our reasonable judgment is or could be injurious or prejudicial to the goodwill associated with the Marks or the System; (4) you lose ownership possession or the right to possession of the Facility or otherwise lose the right to conduct the franchised business at the Location; (5) you (or any guarantor) suffer the termination of another license or franchise agreement with us or one of our affiliates; (6) you intentionally maintain false books and records or submit a materially false report to us; (7) you (or any guarantor) generally fail to pay debts as they come due in the ordinary course of business; (8) you, any guarantor or any of your owners or agents misstated to us or omitted to tell us a material fact to obtain or maintain this Agreement with us; (9) you receive two or more notices of default from us in any one-year period (whether or not you cure the defaults); (10) a violation of Section 9 occurs, or a Transfer occurs before the relicensing process is completed; (11) you or any of your owners contest in court the ownership or right to franchise or license all or any part of the System or the validity of any of the Marks; (12) you, any guarantor, or the Facility is subject to any voluntary or involuntary bankruptcy, liquidation, dissolution, receivership, assignment, reorganization, moratorium, composition or a similar action or proceeding that is not dismissed within 60 days after its filing; (13) you maintain or operate the Facility in a manner that endangers the health or safety of the Facility's guests; (14) if a threat to public health or safety exists at the Facility and we reasonably determine that an immediate shut down of the Facility is necessary to avoid substantial risk of liability or goodwill; or (15) you disclose any Confidential Information in violation of this Agreement.

### **11.3 Casualty and Condemnation.**

11.3.1 You will notify us promptly after the Facility suffers a Casualty that prevents you from operating in the normal course of business, with less than 75% of guest rooms available. You will give us information on the availability of guest rooms and the Facility's ability to honor advance

reservations. You will tell us in writing within 60 days after the Casualty whether or not you will restore, rebuild and refurbish the Facility to conform to System Standards and its condition prior to the Casualty. This restoration will be completed within 180 days after the Casualty. You may decide within the 60 days after the Casualty, and if we do not hear from you, we will assume that you have decided, to terminate this Agreement, effective as of the date of your notice or 60 days after the Casualty, whichever comes first. If this Agreement so terminates, you will pay all amounts accrued prior to Termination and follow the post-Termination requirements in Section 13. You will not be obligated to pay Liquidated Damages if the Facility will no longer be used as a transient guest lodging facility for 3 years after the Casualty.

11.3.2 You will notify us in writing within 10 days after you receive notice of any proposed Condemnation of the Facility, and within 10 days after receiving notice of the Condemnation date. This Agreement will terminate on the date the Facility or a substantial portion is conveyed to or taken over by the condemning authority but you will be liable for condemnation payments set forth in Section 12.2.

11.3.3 Any protected territory covenants will terminate when you give us notice of any proposed Condemnation or that you will not restore the Facility after a Casualty.

11.4 **Our Other Remedies.** We may suspend the Facility from the Reservation System for any default or failure to pay or perform under this Agreement or any other written agreement with us relating to the Facility, discontinue reservation referrals to the Facility for the duration of such suspension, and may divert previously made reservations to other Chain Facilities after giving notice of non-performance, non-payment or default. All fees accrue during the suspension period. Reservation service will be restored after you have fully cured any and all defaults and failures to pay and perform. We may charge you, and you must pay as a condition precedent to restoration of reservation service, a Reconnection Fee specified on Schedule C to reimburse us for our costs associated with service suspension and restoration. We may deduct points under our quality assurance inspection program for your failure to comply with this Agreement or System Standards. We also may suspend or terminate any temporary or other fee reductions we may have agreed to in this Agreement and/or any stipulations in Section 18 below, and/or refuse to provide any operational support until you address any failure to perform under this Agreement. You agree that our exercise of any rights in this Section will not constitute an actual or constructive Termination of this Agreement. All such remedies are cumulative and not in lieu of any other rights or remedies we may have under this Agreement. If we exercise our right not to terminate this Agreement but to implement such suspension and/or removal, we reserve the right at any time after the appropriate cure period under the written notice has lapsed, to, upon written notice to you, terminate this Agreement without giving you any additional corrective or cure period. You recognize that any use of the System not in accord with this Agreement will cause us irreparable harm for which there is no adequate remedy at law, entitling us to injunctive and other relief, without the need for posting any bond. We may litigate to collect amounts due under this Agreement without first issuing a default or Termination notice. Our consent or approval may be withheld if needed while you are in default under this Agreement or may be conditioned on the cure of all your defaults. Once a Termination or expiration date for this Agreement has been established in accordance with the provisions of this Agreement, we may cease accepting reservations through the Reservation System for any person(s) seeking to make a reservation for a stay on any date including or following the Termination or

expiration of this Agreement.

## 11.5 Your Remedies.

11.5.1 If our approval or consent is required under this Agreement and we do not issue our approval or consent within a reasonable time, but in any event not less than 30 days after we receive all of the information we request, and you believe our failure to approve or consent is wrongful, then you may bring a legal action against us to compel us to issue our approval or consent to the obligation. To the extent permitted by applicable law, this action shall be your exclusive remedy.

11.5.2 You (and your owners and guarantors) waive, to the fullest extent permitted by law, any right to, or claim for, any punitive or exemplary damages against us and against any affiliates, owners, employees or agents of us, and agree that in the event of a dispute, you will be limited to the recovery of any actual damages sustained and any equitable relief to which you might be entitled.

## 12. Liquidated Damages.

12.1 **Generally.** If we terminate this Agreement under Section 11.2, or you terminate this Agreement (except under Section 11.3 or as a result of our default which we do not cure within a reasonable time after written notice), you will pay us within 10 days following the date of Termination, as Liquidated Damages, an amount equal to the average monthly accrued Recurring Fees during the immediately preceding 12 full calendar months multiplied by 36 (or the number of months remaining in the unexpired Term (the "Ending Period") at the date of Termination, whichever is less). If the Facility has been open for fewer than 12 months, then the amount shall be the average monthly Recurring Fees since the Opening Date multiplied by 36. You also will pay any applicable Taxes assessed on such payment and Interest calculated under Section 7.3 accruing from 10 days after the date of Termination. Before the Ending Period, Liquidated Damages will not be less than the product of \$3,000 multiplied by the number of guest rooms that you are authorized to operate under Schedule B of this Agreement as of the Termination. In the event that we authorize you to reduce the number of rooms at the Facility after the Opening Date, then we reserve the right to charge Liquidated Damages for those rooms on a per-room basis, either at the time they are removed from the Facility's inventory or at Termination. If we terminate this Agreement under Schedule D before the Opening Date, then you will pay us, within 10 days after you receive our notice of Termination, Liquidated Damages in an amount equal to \$1,500 per guest room described on Schedule B. If any valid, applicable law or regulation of a competent governmental authority having jurisdiction over this Agreement limits your ability to pay, and our ability to receive, the Liquidated Damages you are obligated to pay hereunder, you shall be liable to us for any and all damages that we incur, now or in the future, as a result of your breach of this Agreement. Liquidated Damages are paid in place of our claims for lost future Recurring Fees under this Agreement. The portion of Liquidated Damages collected that are attributable to the Marketing/Reservation Contributions will be credited to the Marketing Fund. Our right to receive other amounts due under this Agreement is not affected.

12.2 **Condemnation Payments.** In the event a Condemnation is to occur, you will pay us the fees set forth in Section 7 for a period of one year after we receive the initial notice of condemnation

described in Section 11.3.2, or until the Condemnation occurs, whichever is longer (the “Notice Period”). You will pay us Liquidated Damages equal to the average daily Royalties and Marketing/Reservation Contributions for the one-year period preceding the date of your condemnation notice to us multiplied by 365 less the number of days in the Notice Period. This payment will be made within 30 days after Condemnation is completed (when you close the Facility or you deliver it to the condemning authority). You will pay no Liquidated Damages if the Condemnation is completed after the Notice Period expires. For the sake of clarity, you must continue to pay when due the fees, set forth in this Agreement, including under Section 7, and all other agreements with us or our affiliates pertaining to the Facility until Condemnation is completed.

**13. Your Duties At and After Termination.** When a Termination occurs for any reason whatsoever:

**13.1 System Usage Ceases.** You must comply with the following “de-identification” obligations. You will immediately stop using the System to operate and identify the Facility. You will remove all signage and other items bearing any Marks and follow the other steps detailed in the System Standards Manual or other brand directives for changing the identification of the Facility. You will promptly paint over or remove the Facility’s distinctive System trade dress, color schemes and architectural features. You shall not identify the Facility with a confusingly similar mark or name, or use the same colors as the System trade dress for signage, printed materials and painted surfaces. You will cease all Internet marketing using any Marks to identify the Facility. If you do not strictly comply with all of the de-identification requirements above, in the System Standards Manual and in our other brand directives, you agree to pay us a royalty equal to \$2,000 per day until de-identification is completed to our satisfaction.

**13.1.1 Cancel Assumed Name Certificate.** You shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the name “Hawthorn” or any variation thereof or any other Mark. You shall provide us with evidence to our satisfaction of compliance with this obligation within thirty (30) days after Termination or expiration of this Agreement.

**13.2 Other Duties.** You will pay all amounts owed to us under this Agreement and any related ancillary agreements with us or our affiliates pertaining to the Facility within 10 days after Termination. We may immediately remove the Facility from the Reservation System and divert reservations as authorized in Section 11.4. We may notify third parties that the Facility is no longer associated with the Chain. We also may, to the extent permitted by applicable law, and without prior notice enter the Facility and any other parcels, remove software (including archive and back-up copies) for accessing the Reservation System, all copies of the System Standards Manual, Confidential Information, equipment and all other personal property of ours. If you have not completed your de-identification obligations to our satisfaction, we may paint over or remove and purchase for \$10.00, all or part of any interior or exterior Mark-bearing signage (or signage face plates), including billboards, whether or not located at the Facility, that you have not removed or obliterated within five days after Termination. You will promptly pay or reimburse us for our cost of removing such items, net of the \$10.00 purchase price for signage. We will exercise reasonable care in removing or painting over signage. We will have no obligation or liability to restore the



Facility to its condition prior to removing the signage. We shall have the right, but not the obligation, to purchase some or all of the Facility's Mark-bearing FF&E and supplies at the lower of their cost or net book value, with the right to set off their aggregate purchase price against any sums then owed us by you. You will transfer to us any domain names you own that include any material portion of the Marks.

**13.3 Reservations.** The Facility will honor any advance reservations, including group bookings, made for the Facility prior to Termination at the rates and on the terms established when the reservations are made and pay when due all related travel agent commissions. You acknowledge and agree that once a Termination or expiration date for this Agreement has been established in accordance with the provisions of this Agreement, we may stop accepting reservations through the Reservation System for any person(s) seeking to make a reservation for a stay on any date on or after the Termination or expiration of this Agreement. In addition, when this Agreement terminates or expires for any reason, we have the right to contact those individuals or entities who have reserved rooms with you through the Central Reservation System to inform them that your lodging facility is no longer part of the System. We further have the right to inform those guests of other facilities within the System that are near your Facility in the event that the guests prefer to change their reservations. You agree that the exercise of our rights under this Section will not constitute an interference with your contractual or business relationship.

**13.4 Survival of Certain Provisions.** Sections 3.6 (as to audits, for 2 years after Termination), the first two sentences of Section 3.11, Section 7 (as to amounts accruing through Termination), and Sections 8, 11.3.2, 11.4, 12, 13, 15, 16, and 17 survive Termination of this Agreement. Additionally, all covenants, obligations and agreements of yours that, by their terms or by implication, are to be performed after the Termination or expiration of the Term, shall survive such Termination or expiration.

**14. Your Representations and Warranties.** You expressly represent and warrant to us as follows:

**14.1 Quiet Enjoyment and Financing.** You own, or will own prior to commencing improvement, or lease, the Location and the Facility. You will be entitled to possession of the Location and the Facility during the entire Term without restrictions that would interfere with your performance under this Agreement, subject to the reasonable requirements of any financing secured by the Facility. You have, when you sign this Agreement, and will maintain during the Term, adequate financial liquidity and financial resources to perform your obligations under this Agreement. If you are an entity, all of your owners or any of the individuals disclosed on Schedule B, including any subsequent person or entity that becomes an owner at any time after the Effective Date, shall sign our then-current form of personal guaranty guaranteeing all of your obligations under this Agreement, unless expressly waived by us in our sole discretion.

**14.2 This Transaction.** You have received our FDD at least 14 days before signing this Agreement or paying any fee to us. You and the persons signing this Agreement for you have full power and authority and have been duly authorized, to enter into and perform or cause performance of your obligations under this Agreement. You have obtained all necessary approvals of your owners, Board of Directors and lenders. No executory franchise, license or affiliation agreement for the Facility exists other than this Agreement. Your execution, delivery and performance of this

Agreement will not violate, create a default under or breach of any charter, bylaws, agreement or other contract, license, permit, indebtedness, certificate, order, decree or security instrument to which you or any of your principal owners is a party or is subject or to which the Facility is subject. Neither you nor the Facility is the subject of any current or pending merger, sale, dissolution, receivership, bankruptcy, foreclosure, reorganization, insolvency, or similar action or proceeding on the date you execute this Agreement and was not within the three years preceding such date, except as disclosed in the application. You will submit to us the documents about the Facility, you, your owners and your finances that we request in the application (or after our review of your initial submissions) before or within 30 days after you sign this Agreement. You represent and warrant to us that the information you provided in your application is true, correct and accurate. To the best of your knowledge, neither you nor any of your owners (if you are an entity), officers, directors, employees, or anyone else affiliated or associated with you, whether by common ownership, by contract, or otherwise, has been designated as, or is, a terrorist, a “Specially Designated National” or a “Blocked Person” under U.S. Executive Order 13224, in lists published by the U.S. Department of the Treasury’s Office of Foreign Assets Control, or otherwise.

**14.3 No Misrepresentations or Implied Covenants.** All written information you submit to us about the Facility, you, your owners, any guarantor, or the finances of any such person or entity, was or will be at the time delivered and when you sign this Agreement, true, accurate and complete, and such information contains no misrepresentation of a material fact, and does not omit any material fact necessary to make the information disclosed not misleading under the circumstances. There are no express or implied covenants or warranties, oral or written, between we and you except as expressly stated in this Agreement.

## **15. Proprietary Rights.**

**15.1 Marks and System.** You will not acquire any interest in or right to use the System or Marks except under this Agreement. You will not apply for governmental registration of the Marks, or use the Marks or our corporate name in your legal name, but you may use a Mark for an assumed business or trade name filing, provided such filing is for the full name of the property, including any secondary designation. You agree (i) to execute any documents we request to obtain or maintain protection for the Marks; (ii) use the Marks only in connection with the operation of the Facility as permitted by the System Standards; and (iii) that your unauthorized use of the Marks shall constitute both an infringement of our rights and a material breach of your obligations under this Agreement. You shall not, and shall not assist any other person or entity to, challenge or otherwise contest the validity or ownership of the System or Marks.

**15.2 Inurements.** All present and future distinguishing characteristics, improvements and additions to or associated with the System by us, you or others, and all present and future service marks, trademarks, copyrights, service mark and trademark registrations used and to be used as part of the System, and the associated good will, shall be our property and will inure to our benefit. No good will shall attach to any secondary designator that you use.

**15.3 Other Locations and Systems.** We and our affiliates each reserve the right to own, (including through a joint venture or otherwise) in whole or in part, manage, operate, use, lease, finance, sublease, franchise, license (as franchisor or franchisee), or provide services to (i)

distinctive separate lodging or food and beverage marks and other intellectual property which are not part of the System, and to enter into separate agreements with you or others (for separate charges) for use of any such other marks or proprietary rights, (ii) other lodging, food and beverage facilities, or businesses, under the System utilizing modified System Standards, and (iii) a Chain Facility at or for any location outside the Protected Territory. You acknowledge that we are affiliated with or in the future may become affiliated with other lodging providers or franchise systems that operate under names or marks other than the Marks. We and our affiliates may use or benefit from common hardware, software, communications equipment and services and administrative systems for reservations, franchise application procedures or committees, marketing and advertising programs, personnel, central purchasing, Approved Supplier lists, franchise sales personnel (or independent franchise sales representatives).

**15.4 Confidential Information.** You will take all appropriate actions to preserve the confidentiality of all Confidential Information. Access to Confidential Information should be limited to persons who need the Confidential Information to perform their jobs and are subject to your general policy on maintaining confidentiality as a condition of employment or who have first signed a confidentiality agreement. You will not permit copying of Confidential Information (including, as to computer software, any translation, decompiling, decoding, modification or other alteration of the source code of such software). You will use Confidential Information only for the Facility and to perform under this Agreement. Upon Termination (or earlier, as we may request), you shall return to us all originals and copies of the System Standards Manual, policy statements and Confidential Information “fixed in any tangible medium of expression,” within the meaning of the U.S. Copyright Act, as amended. Your obligations under this subsection commence when you sign this Agreement and continue for trade secrets (including computer software we license to you) as long as they remain secret and for other Confidential Information, for as long as we continue to use the information in confidence, even if edited or revised, plus three years. We will respond promptly and in good faith to your inquiry about continued protection of any Confidential Information.

**15.5 Litigation.** You will promptly notify us of (i) any adverse or infringing uses of the Marks (or names or symbols confusingly similar), Confidential Information or other System intellectual property, and (ii) any threatened or pending litigation related to the System against (or naming as a party) you or us of which you become aware. We alone have the right to control any proceeding or litigation involving use of all or any part of the System, including any settlement. You will cooperate with our efforts to resolve these disputes. We need not initiate suit against imitators or infringers who do not have a material adverse impact on the Facility, or any other suit or proceeding to enforce or protect the System in a matter we do not believe to be material. We also have the right to keep all sums obtained in settlement or as a damages award in any proceeding or litigation without any obligation to share any portion of the settlement sums or damages award with you. You will cooperate with our efforts to resolve these disputes.

**15.6 The Internet and other Distribution Channels.** You may use the Internet to market the Facility subject to this Agreement and System Standards. You shall not use, license or register any domain name, universal resource locator, or other means of identifying you or the Facility that uses a Mark or any image or language confusingly similar to a Mark except as otherwise expressly permitted by the System Standards Manual or with our written consent. You will

assign to us any such identification at our request without compensation or consideration. You may not purchase any key words for paid search or other electronic marketing that utilizes any Mark without our written consent. You must make available through the Reservation System and the Chain Website all rates you offer directly to the general public or indirectly via Internet marketing arrangements with third parties. You agree to participate in our Central Commission Payment Program and to reimburse us for any fees or commissions we pay to intermediaries and retailers on your behalf or for Chain Facilities to participate in their programs. You must participate in the Chain's best available rate on the Internet guarantee or successor program. The content you provide us or use yourself for any Internet or distribution marketing materials must be true, correct and accurate, and you will notify us in writing promptly when any correction to the content becomes necessary. You shall promptly modify at our request the content of any Internet or distribution marketing materials for the Facility you use, authorize, display or provide to conform to System Standards. Any use of the Marks and other elements of the System on the Internet inures to our benefit under Section 15.2.

## **16. Relationship of Parties.**

**16.1 Independence.** You are an independent contractor. You are not our legal representative or agent, and you have no power to obligate us for any purpose whatsoever. We and you have a business relationship based entirely on and circumscribed by this Agreement. No partnership, joint venture, agency, fiduciary or employment relationship is intended or created by reason of this Agreement. You understand that the franchise relationship is an arms' length, commercial business relationship in which each party acts in its own interest. You will exercise full and complete control over and have full responsibility for your contracts, daily operations, labor relations, employment practices and policies, including, but not limited to, the recruitment, selection, hiring, disciplining, firing, compensation, work rules and schedules of your employees.

**16.2 Joint Status.** If you are comprised of two or more persons or entities (notwithstanding any agreement, arrangement or understanding between or among such persons or entities) the rights, privileges and benefits of this Agreement may only be exercised and enjoyed jointly. The liabilities and responsibilities under this Agreement will be the joint and several obligations of all such persons or entities.

## **17. Legal Matters.**

**17.1 Partial Invalidity.** If all or any part of a provision of this Agreement violates the law of your state (if it applies), such provision or part will not be given effect. If all or any part of a provision of this Agreement is declared invalid or unenforceable, for any reason, or is not given effect by reason of the prior sentence, the remainder of the Agreement shall not be affected. However, if in our judgment the invalidity or ineffectiveness of such provision or part substantially impairs the value of this Agreement to us, then we may at any time terminate this Agreement by written notice to you without penalty or compensation owed by either party.

**17.2 Waivers, Modifications and Approvals.** If we allow you to deviate from this Agreement, we may insist on strict compliance at any time after written notice. Our silence or inaction will not be or establish a waiver, consent, course of dealing, implied modification or

estoppel. All modifications, waivers, approvals and consents of or under this Agreement by us must be in writing and signed by our authorized representative to be effective. We may unilaterally revise Schedule C when this Agreement so permits.

**17.3 Notices.** Notices will be effective if in writing and delivered (i) by delivery service, with proof of delivery; (ii) by first class, prepaid certified or registered mail, return receipt requested; (iii) by electronic mail, posting of the notice on our Chain intranet site or by a similar technology; or (iv) by such other means as to result in actual or constructive receipt by the person or office holder designated below, to the appropriate party at its address stated below or as it may otherwise designate by notice. You consent to receive electronic mail from us. Notices shall be deemed given on the date delivered or date of attempted delivery, if refused.

HAWTHORN SUITES FRANCHISING, INC.:  
22 Sylvan Way, Parsippany, New Jersey 07054-0278  
Attention: Vice President - Contracts Compliance  
E-mail address: Suzanne.Fenimore@wyndham.com

Your name: \_\_\_\_\_  
Your address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Your e-mail address: \_\_\_\_\_

**17.4 Remedies.** Remedies specified in this Agreement are cumulative and do not exclude any remedies available at law or in equity. The non-prevailing party will pay all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party to enforce this Agreement or collect amounts owed under this Agreement.

**17.5 Miscellaneous.** This Agreement is exclusively for the benefit of the parties. There are no third-party beneficiaries. No agreement between us and anyone else is for your benefit. The section headings in this Agreement are for convenience of reference only.

**17.6 Choice of Law; Venue; Dispute Resolution.**

**17.6.1** This Agreement will be governed by and construed under the laws of the State of New Jersey, except for its conflicts of law principles. Neither the New Jersey Franchise Practices Act (the "Act"), any successor act, nor any other law enacted by the State of New Jersey that supplements such Act or successor act will apply to any Facility located outside the State of New Jersey.

**17.6.2** The parties shall attempt in good faith to resolve any dispute concerning this Agreement or the parties' relationship promptly through negotiation between authorized representatives. If these efforts are not successful, either party may attempt to resolve the dispute through non-binding mediation. Either party may request mediation which shall be conducted by a mutually acceptable and neutral third-party organization. If the parties cannot resolve the dispute through negotiation or mediation, or choose not to negotiate or mediate, either party may pursue litigation.

17.6.3 You consent and waive your objection to the non-exclusive personal jurisdiction of and venue in the New Jersey state courts situated in Morris County, New Jersey and the United States District Court for the District of New Jersey for all cases and controversies under this Agreement or between we and you.

**17.6.4 WAIVER OF JURY TRIAL. THE PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION RELATED TO THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE FRANCHISOR, THE FRANCHISEE, ANY GUARANTOR, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.**

17.6.5 Any judicial proceeding directly or indirectly arising from or relating to this Agreement shall be considered unique as to its facts and may not be brought as a class action. You and each of the owners of your Equity Interests waive any right to proceed against us by way of class action.

**17.7 Special Acknowledgments. You acknowledge the following statements to be true and correct as of the date you sign this Agreement, and to be binding on you.**

17.7.1 **You** have read our disclosure document for prospective franchisees (“FDD”) and independently evaluated and investigated the risks of investing in the hotel industry generally and purchasing this franchise specifically, including such factors as current and potential market conditions, owning a franchise and various competitive factors.

17.7.2 **Neither we nor any person acting on our behalf has made any oral or written representation or promise to you on which you are relying to enter into this Agreement that is not written in this Agreement or in the FDD. You release any claim against us or our agents based on any oral or written representation or promise not stated in this Agreement or in the FDD.**

17.7.3 **This Agreement, together with the exhibits and schedules attached, is the entire agreement superseding all previous oral and written representations, agreements and understandings of the parties about the Facility and the Franchise other than the representations set forth in the FDD. Notwithstanding the foregoing, no provision in any franchise or membership agreement, or any related agreement, is intended to disclaim the express representations made in the FDD.**

17.7.4 **You acknowledge that no salesperson has made any promise or provided any information to you about actual or projected sales, revenues, income, profits or expenses from the Facility except as stated in Item 19 of the FDD or in a writing that is attached to this Agreement and signed by us.**

17.8 **Force Majeure.** Neither you nor we shall be liable for loss or damage or deemed to be in breach of this Agreement if the failure to perform obligations results from any of the following events that first occurs following the Effective Date: (a) windstorms, rains, floods, earthquakes,

typhoons, mudslides, or other similar natural causes; (b) fires, strikes, embargoes, war, acts of terrorism or riot; (c) legal restrictions that prohibit or prevent performance; or (d) any other similar event or cause beyond the control of the party affected. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, so long as a remedy is continuously and diligently sought by the affected party, except that no such cause shall excuse payment of amounts owed at the time of such occurrence or payment of Recurring Fees and other amounts due to us subsequent to such occurrence other than a governmental or judicial order prohibiting such payments.

17.9 **No Right to Offset.** You acknowledge and agree that you will not withhold or offset any liquidated or unliquidated amounts, damages or other monies allegedly due you by us against any Recurring Fees or any other fees due us under this Agreement.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and agree to be bound by the terms and conditions of this Agreement as of the Effective Date.

**WE:**  
**HAWTHORN SUITES FRANCHISING, INC.**

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

**YOU:**  
\_\_\_\_\_

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



## APPENDIX A

### DEFINITIONS

Additional Fees means the fees charged under Section 7.1.2 other than the Marketing/Reservation Contribution.

Agreement means this Franchise Agreement.

Application Fee means the fee you pay when you submit your application for a Franchise under Section 6.

Approved Plans means your plans and specifications for constructing or improving the Facility initially or after opening, as approved by us under Schedule D.

Casualty means destruction or significant damage to the Facility by act of God or other event beyond your reasonable anticipation and control.

Chain means the network of Chain Facilities.

Chain Facility means a lodging facility we own, lease, manage, operate or authorize another party to operate using the System and identified by the Marks.

Chain Websites means any current or future consumer or business websites, mobile websites or mobile applications that we or our affiliates develop for booking reservations for and/or providing information about Chain Facilities, and any future equivalent technology.

Condemnation means the taking of the Facility for public use by a government or public agency legally authorized to do so, permanently or temporarily, or the taking of such a substantial portion of the Facility that continued operation in accordance with the System Standards, or with adequate parking facilities, is commercially impractical, or if the Facility or a substantial portion is sold to the condemning authority in lieu of condemnation.

Conference Fee means the fee we charge for your attendance at a conference for Chain Facilities and their franchisees when and if held.

Confidential Information means any trade secrets we own or protect and other information not generally known to the lodging industry including confidential portions of the System Standards Manual or information we otherwise impart to you and your representatives in confidence. Confidential Information includes all other system standards manuals and documentation, including those on the subjects of employee relations, finance and administration, field operation, purchasing and marketing, the property management system software and other applications software.

Design Standards mean standards specified in the System Standards Manual from time to time for design, construction, renovation, modification and improvement of new or existing Chain Facilities, including all aspects of facility design, number of rooms, rooms mix and configuration, construction materials, workmanship, finishes, electrical, mechanical, structural, plumbing, HVAC, utilities,

access, life safety, parking, systems, landscaping, amenities, interior design and decor and the like for a Chain Facility.

Effective Date means the date we insert in the preamble of this Agreement after we sign it.

Equity Interests shall include, without limitation, all forms of equity ownership of you, including voting stock interests, partnership interests, limited liability company membership or ownership interests, joint and tenancy interests, the proprietorship interest, trust beneficiary interests and all options, warrants, and instruments convertible into such other equity interests.

Equity Transfer means any transaction or series of transactions in which your owners or you sell, assign, transfer, convey, pledge, or suffer or permit the transfer or assignment of, any percentage of your Equity Interests that will result in a change in control of you to persons other than those persons disclosed on Schedule B, as in effect prior to the transaction. Unless there are contractual modifications to your owners' rights, an Equity Transfer of a corporation or limited liability company occurs when either majority voting rights or beneficial ownership of more than 50% of the Equity Interests changes in one transaction or a series of transactions. An Equity Transfer of a partnership occurs when a newly admitted partner will be the managing, sole or controlling general partner, directly or indirectly through a change in control of the Equity Interests of an entity general partner in one transaction or a series of transactions. An Equity Transfer of a trust occurs when either a new trustee with sole investment power is substituted for an existing trustee, or a majority of the beneficiaries convey their beneficial interests to persons other than the beneficiaries existing on the Effective Date in one transaction or a series of transactions. An Equity Transfer does not occur when the Equity Interest ownership among the owners of Equity Interests on the Effective Date changes without the admission of new Equity Interest owners. An Equity Transfer occurs when you merge, consolidate or issue additional Equity Interests in a transaction which would have the effect of diluting the voting rights or beneficial ownership of your owners' combined Equity Interests in the surviving entity to less than a majority in one transaction or a series of transactions.

Facility means the Location, together with all improvements, buildings, common areas, structures, appurtenances, facilities, entry/exit rights, parking, amenities, FF&E and related rights, privileges and properties existing or to be constructed at the Location on or after the Effective Date.

FF&E means furniture, fixtures, and equipment.

FF&E Standards means standards specified in the System Standards Manual for FF&E and supplies to be utilized in a Chain Facility.

Food and Beverage means any restaurant, catering, bar/lounge, entertainment, room service, retail food or beverage operation, continental breakfast, food or beverage concessions and similar services offered at the Facility.

Franchise means the non-exclusive franchise to operate the type of Chain Facility described in Schedule B only at the Location, using the System and the Mark we designate in Section 1.

Franchise Year means:

(i) *If the Opening Date occurs on the first day of a month:* the period beginning on the Opening Date and ending on the day immediately preceding the first anniversary of the Opening Date, and each subsequent one-year period; or

(ii) *If the Opening Date does not occur on the first day of a month:* the period beginning on the Opening Date and ending on the first anniversary of the last day of the month in which the Opening Date occurs, and each subsequent one-year period.

Gross Room Revenues means gross revenues attributable to or payable for rentals of guest (sleeping) rooms at the Facility, including all credit transactions, whether or not collected, guaranteed no-show revenue, net of chargebacks from credit card issuers, any proceeds from any business interruption or similar insurance applicable to the loss of revenues due to the non-availability of guest rooms and any miscellaneous fees charged to all guests regardless of the accounting treatment of such fees. Excluded from Gross Room Revenues are separate charges to guests for Food and Beverage (including room service); actual telephone charges for calls made from a guest room; key forfeitures and entertainment (including Internet fees and commissions); vending machine receipts; and federal, state, and local sales, occupancy, and use taxes. Gross Room Revenue is further described in System Standards.

Guest Information means any names, e-mail addresses, phone numbers, mailing addresses and other information about guests and customers of the Facility, including without limitation stay information, that either you or we or a person acting on behalf of you, us, or both you and us, receives from or on behalf of the other or any guest or customer of the Facility or any other third party.

Improvement Obligation means your obligation to either (i) renovate and upgrade the Facility, or (ii) construct and complete the Facility, in accordance with the Approved Plans and System Standards, as described in Schedule D.

Indemnitees means us, our direct and indirect parent, subsidiary and affiliate entities, and the respective officers, directors, shareholders, employees, agents, and contractors, and the successors, assigns, personal representatives, heirs, and legatees of all such persons or entities.

Initial Fee means the fee you are to pay for signing this Agreement as stated in Section 6 if the Agreement is for a new construction or conversion franchise.

Liquidated Damages means the amounts payable under Section 12, set by the parties because actual damages will be difficult or impossible to ascertain on the Effective Date and the amount is a reasonable pre-estimate of the damages that will be incurred and is not a penalty.

Location means the parcel of land situated at \_\_\_\_\_, as more fully described in Schedule A or such other documentation that reflects the legal description of the land on which the Facility is located.

Losses and Expenses means (x) all payments or obligations to make payments either (i) to or for third party claimants by any and all Indemnitees, including guest refunds, or (ii) incurred by any and all Indemnitees to investigate, respond to or defend a matter, including without limitation

investigation and trial charges, costs and expenses, attorneys' fees, experts' fees, court costs, settlement amounts, judgments and costs of collection; and (y) the "Returned Check Fee" we then specify in the System Standards Manual (\$100.00 on the Effective Date) if the drawee dishonors any check that you submit to us.

Loyalty Program Charge means the fee you pay us under Section 3.4.4 and Schedule C for a frequent guest rewards program or other special marketing programs that we may create or undertake and require participation by Chain Facilities.

Maintenance Standards means the standards specified from time to time in the System Standards Manual for repair, refurbishment and replacement of FF&E, finishes, decor, and other capital items and design materials in Chain Facilities.

Marketing/Reservation Contribution means the fees you pay to us under Section 7 and Schedule C for marketing, advertising, training, the Reservation System and other services.

Marketing Fund means the fund to which the Chain Facilities' Marketing/Reservation Contributions are credited.

Marketing Standards means the standards specified from time to time in the System Standards for marketing programs in which the Facility participates and your use of the Marks in marketing or promoting the Facility.

Marks means, collectively (i) the service marks associated with the System published in the System Standards Manual from time to time including, but not limited to, the name, design and logo for "Hawthorne," "Hawthorn Suites," "Hawthorn Suites by Wyndham," "Hawthorn Extended Stay," Hawthorne Extended Stay by Wyndham" (including U.S. Reg. Nos.: 5,865,224; 4,198,186; 3,887,289; 3,887,288; 3,881,027; 7,267,263; 7,267,278; and 7,267,285; and U.S. Application No.: 98038287) and other marks and (ii) trademarks, trade names, trade dress, logos and derivations, and associated good will and related intellectual property interests.

Marks Standards means standards specified in the System Standards Manual for interior and exterior Mark-bearing signage, advertising materials, china, linens, utensils, glassware, uniforms, stationery, supplies, and other items, and the use of such items at the Facility or elsewhere.

Material Renovation means the repairs, refurbishing, repainting, and other redecorating of the interior, exterior, guest rooms, public areas and grounds of the Facility and replacements of FF&E we may require you to perform under Section 3.14.

Material Renovation Notice means the written notice from us to you specifying the Material Renovation to be performed and the dates for commencement and completion given under Section 3.14.

Opening Date has the meaning specified in Schedule D.

Operations Standards means standards specified in the System Standards Manual for cleanliness,

housekeeping, general maintenance, repairs, concession types, food and beverage service, vending machines, uniforms, staffing, employee training, guest services, guest comfort and other aspects of lodging operations.

Permitted Transferee means any entity, natural person(s) or trust receiving from the personal representative of an owner any or all of the owner's Equity Interests upon the death of the owner, if no consideration is paid by the transferee; (ii) the spouse or adult issue of the transferor, if the Equity Interest transfer is accomplished without consideration or payment; or (iii) any natural person or trust receiving an Equity Interest if the transfer is from a guardian or conservator appointed for an incapacitated or incompetent transferor.

Property Improvement Plan or PIP means the list of upgrades, updates, improvements, repairs, repainting, refurbishing, replacements, and other requirements we prepare that are required to be completed pursuant to this Agreement.

Prototype Plans has the meaning specified in Schedule D for New Construction Facilities.

Reconnection Fee means the fee you pay us when we restore the Central Reservation System service after such service has been suspended because you default under this Agreement or for any other reason, in the amount specified in Schedule C.

Recurring Fees means fees paid to us on a periodic basis, including without limitation, Royalties, Marketing /Reservation Contributions, and other reservation fees and charges as stated in Section 7.

Reinspection Fee means the fee you must pay to us under Section 3.7 if you do not complete your PIP on time, fail any inspection or do not cooperate with our inspector or inspection System Standards.

Relicense Fee means the fee your transferee pays to us when a Transfer occurs or the fee you pay to us if you are renewing an existing franchise.

Reservation System or Central Reservation System means the back end technology platform and applications used by us to accept, store and/or communicate reservations for Chain Facilities. The Reservation System is separate from, but enables, the booking of reservations for Chain Facilities through various distribution channels such as the Chain Websites, the GDS and other distribution channels.

Rooms Addition Fee means the fee we charge you for adding guest rooms to the Facility.

Royalty means the monthly fee you pay to us for use of the System under Section 7.1.1. "Royalties" means the aggregate of all amounts owed as a Royalty.

System means the comprehensive system for providing guest lodging facility services under the Marks as we specify which at present includes only the following: (a) the Marks; (b) other intellectual property, including Confidential Information, System Standards Manual and know-how; (c) marketing, advertising, publicity and other promotional materials and programs; (d) System

Standards; (e) training programs and materials; (f) quality assurance inspection and scoring programs; and (g) the Reservation System.

System Standards means the standards for participating in the Chain and using the System published in the System Standards Manual, or elsewhere, including but not limited to Design Standards, FF&E Standards, Marks Standards, Marketing Standards, Operations Standards, Technology Standards and Maintenance Standards and any other standards, policies, rules and procedures we promulgate about System operation and usage.

System Standards Manual means the Standards of Operation and Design Manual and any other manual or written directive or other communication we issue or distribute specifying the System Standards.

Taxes means the amounts payable under Section 7.2 of this Agreement.

Technology Standards means standards specified in the System Standards Manual for local and long-distance telephone communications services, telephone, telecopy and other communications systems, Internet access, in-room and public area technology, point of sale terminals and computer hardware and software for various applications, including, but not limited to, front desk, rooms management, records maintenance, marketing data, accounting, budgeting and interfaces with the Reservation System to be maintained at the Chain Facilities.

Term means the period of time during which this Agreement shall be in effect, as stated in Section 5.

Termination means a termination of this Agreement.

Transfer means (1) an Equity Transfer, (2) you assign, pledge, transfer, delegate or grant a security interest in all or any of your rights, benefits and obligations under this Agreement, as security or otherwise without our consent as specified in Section 9, (3) you assign (other than as collateral security for financing the Facility) your leasehold interest in (if any), lease or sublease all or any part of the Facility to any third party, (4) you engage in the sale, conveyance, transfer, or donation of your right, title and interest in and to the Facility, (5) your lender or secured party forecloses on or takes possession of your interest in the Facility, directly or indirectly, or (6) a receiver or trustee is appointed for the Facility or your assets, including the Facility. A Transfer does not occur when you pledge or encumber the Facility to finance its acquisition or improvement, you refinance it, or you engage in a Permitted Transferee transaction.

We, Our, and Us mean and refer to Hawthorn Suites Franchising, Inc., a Georgia corporation, its successors and assigns.

You, Your, and Franchisee mean and refer to the party named as franchisee identified in the first paragraph of this Agreement and its Permitted Transferees.

**SCHEDULE A**

(Legal Description of Facility)

**SCHEDULE B**

PART I:      YOUR OWNERS:

Name and Address	Ownership Percentage	Type of Equity Interest	Office Held (Title)
_____			
_____			
_____			
_____			

PART II:      HAWTHORN FACILITY

Number of approved Suites: \_\_\_\_\_ SUITES

\_\_\_\_\_  
Initial



# HAWTHORN SUITES FRANCHISING, INC.

## SCHEDULE C

April 2024

### **I. Marketing/Reservation Contribution**

The Marketing/Reservation Contribution is equal to 2.5% of Gross Room Revenues. We reserve the right, in our sole discretion, to increase or modify the Marketing/Reservation Contribution for all Chain Facilities from time to time to cover costs (including reasonable direct or indirect overhead costs) related to such services and programs but with at least 30 days prior written notice.

### **II. Additional Fees**

#### **A. Loyalty Program Fees**

We charge a Loyalty Program Charge for your participation in the Wyndham Rewards or successor guest loyalty program. The Loyalty Program Charge is currently 4.25% - 5.5% of any amounts on which members of the Loyalty Program earn points or other program currency at the Facility as defined in the Front Desk Guide or any other program rules, which are System Standards. The Loyalty Program Charge may vary within the stated range based on the number of Wyndham Rewards valid enrollments obtained by the Facility during a defined measurement period, as described in the Front Desk Guide. We will proactively match and award members with points or other program currency they earn at the Facility even if they do not present their Wyndham Rewards membership number upon check-in. You will be billed monthly in arrears for points or other program currency awarded to members during the preceding month. If you do not achieve a certain number of Wyndham Rewards valid enrollments, you must pay us a Missed Valid Enrollment Fee of up to \$400 per month as described in the Front Desk Guide. If you do not process a member's points in a timely manner and we must resolve the issue with the member, we will charge you a Loyalty Member Services Administration Fee as described in the Front Desk Guide.

#### **B. Customer Care Costs**

We will contact you if we receive any guest complaint about you or the Facility, and you will be responsible for resolving the complaint to the satisfaction of the guest. If you do not respond to resolve any complaint to the satisfaction of the guest within the time frame we establish in System Standards after we refer it to you, we may resolve the complaint and will charge you for the costs we incur to settle the matter with the guest. All guest complaints remain subject to indemnification under this Agreement.

#### **C. Wyndham Response Fees**

We will respond to all online reviews of the Facility and its services and staff of which we become aware, including complaints that are posted on third-party travel websites,

distribution channels, blogs and social networks, or other forums. You will pay us \$15.00 for each “detractor” review to which we respond and \$6.00 for each “neutral” review to which we respond, as such terms are described in the System Standards Manual.

**D. Best Rate Guarantee Processing Fee**

You must (i) make available to us through the Central Reservation System and the Chain Websites room rates for the Facility equivalent to those you offer directly or indirectly via third parties that you authorize to offer and sell reservations for the Facility’s guest rooms, and (ii) participate in the Chain’s Best Rate Guarantee Program according to its published requirements. If we, or a guest, identifies rate for the Facility that is lower than the rate that you have provided to us for the same date, then we may charge you a Processing Fee, currently \$195, to reimburse us for our administrative charges to process each discrepancy.

**E. Reconnection Fee**

If we suspend Central Reservation System service because of your default under this Agreement or for any other reason, then you must pay us the Reconnection Fee set forth in the System Standards Manual before we restore service. Currently, the Reconnection Fee is \$4,000.

**F. Other Fees, Commissions and Charges**

You will pay us a fee, as applicable, for reservations for your Facility from certain distribution partners processed through various reservation channels. “GDS Fees” are assessed for qualified reservations processed through any global distribution system (“GDS”) or through any Internet website or other booking source powered by a GDS. “Internet Booking Fees” are assessed for qualified reservations processed through an Internet website connected through an alternate distribution system. “Third-Party Channel Fees” are assessed for qualified reservations coming from our partners directly or indirectly to our distribution platform. We will establish the amount of the GDS, Internet Booking Fees, and Third-Party Channel Fees from time to time based on the fees these channels charge us and/or our own costs (including overhead) for providing these services. Some of our distribution partners may charge a commission on reservations you receive through these reservation channels and, if we pay such commission on your behalf, you will reimburse us and pay our service charge of 1.5% of commissionable revenue. Upon written notice to you, we may alter, change, modify, remove or add new fees as existing reservation channels are modified or partners are added to existing channels or new reservation channels are established.

You will also pay commissions for (a) reservations booked by “Agents” and/or (b) qualified reservations consumed by members of affinity groups and organizations that participate in our Member Benefits program. You must pay our service charge of 1.5% of commissionable revenue, if applicable. “Agents” include, but are not limited to, travel agents, on-line travel and referral websites, travel consortia, travel management companies, and global sales agents, as well as digital media linking to Chain websites and unique call center numbers purchased by the pay-for-performance program (“PFP”). These commission payments may go to the Agent, affinity group or organization in whole or a portion of the payment may be allocated to various

marketing activities and/or to our Global Sales Organization to offset its administrative and overhead costs for supporting the Member Benefit Program and other programs that generate room nights at Chain Facilities, or, in the case of the PFP program, to fund purchases of additional digital media directing consumers to Chain websites and unique call center numbers.

Under our Everyone Sells Group Referrals Program, Chain Facilities may receive leads from other Chain Facilities, facilities of our affiliates and employees of our parent company or its predecessor. For this business, we charge you a referral commission of 10% of the commissionable revenue on qualifying reservations. When the referring party is a Chain Facility or facility of an affiliate 7% of the referral commission is paid to the referring facility; and when the referring party is an employee of our parent company or its predecessor, 6% of the referral commission is paid to the employee. The remaining 3% and 4%, as applicable, is distributed to our Global Sales Organization to offset its administrative and overhead costs for supporting the Everyone Sells Group Referrals Program.

We may change, modify or delete Additional Fees for existing services and programs and add new Additional Fees for new services, programs and distribution channels at any time upon not less than thirty (30) days' written notice.

**SCHEDULE D**  
**ADDENDUM FOR CONVERSION FACILITIES**

This Addendum and the attached Property Improvement Plan apply if you are converting an existing guest lodging facility to a Chain Facility.

**1. YOUR IMPROVEMENT OBLIGATION.**

**1.1 Generally.** You must select and acquire the Location and acquire, equip and supply the Facility in accordance with this Agreement and System Standards. You must provide us with proof that you own or lease the Facility by the earlier to occur of (a) 30 days after the Effective Date or (b) the Opening Date. You must maintain control of the Facility consistent with such documentation during the Term. You must begin renovation of the Facility no later than 30 days after the Effective Date. Time is of the essence for the completion of the Improvement Obligation. We may, however, in our sole discretion, grant one or more extensions of time to perform any phase of the Improvement Obligation. The grant of an extension will not waive any other default existing at the time the extension is granted. All renovations must comply with System Standards, any Approved Plans, this Agreement and the PIP. Your general contractor or you must carry the insurance required under this Agreement during renovation.

**1.2 Pre-Opening Improvements.** You must complete all renovations specified as “prior to opening” on the PIP before we consider the Facility to be ready to open under the System. The deadline for completing the pre-opening phase of conversion and the renovations shall be as specified on any PIP attached to this Agreement, but is otherwise 270 days from the Effective Date. You must continue renovation and improvement of the Facility after the Opening Date if the PIP so requires. We may, in our sole discretion, terminate this Agreement by giving written notice to you (subject to applicable law) if (1) you do not commence or complete the pre-opening improvements of the Facility by the dates specified on the PIP or otherwise and you fail to do so within five days after we send you written notice of default, or (2) you prematurely identify the Facility as a Chain Facility or begin operation under the System in violation of this Schedule and you fail to cease operating and/or identifying the Facility under the Marks and System within five days after we send you written notice of default. If we choose to grant an extension of any deadlines, including the Facility’s Opening Date, we may require you to pay us an extension fee of \$10,000. The extension fee, if assessed, is due within ten days of the Facility’s Opening Date. You also must also pay us the Reinspection Fee described in Section 3.7 if you fail to complete the Improvement Obligation by the deadline established in the PIP or otherwise and our representatives must return to the Facility to inspect it. In limited circumstances, you may identify the Facility as a Chain Facility prior to the Opening Date, or commence operation of the Facility under a Mark and using the System, only after first obtaining our prior written approval. If you identify the Facility as a Chain Facility or operate the Facility under a Mark before the Opening Date without our express written consent, then in addition to our remedies under Section 11, you will begin paying the Royalty to us, as specified in Section 7.1, from the date you identify or operate the Facility using the Mark. We may delay the Opening Date until you pay the Royalty accruing under this Section.

### 1.3 Improvement Plans.

(a) Prototype Plans Renovation. If the PIP requires you to renovate the Facility in accordance with our Prototype Plans (or you elect to receive the Prototype Plans), you will be required to electronically designate an architect who must electronically accept the Prototype Plans Agreement. Within 15 days after we electronically receive the signed Prototype Plans Agreement, we will deliver to your architect a complete set of our Prototype Plans. Your architect and you will create construction documents (including a project manual and working drawings) for renovation of the Facility based upon the Prototype Plans, System Standards and this Agreement so that it conforms as closely as possible to the Prototype Plans and System Standards, and then submit them for our approval before starting demolition and improvement of the Location.

(b) Generally. You will create plans and specifications for the work described in Section 1.1 of this Schedule D (based upon System Standards and this Agreement) if we so request and submit them for our approval before starting improvement of the Location. We will not unreasonably withhold or delay our approval, which is intended only to test compliance with System Standards, and not to detect errors or omissions in the work of your architects, engineers, contractors or the like, who must exercise their own independent professional care, skill and diligence in the design and renovation of your Facility. Our review does not cover technical, architectural or engineering factors relating to the existing structure at the Location, the validity of conversion given the existing structure, or compliance with federal, state or local laws, regulations or code requirements, for which your architect is responsible. You must allow for 10 days of our review each time you submit plans to us. We will not be liable to your lenders, contractors, employees, guests, others, or you on account of our review or approval of your plans, drawings or specifications, or our inspection of the Facility before, during or after the renovation. Any material variation from the Approved Plans requires our prior written approval. Approved Plans must incorporate design elements as set forth in System Standards. You may purchase furniture, fixtures, equipment and other supplies that you may need during renovation of the Facility through our affiliate, Worldwide Sourcing Solutions, Inc.'s "Approved Supplier" program. If you choose to purchase certain design items from a supplier other than an Approved Supplier, we may charge you a Custom Interior Design Review Fee, currently \$6,000. This fee will be assessed for our review of custom interior design drawings, which you must submit to us to ensure compliance with our interior design standards. We may offer other optional architectural and design services for a separate fee. You will promptly provide us with copies of permits, job progress reports, and other information as we may reasonably request.

(c) Deviation from Approved Plans. We may inspect the work while in progress without prior notice. We may direct you to change the work in progress if it deviates from the Approved Plans or System Standards and may terminate this Agreement if you fail to comply with any such direction. If you encounter unexpected issues with demolition, renovation, reconstruction or refurbishment of the existing structure which make continuation of the project using the Approved Plans not commercially feasible, you must notify us immediately and provide a complete written report on the matter, including any proposal to modify the Approved Plans you believe is appropriate together with your estimate of the projected costs of meeting the Approved

Plans. We will evaluate the report, your proposal and the situation and respond within 30 days to any request to vary the Approved Plans, or provide suggestions for resolving the issues in such a manner as will be acceptable to us. Neither party shall terminate this Agreement unless and until such notice is given and the 30-day period shall have elapsed without agreement on modifying the Approved Plans. If either party then decides to terminate this Agreement, you will pay, if then not paid, and we will retain, the full Initial Fee. Provided that we determine in our reasonable discretion that continuation of the project using the Approved Plans or any modification of the Approved Plans is not commercially feasible then Liquidated Damages shall not be owed.

## **2. INTEGRATION AND MANDATORY SUPPORT SERVICES AND FEES.**

**2.1 Integration Services.** We will provide training through various on-line courses on subjects such as quality assurance, housekeeping, preventative maintenance, customer service, and the request for proposal process. A member of our field team will also assist with property operations topics including Systems Standards and use of the Chain's intranet site. These services are provided as part of the Initial Fee required in Section 6.

**2.2 Mandatory Support and Services Fees.** We will arrange for delivery of an initial supply of key property supplies that assist the Facility with meeting System Standards and/or participating in key marketing initiatives as reasonably determined by us. You will pay \$500 for your initial supplies. We will arrange to have our preferred photography provider take digital photographs of the in accordance with System Standards for use on our Chain Websites, third-party travel websites and various marketing media and such photographs will be owned by us. You will pay \$2,750 for the required photo package; you may incur additional costs based on the number of room types and amenities at the Facility. If we allow you to open the Facility before your installation of permanent signage, we will arrange for one of our Approved Suppliers to provide temporary exterior signage for the Facility in the form of a Mark-bearing bag to cover your existing primary free-standing sign. You will pay \$1,000 for this temporary signage. If you install permanent signage from an Approved Supplier for the Facility on or before the Opening Date, or if within thirty (30) days of the Opening Date you sign a quote and pay the required deposit for permanent signage from the vendor assigned to provide temporary signage for the Facility, then we shall issue you a credit of \$1,000. We will provide training for your general manager as set forth in Section 4.1 of the Agreement if he/she attends the training by the deadline set forth in Section 4.1. The tuition for this mandatory training program is currently \$2,250. We will provide training for your staff at your Facility. This training is conducted on site at your Facility and depending on your room count will last between one and five days and cost between \$750 - \$3,750. If you have not previously owned a Chain facility or any hotel licensed by one of our affiliates, we will also provide owner training. There is no fee for the first attendee of the program, which may run for up to three days at a location we designate. You may choose to send additional attendees for a charge of \$1,000 each. You are also responsible for facilitator, or your, travel, lodging and meal expense for on-site and owner training. We will provide a comprehensive curriculum of hotel operations training. The cost of ongoing learning and development support for your entire hotel team currently is \$1,200 per year.

### **3. DEFINITIONS.**

Opening Date means the date on which we authorize you to open the Facility for business identified by the Marks and using the System.

Prototype Plans means the prototype documents reflecting the overall design intent, FF&E, and color schemes for a Chain Facility that we deliver to you after the Effective Date.

Prototype Plans Agreement means the agreement that your designated architect will execute in order to receive a copy of the Prototype Plans.

**SCHEDULE D**  
**ADDENDUM FOR CONVERSION FACILITIES**

**[Property Improvement Plan Attached]**



**SCHEDULE D**  
**ADDENDUM FOR NEW CONSTRUCTION FACILITIES**

This Addendum and the attached Milestone Schedule apply if you are constructing a new Chain Facility.

**1. YOUR IMPROVEMENT OBLIGATION.**

**1.1 Generally.** You must select and acquire the Location and acquire, design, construct, equip and supply the Facility in accordance with this Agreement and System Standards. You must provide us with proof that you own or are the lessee under a ground lease for the Location by the earlier to occur of (a) 90 days after the Effective Date or (b) the Opening Date. You must maintain control of the Facility consistent with such documentation during the Term. You must submit “Preliminary Plans” and a copy of your agreement with your selected FF&E vendor and/or design company no later than 180 days from the Effective Date. You must obtain our approval for your plans and submit the Approved Construction Plans to applicable governmental authorities for permitting and submit to us a copy of your agreement with your general contractor no later than 9 months after the Effective Date. You must commence construction of the Facility no later than 18 months after the Effective Date, and complete construction, and properly deliver the Certification as described in subsection 1.3 of this Schedule, and open the Facility under the Chain with our authorization no later than 30 months from the Effective Date. Construction commences, for purposes of this Schedule, when all of the following occur: (x) we approve a site plan, completed working drawings and detail specifications for the Facility; (y) governmental permits are issued to commence foundation construction; and (z) you commence pouring concrete for building footings. Time is of the essence for the completion of the Improvement Obligation. We may, however, in our sole discretion, grant extensions of time to perform any phase of the Improvement Obligation. The grant of an extension will not waive any other default existing at the time the extension is granted. All construction must comply with System Standards, any Approved Plans, and this Agreement. Your general contractor or you must carry the insurance required under this Agreement during construction.

**1.2 Pre-Opening.** We may, in our sole discretion, terminate this Agreement by written notice to you (subject to applicable law) if you do not meet the deadlines above. If we choose to grant an extension of any deadline, including the Opening Date, we may require you to pay us a non-refundable extension fee of \$10,000. The extension fee, if assessed, is due within 10 days of the Facility’s Opening Date. You also must pay us the Reinspection Fee described in Section 3.7 if the Facility fails the inspection you designate as the completion inspection, does not meet our Standards or conform to the Approved Plans, and our representatives must return to the Facility to inspect it. In limited circumstances, you may identify the Facility as a Chain Facility prior to the Opening Date, or commence operation of the Facility under a Mark and using the System, only after first obtaining our prior written approval, but in no event before the Facility passes our completion inspection, at which we determine that the Facility as built meets our System Standards, and we receive from you and your architect or contractor the Certification described in subsection 1.3 below. If you identify the Facility as a Chain Facility or operate the Facility

under a Mark before the Opening Date without our express written consent, then in addition to our remedies under Section 11, you will begin paying the Royalty to us, as specified in Section 7.1, from the date you identify or operate the Facility using the Mark. We may delay the Opening Date until you pay the Royalty accruing under this Section.

**1.3 ADA Certification.** Your architect must certify to us and to you that the Facility’s plans and specifications comply with the design requirements of the Americans with Disabilities Act (“ADA”), the Department of Justice Standards for Accessible Design (“ADA Standards”) under the ADA, and all codes that apply using the ADA Certification Form for New Construction (Pre-Construction) in Exhibit A. Before we authorize you to open the Facility, you must complete and submit the ADA Certification Form for New Construction (Post-Construction) attached as Exhibit B (Exhibits A and B, collectively, the “Certification”). You must complete the Certification per their instructions and submit to us only after they have been signed by your general contractor, your architect of record or a consulting architect you hire for the Certification. If you cannot obtain the signature of the contractor or such an architect for the Certification, you must sign the Franchisee’s Certification of Compliance on the signature page of the Certification. If we determine that the Certification has not been properly completed, or if we have actual knowledge (not constructive or implied knowledge) that the signatures on the Certification are false or fraudulent, we will return the Certification to you with written notice that we will not permit you to open the Facility for business under the System until we receive a properly completed Certification. We may terminate this Agreement under Section 11 if you do not submit the Certification properly completed before you open the Facility under the System, you fail to meet the deadline for completing the Facility specified in this Schedule because you do not submit a properly completed Certification, or if you submit a false or fraudulent Certification. We will delay the Opening Date until you submit the properly completed Certification. We shall not be liable to you or any third party if the Certification is improperly completed or the Facility is not built or operated in compliance with ADA.

#### **1.4 Improvement Plans.**

(a) Prototype Plans. We will provide your designated architect with a set of “Prototype Plans” for the construction, renovation or furnishing of the Facility, which your architect can use for creating the construction documents. To receive the Prototype Plans, you will be required to electronically designate an architect who must electronically accept the Prototype Plans Agreement. Within 15 days after we electronically receive the signed Prototype Plans Agreement, we will deliver to your architect a complete set of our Prototype Plans. Your architect and you will create construction documents (including a project manual and working drawings) for construction of the Facility based upon the Prototype Plans, System Standards and this Agreement so that it conforms as closely as possible to the Prototype Plans and System Standards, and then submit them for our approval before starting improvement of the Location. We will not unreasonably withhold or delay our approval, which is intended only to test compliance with System Standards, and not to detect errors or omissions in the work of your architects, engineers, contractors or the like, who must exercise their own independent professional care, skill and diligence in the design and construction of your Facility. Our review does not cover technical, architectural or engineering factors relating to the Location, or compliance with federal, state or local laws, regulations or code requirements, including without limitation, compliance with the ADA, for which your architect is responsible. You must allow for 10 days of review each time you submit plans to us.

We will not be liable to your lenders, contractors, employees, guests, others, or you on account of our review or approval of your plans, drawings or specifications, or our inspection of the Facility, before during or after construction or any subsequent renovation. Any material violation from the Approved Plans requires our prior written approval. Approved Plans must incorporate design elements as set forth in System Standards. You may purchase furniture, fixtures, equipment and other supplies that you may need during construction of the Facility through our affiliate, Worldwide Sourcing Solutions, Inc.'s "Approved Supplier" program. If you choose to purchase certain design items from a supplier other than an Approved Supplier, we may charge you a Custom Interior Design Review Fee, currently \$6,000. This fee will be assessed for our review of custom interior design drawings, which you must submit to us to ensure compliance with our interior design standards. We may offer other optional architectural and design services for a separate fee. You will promptly provide us with copies of permits, job progress reports, and other information as we may reasonably request.

(b) Construction Costs. Before we authorize you to open the Facility, we may request that you furnish us with information about the construction costs of the Facility by providing a copy of your contractor's application for payment on AIA form G702 and G703 or other documentation reasonably acceptable to us. We will use this information, along with similar information obtained from other franchisees, to more accurately project the cost of developing new construction Facilities in the United States, which we are required to disclose in our Franchise Disclosure Document for new franchisees. We will not disclose outside of our organization or our consultants any information you give to us in a manner which would enable other franchisees or persons to determine your costs for constructing your Facility.

(c) Deviation from Approved Plans. We may inspect the work while in progress without prior notice. We may direct you to change the work in progress if it deviates from the Approved Plans or System Standards and may terminate this Agreement if you fail to comply with any such direction. If you encounter unexpected issues with demolition, renovation, reconstruction or refurbishment of the existing structure which make continuation of the project using the Approved Plans commercially infeasible, you must notify us immediately and provide a complete written report on the matter, including any proposal to modify the Approved Plans you believe is appropriate together with your estimate of the projected costs of meeting the Approved Plans. We will evaluate the report, your proposal and the situation and respond within 30 days to any request to vary the Approved Plans, or provide suggestions for resolving the issues in such a manner as will be acceptable to us. Neither party shall terminate this Agreement unless and until such notice is given and the 30-day period shall have elapsed without agreement on modifying the Approved Plans. If either party then decides to terminate this Agreement, you will pay, if then not paid, and we will retain, the full Initial Fee. Provided that we determine in our reasonable discretion that continuation of the project using the Approved Plans or any modification of the Approved Plans is not commercially feasible then Liquidated Damages shall not be owed.

## **2. INTEGRATION AND MANDATORY SUPPORT SERVICES AND FEES.**

**2.1 Integration Services.** We will provide training through various on-line courses on subjects such as quality assurance, housekeeping, preventative maintenance, customer service, and the

request for proposal process. A member of our field team will also assist with property operations topics including Systems Standards and use of the Chain's intranet site. These services are provided as part of the Initial Fee required in Section 6.

**2.2 Mandatory Support Services and Fees.** We will arrange for our preferred photography provider to take digital photographs of the Facility in accordance with System Standards for use on our Chain Websites, third-party travel websites and various marketing media and such photographs will be owned by us. You will pay \$2,750 for the required photo package; you may incur additional costs based on the number of room types and amenities at the Facility. We will provide general manager certification training for your general manager as set forth in Section 4.1 of the Agreement if he/she completes the training by the deadline set forth in Section 4.1. The tuition for this mandatory training program is currently \$2,250. We will provide Opening Training for your staff at your Facility. This training is conducted on site at your Facility and depending on your room count will last between one and five days and cost between \$750 - \$3,750. We will provide a comprehensive curriculum of hotel operations training. The cost of ongoing learning and development support for your entire hotel team currently is \$1,200 per year. You are also responsible for facilitator, or your, travel, lodging and meal expense for trainings.

### **3. DEFINITIONS.**

Opening Date means the date on which we authorize you to open the Facility for business identified by the Marks and using the System.

Prototype Plans means the prototype documents reflecting the overall design intent, FF&E, and color schemes for a Chain Facility that we deliver to you after the Effective Date.

Prototype Plans Agreement means the agreement that your designated architect will execute in order to receive a copy of the Prototype Plans.

**SCHEDULE D**  
**ADDENDUM FOR NEW CONSTRUCTION FACILITIES**

**Milestone Schedule**

<b>Milestone</b>	<b>Deadline for Completion</b>
1) Provide us with proof that you own or a ground lease of the Location	[Insert date 90 days from the Effective Date]
2) Provide us with Preliminary Plans	[Insert date 180 days from the Effective Date]
3) Commence construction of the Facility as defined in subsection 1.1 of this Schedule	[Insert date 18 months from the Effective Date]*
4) Complete construction and properly deliver the Certification as described in subsection 1.3 of this Schedule	[Insert date 30 months from the Effective Date]

\*Failure to complete Milestones 1 or 2 by the Deadlines for Completion listed above will reduce the Deadline for Completion for Milestone 3 from 18 months to 12 months from the Effective Date.

\_\_\_\_\_  
Initial

## **INSTRUCTIONS**

New construction projects whose last application for a building permit or permit extension is certified to be complete by a state, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, the date when the last application for a building permit or permit extension is received by the state, county, or local government) on or after March 15, 2012 must comply with the ADA standards published on September 15, 2010 (28 C.F.R. Part 36, subpart D, and 2004 ADA Standards at 36 C.F.R. Part 1191, Appendices B and D). Thus, for projects that fall within this category, owners must use Exhibit A at the pre-construction stage and Exhibit B at the post-construction stage.

**EXHIBIT A**

**ADA CERTIFICATION FORM FOR NEW CONSTRUCTION  
(PRE-CONSTRUCTION)**

In connection with the project identified as: \_\_\_\_\_

To the best of my professional knowledge, information and belief, I hereby state the following:

1. I have professional experience applying the requirements of the Americans with Disabilities Act (ADA) and the 2010 Standards at 28 C.F.R. Part 36, subpart D, and 2004 ADA Standards at 36 C.F.R. Part 1191, Appendices B and D.
2. I have reviewed the plans (including architectural interior design plans if they are available prior to construction).
3. The plans comply with the 2010 Standards.
4. I have specifically determined that the plans provide:
  - a. The number of accessible car and van-accessible parking spaces required by the 2010 Standards (if parking facilities are to be provided);
  - b. The number of accessible rooms with features for guests with mobility disabilities (including the required number of accessible rooms with roll-in showers) and the number of accessible rooms with communications features for guests who are deaf or hard of hearing required under 2010 Standards.
  - c. An inventory of accessible rooms with mobility features and communications features for guests with hearing impairments that is dispersed among the various room types offered to the public as required by the 2010 Standards.

Sign: \_\_\_\_\_

Print Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**ADA CERTIFICATION FORM FOR NEW CONSTRUCTION  
(POST-CONSTRUCTION)**

1. I have professional experience applying the requirements of the Americans with Disabilities Act (ADA) and the 2010 Standards at 28 C.F.R. Part 36, subpart D, and 2004 ADA Standards at 36 C.F.R. Part 1191, Appendices B and D.
2. I have inspected all areas of the hotel that are open to the public (including accessible guest rooms), and they comply with the 2010 Standards.
3. I have specifically determined that the hotel, as constructed, provides:
  - a. The number of accessible car and van-accessible parking spaces required by the 2010 Standards (if parking facilities are to be provided);
  - b. The number of accessible rooms with features for guests with mobility disabilities (including the required number of accessible rooms with roll-in showers) and the number of accessible rooms with communications features for guests who are deaf or hard of hearing required under the 2010 Standards.
  - c. An inventory of accessible rooms with mobility features and communications features for guests with hearing impairments that is dispersed among the various room types offered to the public as required by the 2010 Standards.

Sign: \_\_\_\_\_

Print Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Date: \_\_\_\_\_



**SCHEDULE D**  
**ADDENDUM FOR TRANSFER FACILITIES**

This Addendum and the attached Property Improvement Plan apply if you are the transferee of an existing Chain Facility.

**1. TRANSFER AND ASSUMPTION.**

**1.1** This Addendum is for the transfer of an existing Chain Facility at the Location first granted to \_\_\_\_\_ (“Prior Franchisee”) in a franchise agreement with us dated \_\_\_\_\_ (the “Prior Agreement”). You assume and obligate yourself to perform any and all of the obligations (financial and otherwise) of the Prior Franchisee under the Prior Agreement that are not paid or performed as of the Effective Date, including without limitation, the obligation to pay any unpaid Royalties, Marketing/Reservation Contributions or other amounts due us and to correct any uncured defaults, except as may be expressly superseded by this Agreement. You acknowledge that we may require you or your staff to complete training on the use of a property management or similar computer system and software for accessing the Reservation System and pay our then-current fees for such training.

**2. YOUR IMPROVEMENT OBLIGATION.**

**2.1 Generally.** You must acquire the Location and acquire, equip and supply the Facility in accordance with this Agreement and System Standards. You must provide us with proof that you own or lease the Facility by the Opening Date. You must maintain control of the Facility consistent with such documentation during the Term. You must begin renovation of the Facility no later than 30 days after the Effective Date. Time is of the essence for the completion of the Improvement Obligation. We may, however, in our sole discretion, grant one or more extensions of time to perform any phase of the Improvement Obligation. The grant of an extension will not waive any other default existing at the time the extension is granted. All renovations must comply with System Standards, any Approved Plans, this Agreement and the PIP. Your general contractor or you must carry the insurance required under this Agreement during renovation. The deadline for completing the Improvement Obligation shall be as specified on any PIP attached to this Agreement, but is otherwise 270 days from the Effective Date. We may, in our sole discretion, terminate this Agreement by giving written notice to you (subject to applicable law) if you do not commence or complete the improvement of the Facility by the dates specified in the PIP or otherwise and you fail to do so within five days after we send you written notice of default. You also must pay us the Reinspection Fee described in Section 3.7 if you fail to complete any Improvement Obligation by the deadline established in the PIP or otherwise and our representatives must return to the Facility to inspect it.

**\_\_\_\_\_ [If the Facility was in quality assurance default immediately before the Effective Date of the transfer, add the following to the end of Section 2.1:]**

You and we acknowledge that Prior Franchisee received one or more notices of default from us before the Effective Date regarding the Facility’s failure to meet System Standards. Prior Franchisee did not cure the default before the Effective Date. We have approved the application you submitted to us and have entered into this Agreement in reliance upon your promise and undertaking to complete the Improvement Obligation, including the renovations, operational

changes, repairs, refurbishment, replacements, and capital improvements necessary to conform the Facility to System Standards as detailed on the PIP attached to this Agreement. You must erect a barrier or place signage acceptable to us to exclude Chain guests from any areas under renovation or construction while completing the Improvement Obligation. We may require you to remove, cease display or use, or completely obscure all signage and other items bearing any Marks until the Facility meets System Standards in our discretion. We may, in our sole discretion, terminate this Agreement by giving written notice to you (subject to applicable law) if you continue to display the Marks and identify the Facility as a Chain Facility five days after we send you written notice that you have failed to complete the Improvement Obligation by the date specified in the PIP or otherwise.

**2.2 Improvement Plans.** You will create plans and specifications for the work described in Section 2.1 of this Schedule D (based upon the System Standards and this Agreement) if we so request and submit them for our approval before starting improvement of the Location. We will not unreasonably withhold or delay our approval, which is intended only to test compliance with System Standards, and not to detect errors or omissions in the work of your architects, engineers, contractors or the like, who must exercise their own independent professional care, skill and diligence in the design and renovation of your Facility. Our review does not cover technical, architectural or engineering factors relating to the existing structure at the Location, or compliance with federal, state or local laws, regulations or code requirements, for which your architect is responsible. You must allow for 10 days of our review each time you submit plans to us. We will not be liable to your lenders, contractors, employees, guests, others or you on account of our review or approval of your plans, drawings or specifications, or our inspection of the Facility before, during or after renovation or construction. Any material variation from the Approved Plans requires our prior written approval. Approved Plans must incorporate design elements as set forth in System Standards. You may purchase furniture, fixtures, equipment and other supplies that you may need during renovation of the Facility through our affiliate, Worldwide Sourcing Solutions, Inc.'s "Approved Supplier" program. If you choose to purchase certain design elements from a supplier other than an Approved Supplier, we may charge you a Custom Interior Design Review Fee, currently \$6,000. This fee will be assessed for our review of custom interior design drawings, which you must submit to ensure compliance with our interior design standards. We may offer other optional architectural and design services for a separate fee. You will promptly provide us with copies of permits, job progress reports, and other information as we may reasonably request. We may inspect the work while in progress without prior notice.

**2.3 Identification of Facility.** You may continue to identify and operate the Facility as part of the System while you perform the Improvement Obligation, if any.

### **3. MANDATORY SUPPORT SERVICES AND FEES.**

**3.1 Mandatory Support Service and Fee.** We will provide training for your general manager as set forth in Section 4.1 of the Agreement if he/she attends the training by the deadline set forth in Section 4.1. The tuition for this mandatory training is currently \$2,250. We will provide a comprehensive curriculum of hotel operations training. The cost of ongoing learning and development support for your entire hotel team currently is \$1,200 per year.

### **4. DEFINITIONS.**

Effective Date means the date that you first take possession of the Facility, even if you sign this Agreement after the date you first take possession of the Facility.

Opening Date means the date as of which we authorize you to open the Facility for business identified by the Marks and using the System, even if you sign this Agreement after that date. Unless we require that you close the Facility to perform any pre-opening Improvement Obligation, the Opening Date is the Effective Date.

**SCHEDULE D**  
**ADDENDUM FOR TRANSFER FACILITIES**

**[Property Improvement Plan Attached]**

**SCHEDULE D**  
**ADDENDUM FOR RENEWAL FACILITIES**

This Addendum and the attached Property Improvement Plan apply if you are renewing the franchise for an existing Chain Facility by entering into a new Franchise Agreement.

**1. CONTINUING OBLIGATION.**

**1.1** This Addendum is for the renewal of the Franchise for an existing Chain Facility first granted to you in a franchise agreement dated \_\_\_\_\_ (the “Prior Agreement”). You must perform any and all of your obligations (financial and otherwise) under the Prior Agreement remaining as of the date of this Agreement and correct any uncured defaults, except as may be expressly superseded by this Agreement. If the Facility’s general manager has not completed our Hospitality Management Program during the eight years immediately preceding the Effective Date, then he/she will be required to participate as set forth in Section 4.1.1 and pay the current fee of \$2,250.

**2. YOUR IMPROVEMENT OBLIGATION.**

**2.1 Generally.** You must renovate and improve the Facility in accordance with this Agreement and System Standards. You must provide us with proof that you own or lease the Facility by the Opening Date. You must maintain control of the Facility consistent with such documentation during the Term. You must begin renovation of the Facility no later than 30 days after the Effective Date. Time is of the essence for the completion of the Improvement Obligation. We may, however, in our sole discretion, grant one or more extensions of time to perform any phase of the Improvement Obligation. The grant of an extension will not waive any other default existing at the time the extension is granted. All renovations must comply with System Standards, this Agreement and the PIP. Your general contractor or you must carry the insurance required under this Agreement during renovation. The deadline for completing the Improvement Obligation shall be as specified on any PIP attached to this Agreement, but is otherwise 90 days from the Effective Date. We may, in our sole discretion, terminate this Agreement by giving written notice to you (subject to applicable law) if you do not commence or complete the improvement of the Facility by the dates specified in the PIP or otherwise and you fail to do so within five days after we send you written notice of default. You also must pay us the Reinspection Fee described in Section 3.7 if you fail to complete any Improvement Obligation by the deadline established in the PIP or otherwise and our representatives must return to the Facility to inspect it.

**2.2 Improvement Plans.** You will create plans and specifications for the work described in Section 2.1 of this Schedule D (based upon the System Standards and this Agreement) if we so request and submit them for our approval before starting improvement of the Location. We will not unreasonably withhold or delay our approval, which is intended only to test compliance with System Standards, and not to detect errors or omissions in the work of your architects, engineers, contractors or the like, who must exercise their own independent professional care, skill and diligence in the design and renovation of your Facility. Our review does not cover technical, architectural or engineering factors relating to the existing structure at the Location, or compliance with federal, state or local laws, regulations or code requirements, for which your

architect is responsible. You must allow for 10 days of our review each time you submit Plans to us. We will not be liable to your lenders, contractors, employees, guests, others or you on account of our review or approval of your plans, drawings or specifications, or our inspection of the Facility before, during or after renovation or construction. Any material variation from the Approved Plans requires our prior written approval. Approved Plans must incorporate design elements as set forth in System Standards. You may purchase furniture, fixtures, equipment and other supplies that you may need during renovation of the Facility through our affiliate, Worldwide Sourcing Solutions, Inc.'s "Approved Supplier" program. If you choose to purchase certain design elements from a supplier other than an Approved Supplier, we may charge you a Custom Interior Design Review Fee, currently \$6,000. This fee will be assessed for our review of custom interior design drawings, which you must submit to ensure compliance with our interior design standards. We may offer other optional architectural and design services for a separate fee. You will promptly provide us with copies of permits, job progress reports, and other information as we may reasonably request. We may inspect the work while in progress without prior notice.

**2.3 Identification of Facility.** You may continue to identify and operate the Facility as part of the System while you perform the Improvement Obligation, if any.

### **3. MANDATORY SUPPORT SERVICES AND FEES**

**3.1 Mandatory Services.** We will provide a comprehensive curriculum of hotel operations training. The cost of ongoing learning and development support for your entire hotel team currently is \$1,200 per year.

### **4. DEFINITIONS.**

Opening Date has the same meaning as Effective Date.

**SCHEDULE D**  
**ADDENDUM FOR RENEWAL FACILITIES**

**[Property Improvement Plan Attached]**

**GUARANTY**

To induce Hawthorn Suites Franchising, Inc., its successors, assigns and affiliates (“you”) to sign the franchise agreement, the undersigned, jointly and severally (“we,” “our,” or “us”), irrevocably and unconditionally (i) warrant to you that representations and warranties in the Agreements are true and correct as stated, and (ii) guaranty that Franchisee’s obligations under the Agreements, including any amendments, will be punctually paid and performed. “Franchise Agreement” means the franchise agreement to which this Guaranty is attached pertaining to the Unit indicated above, and the ancillary agreements to the Franchise Agreement (such ancillary agreements and the Franchise Agreement, collectively, the “Agreements”). “Franchisee” means the party designated as the Franchisee in the Franchise Agreement.

Upon default by Franchisee and notice from you we will immediately make each payment and perform or cause Franchisee to perform each unpaid or unperformed obligation of Franchisee under the Agreements. Without affecting our obligations under this Guaranty, without notice to us, you may extend, modify or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee. We waive notice of amendment of the Agreements. We acknowledge that the provisions of Section 17 of the Franchise Agreement, including but not limited to Section 17.4 (Remedies) and Section 17.6 (Choice of Law; Venue; Dispute Resolution, including but not limited to Section 17.6.4 (Waiver of Jury Trial)), apply to this Guaranty.

Upon the death of an individual guarantor, the estate of the guarantor will be bound by this Guaranty for obligations of Franchisee to you existing at the time of death, and the obligations of all other guarantors will continue in full force and effect.

This Guaranty may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of us has signed this Guaranty effective as of the date of the Franchise Agreement.

**GUARANTORS:**

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_



**INITIAL FEE NOTE**

\$ \_\_\_\_\_

Parsippany, New Jersey  
Date: \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_, a \_\_\_\_\_ (“Maker”), and \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, (each a “Co-Maker” and, collectively, the “Co-Makers”) promise to pay to the order of \_\_\_\_\_, a \_\_\_\_\_ (“Holder”), the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), which amount shall bear no interest unless Maker and Co-Makers default or this Note is accelerated. The principal amount will be payable in one installment due on the earlier to occur of \_\_\_\_\_, 20\_\_\_\_, or on the Opening Date of the Facility, as both terms are defined in the Franchise Agreement (as defined below). If this Note is not paid within ten (10) days after it is due, the outstanding principal balance shall bear simple interest at a rate equal to the lesser of eighteen (18%) percent per annum or the highest rate allowed by applicable law from its due date until paid. The outstanding principal balance of this Note shall be payable in lawful money of the United States of America at 22 Sylvan Way, Parsippany, New Jersey 07054, or at such other place as Holder may direct by written notice to Maker.

If a Termination of the Franchise Agreement occurs for any reason, or Maker defaults under the Franchise Agreement and fails to cure the default within the time permitted under the Franchise Agreement, if any, or any other event occurs that permits Holder to terminate the Franchise Agreement as provided in Section 11.2, or a Transfer occurs, the outstanding principal balance of this Note shall be due and payable immediately without further notice, demand, or presentment. Any payments shall be first applied to any accrued interest and then to principal. Maker and each Co-Maker have the right to prepay this Note, in whole or in part, at any time, without premium or penalty. Prepayments of principal will be applied without notation on this Note.

This Note is issued pursuant to the franchise agreement between Holder and Maker (the “Franchise Agreement”) and guaranteed by each Co-Maker for the operation of a \_\_\_\_\_ System facility located, or to be located at \_\_\_\_\_, and identified by the Unit number above (the “Facility”). All terms not defined herein shall have the same definition as in the Franchise Agreement. Maker’s and each Co-Maker’s obligation to pay this Note shall be absolute and unconditional, and all payments shall be made without setoff, deduction, offset, recoupment, or counterclaim.

If this Note is collected by or through an attorney-at-law, the Holder shall be entitled to collect reasonable attorneys’ fees and all costs of collection. This Note is issued in and shall be governed and construed according to the laws of the State of New Jersey (without the application of conflict of laws principles). Each maker, co-maker, endorser, guarantor, or accommodation party liable for this Note waives presentment, demand, notice of demand, protest, notice of non-payment, notice of protest, notice of dishonor, and diligence in collection. Holder reserves the right to modify the terms of this instrument, grant extensions, novations, renewals, releases, discharges, compositions, and compromises with any party liable under this Note, with or without any notice to or the consent of, and without discharging or affecting the obligations of any other party liable under this Note.

The terms “Holder,” “Maker,” and “Co-Maker” shall be deemed to include their respective heirs, successors, legal representatives, and assigns, whether by voluntary action of the parties or by operation of law. All references to “Maker” and “Co-Maker” shall mean and include the named Maker, Co-Maker(s), and all guarantors, sureties and accommodation parties signing or endorsing this Note, each of whom shall be jointly, severally and primarily liable as the maker of this Note.

IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

ATTEST:

MAKER:

\_\_\_\_\_

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

WITNESS:

CO-MAKERS:

\_\_\_\_\_

Name: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

Name: \_\_\_\_\_

**DEVELOPMENT INCENTIVE NOTE\***

\$ \_\_\_\_\_

Parsippany, New Jersey

Date: \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_, a \_\_\_\_\_ (“Maker”), and \_\_\_\_\_, and \_\_\_\_\_ (each a “Co-Maker” and jointly, the “Co-Makers”) promise to pay to the order of \_\_\_\_\_, a \_\_\_\_\_ (“Holder”), the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), which amount shall bear no interest unless this Note is accelerated. The principal amount will be disbursed by Holder to Maker, and Maker and Co-Makers will become subject to the obligation to repay or discharge this Note, when and if all of the conditions for disbursement set forth in the Franchise Agreement (as defined below) have been met.

Maker will become subject to the obligation to repay or discharge this Note upon receipt of any portion of the principal amount. On each anniversary of the Facility’s Opening Date, one - \_\_\_ of the original principal amount will be forgiven without payment. Maker’s obligation to repay the principal of this Note will cease and this Note will be canceled and discharged when the principal is completely forgiven.

This Note shall be accelerated upon any of the following events (each, an “Accelerating Event”): (i) a Termination of the Franchise Agreement occurs for any reason; (ii) a Transfer occurs and the transferee does not assume Maker’s obligation under this Note in a writing acceptable to Holder prior to the closing of the Transfer; (iii) the Maker loses ownership or possession or the right to possession of the Facility, or otherwise loses the right to conduct the franchised business at the Facility, whether by foreclosure, deed in lieu of foreclosure, the exercise of the secured party’s rights against any pledge of Franchisee’s or any parent entity’s equity securities, or otherwise; or (iv) if any proceeding for the appointment of a receiver or other custodian for, or seeking marshaling or composition of or for, Maker’s business or assets is filed in any court of competent jurisdiction, or otherwise commenced in accordance with legal requirements, and is not dismissed within ninety (90) days. If such an Accelerating Event occurs, the outstanding, unamortized principal balance of this Note shall be immediately due and payable without further notice, demand, or presentment. Any payments shall be first applied to any accrued interest and then to principal. Maker and each Co-Maker have the right to prepay this Note, in whole or in part, at any time, without premium or penalty. Prepayments of principal will be applied without notation on this Note.

If this Note is accelerated and is not paid in full within ten (10) days after it is due, the outstanding principal balance shall bear simple interest at a rate equal to the lesser of eighteen (18%) percent per annum and the highest rate allowed by applicable law from its due date until paid. The outstanding principal balance of this Note shall be payable in lawful money of the United States

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\* If a Co-Maker is a resident of community property state or certain other states, his or her spouse also must sign the Note as a co-maker.

of America at 22 Sylvan Way, Parsippany, New Jersey 07054, or at such other place as Holder may direct by written notice to Maker.

This Note is issued pursuant to the franchise agreement between Holder and Maker, and guaranteed by each Co-Maker (the “Franchise Agreement”) for the operation of a \_\_\_\_\_ System facility located, or to be located, at \_\_\_\_\_, and identified by the Unit number indicated above (the “Facility”). All terms not defined in this Note shall have the same definition as in the Franchise Agreement. If the Franchise Agreement terminates before the Facility opens and Holder has not disbursed any portion of the Development Incentive to Maker, or if Maker fails to meet the conditions for disbursement set forth in the Franchise Agreement, then this Note will be deemed discharged and neither party will have any further obligation to the other under this instrument. Maker’s and each Co-Maker’s obligation to pay this Note shall be absolute and unconditional, and all payments shall be made without setoff, deduction, offset, recoupment, or counterclaim.

If this Note is collected by or through an attorney at law, the Holder shall be entitled to collect reasonable attorney’s fees and all costs of collection. This Note is issued in and shall be governed and construed according to the laws of the State of New Jersey (without the application of conflict of laws principles). Each maker, co-maker, endorser, guarantor, or accommodation party liable for this Note waives presentment, demand, notice of demand, protest, notice of non-payment, notice of protest, notice of dishonor and diligence in collection. Holder reserves the right to modify the terms of this instrument, grant extensions, novations, renewals, releases, discharges, compositions, and compromises with any party liable on this Note, with or without notice to or the consent of, or discharging or affecting the obligations of any other party liable under this instrument.

The terms “Holder,” “Maker,” and “Co-Maker” shall be deemed to include their respective heirs, successors, legal representatives, and assigns, whether by voluntary action of the parties or by operation of law. All references to “Maker” and “Co-Maker” shall mean and include the named Maker, Co-Makers, and all guarantors, sureties and accommodation parties signing or endorsing this Note.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

ATTEST:

\_\_\_\_\_

MAKER:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

CO-MAKERS:

\_\_\_\_\_  
Name: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

***TO BE USED BY A TRANSFEREE TO ASSUME THE UNAMORTIZED  
BALANCE OF THE NOTE.***

**ASSUMPTION OF DEVELOPMENT INCENTIVE NOTE\***

FOR VALUE RECEIVED, the undersigned Assignee and the owners of Assignee (“Assignee Principals”) jointly and severally assume and undertake to pay when due the outstanding principal amount and accrued interest, if any, of that certain Development Incentive Note, dated \_\_\_\_\_, originally made by \_\_\_\_\_ in the original principal amount of \$ \_\_\_\_\_ (the “Note”), in accordance with the terms of the Note, a copy of which is attached to this instrument. All terms not defined in this instrument shall have the same definition as in the Franchise Agreement or the Note, as applicable. The undersigned intend for Holder, its successors, and assigns to rely on this instrument to approve and authorize the transfer of the Hawthorne “Facility” located at \_\_\_\_\_ and known by the Site Number indicated above to the undersigned Assignee. The undersigned have obtained information on the outstanding principal amount of the Note from the Prior Owner, the present franchisee of the Facility, satisfactory to the undersigned and represent to Holder that the undersigned will benefit from the assumption of the Note.

The undersigned waive presentment, demand, notice of demand, protest, notice of non-payment, notice of protest, notice of dishonor and diligence in collection of the Note and any prior or subsequent assumptions or transfers of the Note. Holder reserves the right to modify the terms of the Note, grant extensions, renewals, releases, discharges, compositions, and compromises with any party liable on this Note, with or without notice to or the consent of, or discharging or affecting the obligations of any other party liable under the Note and any prior or subsequent assumptions or transfers of the Note.

Each of the undersigned shall be deemed a Maker of the Note, as defined therein.

[Remainder of Page Intentionally Left Blank]

\*If an Assignee Principal is a resident of community property state or certain other states, his or her spouse also must sign the Note and shall be deemed a Co-Maker of the Note.

Site No.: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed and delivered this instrument effective as of the date that the transfer of the Facility to the undersigned is effective.

ASSIGNEE: \_\_\_\_\_  
\_\_\_\_\_, a \_\_\_\_\_

ASSIGNEE PRINCIPALS:

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Individually, as Co-Maker

\_\_\_\_\_  
Name: \_\_\_\_\_  
Individually, as Co-Maker

\_\_\_\_\_  
Name: \_\_\_\_\_  
Individually, as Co-Maker

**Dual Brand Addendum To La Quinta® by Wyndham and  
Hawthorn® Franchise Agreements**

This Dual Brand Addendum (the “Addendum”) is made and entered into effective this \_\_\_ day of \_\_\_\_\_ 20\_\_ among La Quinta Franchising LLC, a Nevada limited liability company (“La Quinta Franchisor”), Hawthorn Suites Franchising, Inc. a Georgia corporation (“Hawthorn Franchisor”), Wyndham Hotel Group, LLC, a Delaware limited liability company and direct and indirect parent of La Quinta Franchisor and Hawthorn Franchisor (“WHG”), and \_\_\_\_\_, a \_\_\_\_\_ (“Franchisee”).

**RECITALS:**

Simultaneous with the execution of this Addendum, La Quinta Franchisor and Franchisee shall execute that certain La Quinta Franchise Agreement dated as of \_\_\_\_\_, 20\_\_ (including all Attachments, Schedules and Addenda thereto, the “La Quinta Agreement”) for the establishment and operation of a La Quinta by Wyndham Chain Facility (the “La Quinta Facility”, and the guest rooms operated thereunder, the “La Quinta Rooms”) at the Location specified, upon the terms and conditions described in the La Quinta Agreement.

Simultaneous with the execution of this Addendum, Hawthorn Franchisor and Franchisee shall execute that certain Hawthorn Franchise Agreement dated as of \_\_\_\_\_, 20\_\_ (including all Attachments, Schedules and Addenda thereto, the “Hawthorn Agreement”) for the establishment and operation of a Hawthorn Chain Facility (the “Hawthorn Facility”, and the guest rooms operated thereunder, the “Hawthorn Rooms”) at the same Location, upon the terms and conditions described in the Hawthorn Agreement.

The La Quinta Facility and the Hawthorn Facility are to be converted or constructed, as applicable, such that each will be operated by Franchisee at the same Location as a single, dual-branded hotel (the “Dual Brand Operation”). This Addendum reflects the agreement of all parties hereto that certain provisions of the La Quinta Agreement and the Hawthorn Agreement shall be modified to (i) reflect the Dual Brand Operation; (ii) describe the terms and conditions by which La Quinta Franchisor, Hawthorn Franchisor and WHG provide their consent to the Dual Brand Operation; and (iii) further to memorialize the parties’ intent that (a) at all times during the term of the La Quinta Agreement and the Hawthorn Agreement (including any renewal term), each of the La Quinta Facility and the Hawthorn Facility will be operated together by the same person or entity, the Franchisee identified above, and (b) the Dual Brand Operation necessitates that La Quinta Franchisor and Hawthorn Franchisor remain under common control of WHG or its assignee.

Upon the execution by each of the parties, this Addendum shall be considered a binding addendum to both the La Quinta Agreement and Hawthorn Agreement such that it modifies the terms and conditions of the La Quinta Agreement and Hawthorn Agreement. To the extent of any conflict between the La Quinta Agreement or the Hawthorn Agreement and this Addendum, this Addendum shall govern.



NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth herein and in the La Quinta Agreement and the Hawthorn Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree that the following revisions shall be made to each of the La Quinta Agreement and the Hawthorn Agreement, with the understanding that any capitalized terms shall have the meanings given to them herein, or if not defined, then as defined in the La Quinta Agreement and the Hawthorn Agreement.

1. Definitions. The following is hereby added to the Definition of “System Standards” in Appendix A to each of the La Quinta Agreement and Hawthorn Agreement:

For so long as the Facility remains dual-branded, “Standards” shall also mean the brand standards, brand requirements, specifications, policies and procedures of the La Quinta System and brand as specified by the La Quinta Franchisor under the La Quinta Agreement and the brand standards, brand requirements, specifications, policies and procedures of the Hawthorn System and brand as specified by the Hawthorn Franchisor under the Hawthorn Agreement in the Manuals, or otherwise in writing, and as modified by the La Quinta Franchisor or the Hawthorn Franchisor, in their sole discretion, to take into account the Dual Brand Operation.

2. Renewal.

a. The following clause (v) is hereby added to the end of the last sentence of Section 5 of the La Quinta Agreement:

(v) and executing our then-current form of license and other agreements for the Hawthorn Facility, if the Facility is to remain dual-branded.

b. The following clause (v) is hereby added to the end of the last sentence of Section 5 of the Hawthorn Agreement:

(v) and executing our then-current form of license and other agreements for the La Quinta Facility, if the Facility is to remain dual-branded.

c. In addition, Franchisee acknowledges and agrees that, in connection with any renewal, it must continue to be the franchisee under both the La Quinta Agreement and the Hawthorn Agreement and that any renewal of the La Quinta Agreement and the Hawthorn Agreement is subject to both La Quinta Franchisor’s and Hawthorn Franchisor’s right, each in its sole discretion, to approve Franchisee’s renewal applications with respect to the applicable agreement.

3. Limitation on Transfer. Notwithstanding any provision of the La Quinta Agreement to the contrary, in addition to satisfying all of the terms and conditions applicable to any proposed Transfer, Franchisee acknowledges and agrees that no direct or indirect interest in the La Quinta Facility, Franchisee, the La Quinta Agreement, or substantially all of the assets of the

La Quinta Facility will be Transferred to any person or entity unless, simultaneously with such Transfer, the same person or entity also acquires the same type of interest in the Hawthorn Facility, Franchisee, the Hawthorn Agreement, or substantially all of the assets of the Hawthorn Facility in accordance with the terms and conditions of the Hawthorn Agreement. Conversely, notwithstanding any provision of the Hawthorn Agreement to the contrary, in addition to satisfying all of the terms and conditions applicable to any proposed Transfer, Franchisee acknowledges and agrees that no direct or indirect interest in the Hawthorn Facility, Franchisee, the Hawthorn Agreement, or substantially all of the assets of the Hawthorn Facility will be Transferred to any person or entity unless, simultaneously with such Transfer, the same person or entity also acquires the same type of interest in the La Quinta Facility, Franchisee, the La Quinta Agreement, or substantially all of the assets of the La Quinta Facility in accordance with the terms and conditions of the La Quinta Agreement.

#### 4. Default and Termination

a. The first sentence of Section 11.1 (Default) is hereby deleted from the La Quinta Agreement and replaced with the following:

11.1. You will be in default under this Agreement if (a) you do not pay us when a payment is due under this Agreement, the Hawthorn Agreement, or under any other instrument, debt, agreement or account with us related to the Facility or the Hawthorn Facility, (b) you do not perform any of your other obligations when the La Quinta Agreement or the La Quinta System Standards Manual require, (c) you do not perform any of your other obligations when the Hawthorn Agreement or Hawthorn System Standards require, (d) you otherwise breach the La Quinta Agreement, or (e) you otherwise breach the Hawthorn Agreement.

b. The first sentence of Section 11.1 (Default) is hereby deleted from the Hawthorn Agreement and replaced with the following:

11.1. You will be in default under this Agreement if (a) you do not pay us when a payment is due under this Agreement, the La Quinta Agreement, or under any other instrument, debt, agreement or account with us related to the Facility or the La Quinta Facility, (b) you do not perform any of your other obligations when the Hawthorn Agreement or the Hawthorn System Standards Manual require (c) you do not perform any of your other obligations when the La Quinta Agreement or the La Quinta System Standards require, (d) you otherwise breach the Hawthorn Agreement, or (e) you otherwise breach the La Quinta Agreement.

c. A new Section 11.2(16) is hereby added to the La Quinta Agreement as follows:

or (16) the Hawthorn Agreement expires or is terminated for any reason (except Casualty or Condemnation), and you fail to convert the guest rooms previously operated under the Hawthorn Agreement to be operated under this Agreement or an agreement with another franchisor operating in a similar chain scale owned by WHG.

d. A new Section 11.2(16) is hereby added to the Hawthorn Agreement as follows:

or (16) the La Quinta Agreement expires or is terminated for any reason (except Casualty or Condemnation), and you fail to convert the guest rooms previously operated under the La Quinta Agreement to be operated under this Agreement or an agreement with another franchisor operating in a similar chain scale owned by WHG.”

e. The following sentence is hereby added to the end of Section 12.1 of the La Quinta Agreement:

In the event that this Agreement terminates (except for Casualty or Condemnation) and you enter into an agreement with either Hawthorn Franchisor or another franchisor operating in a similar chain scale owned by WHG for the operation of the terminated rooms, then you will not be obligated to pay Liquidated Damages in connection with the Termination of this Agreement.

f. The following sentence is hereby added to the end of Section 12.1 of the Hawthorn Agreement:

In the event that this Agreement terminates (except for Casualty or Condemnation) and you enter into an agreement with either La Quinta Franchisor or another franchisor operating in a similar chain scale owned by WHG for the operation of the terminated rooms, then you will not be obligated to pay Liquidated Damages in connection with the Termination of this Agreement.

g. Section 11.3 is hereby deleted from the La Quinta Agreement and its entirety.

h. For purposes of determining whether the Facility has suffered a Casualty, the percentage of guest rooms available shall be measured across both the La Quinta Facility and the Hawthorn Facility combined.

##### 5. Additional Conditions, Amendments and Provisions Applicable to Dual Brand Operation.

a. *Requirement for Common Control.* Franchisee acknowledges that WHG, La Quinta Franchisor and Hawthorn Franchisor are willing to consent to the Dual Brand Operation and the terms of this Addendum only for so long as the La Quinta Facility and the Hawthorn Facility are both owned by Franchisee. Franchisee’s failure to retain common control of the La Quinta Facility and the Hawthorn Facility will constitute a default under Section 11.2(10) of the La Quinta Agreement and Hawthorn Agreement.

b. *Reconciliation of Certain Fees and Charges in Connection with Dual Brand Operation.* Franchisee, La Quinta Franchisor and Hawthorn Franchisor acknowledge and agree that the fees and charges payable by Franchisee described on Exhibit A to this Addendum and which are applicable to the La Quinta Facility and the Hawthorn Facility will be modified to the extent set forth on Exhibit A. Franchisee acknowledges that, except to the extent such fees and charges are expressly modified under Exhibit A, Franchisee will pay all fees and charges in accordance with the La Quinta Agreement and Hawthorn Agreement, respectively, and their brand-specific Standards.

c. *Training and Operation of the La Quinta Facility and the Hawthorn Facility.* La Quinta Franchisor, Hawthorn Franchisor and Franchisee acknowledge and agree that one general manager and the same staff will be permitted to operate both the La Quinta Facility and the Hawthorn Facility so long as such general manager and staff satisfy the requirements of Section 3 of the La Quinta Agreement and the Hawthorn Agreement, including, without limitation, all of Franchisors' training requirements. The applicable training for Franchisee's general manager and staff may be supplemented, amended or otherwise modified by Franchisors to take into account the nature of the Dual Brand Operation.

d. *Consent to Open.* Franchisee will not open the Facility until both La Quinta Franchisor and Hawthorn Franchisor have authorized the Facility to open pursuant to the terms of each of the La Quinta Agreement and Hawthorn Agreement.

e. *Identification of the Facility.* The La Quinta Rooms shall contain no Hawthorn Marks, Mark-bearing supplies or materials, or any other Hawthorn System identification, except to the extent that such identification is common to both the Hawthorn and La Quinta systems. The Hawthorn Rooms shall contain no La Quinta Marks, Mark-bearing supplies or materials, or any other La Quinta System identification, except to the extent that such identification is common to both the Hawthorn and La Quinta systems. All other aesthetic design selections (including but not limited to wall colors, lobby art, and employee uniforms) will be subject to the joint approval of La Quinta Franchisor and Hawthorn Franchisor. Franchisee will also work with La Quinta Franchisor and Hawthorn Franchisor to develop signage acceptable to both brands.

6. Acknowledgments of Franchisee and Guarantors.

a. Franchisee acknowledges and agrees that it is a material consideration to La Quinta Franchisor and the Hawthorn Franchisor that the La Quinta Facility and the Hawthorn Facility at the Location will continue to be operated together throughout the terms (including any renewal terms) of their respective Agreements. Franchisee understands and agrees that any event of default, Termination, non-renewal or transfer affecting the La Quinta Facility shall also affect the Hawthorn Facility and that any event of default, Termination, non-renewal or transfer affecting the La Quinta Facility shall also affect the Hawthorn Facility. Franchisee also acknowledge the Dual Brand Operation requires that La Quinta Franchisor and Hawthorn Franchisor remain under common control of WHG or its assignee, and if at any point any of the Facility's rooms are not franchised entirely under a brand owned by WHG, then WHG's consent to the dual-branded operation of the Facility will immediately cease and, pursuant to

Section 3.11 and Section 2 of each Agreement, neither Franchisee nor the Facility shall promote or advertise any competing business at the Facility or permit any other competing business to share any of the Facility's areas, services or amenities.

b. Each Guarantor acknowledges the terms of this Addendum and affirms and ratifies all of Guarantor's commitments and obligations under the Guaranty. Each Guarantor acknowledges and affirms that his or her obligations under the Guaranty continue in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has caused this Addendum to be executed by its duly authorized representative as of the date first above written.

**HAWTHORN SUITES FRANCHISING, INC.**

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

**LA QUINTA FRANCHISING LLC**

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

**WYNDHAM HOTEL GROUP, LLC**

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

**FRANCHISEE**

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

**Continued on next page.**

**For purposes of Section 6:**

**GUARANTORS:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**Exhibit A**

**Reconciliation of Certain Fees and Charges in Connection with Dual Brand Operation**

<b>Applicable Fee</b>	<b>Modification or Revision to Applicable Fee</b>
Application Fee	Franchisee shall pay a separate Application Fee for each of the La Quinta Agreement and the Hawthorn Agreement, as described in the applicable Agreement.
Initial Franchise Fee	Franchisee shall pay a separate Initial Franchise Fee for each of the La Quinta Agreement and the Hawthorn Agreement, as described in the applicable Agreement.
Transfer Fee	Any transferee shall pay a separate Transfer Fee for each of the La Quinta Agreement and the Hawthorn Agreement, as described in the applicable Agreement.
Renewal Fee	Franchisee shall pay a separate Renewal Fee for each of the La Quinta Agreement and the Hawthorn Agreement, as described in the applicable Agreement.
General Manager Training	The General Manager Certification Training Program must be completed by only one initial general manager (or other representative who exercises day to day operational authority) for the entire Facility. In addition, any replacement general manager who must complete the training program shall only be required to attend once on behalf of the entire Facility.
On-Site and Other Opening Training and Assistance	Shall be provided in accordance with the La Quinta Agreement. Franchisee shall pay for such training as outlined therein.
Continuing Education Fee	Only one Continuing Education Fee will be charged for the La Quinta Facility and the Hawthorn Facility (jointly) for access to ongoing learning and development support for your Facility's team members.
Conference Fee	Provided that both Franchisors host their Chain Conference simultaneously at the same location, then only one Conference Fee will be charged for Franchisee's general manager who attends on behalf of both the La Quinta Facility and the Hawthorn Facility. Additional Conference Fees will be charged for each additional attendee.
Quality Assurance Reinspection Fee	The franchisor shall conduct combined Quality Assurance inspections for the La Quinta Facility and the Hawthorn Facility. If applicable, only one Quality Assurance Reinspection Fee will be charged for the La Quinta and Hawthorn Facility.

<p>Minimum Liquidated Damages</p>	<p>In the event that the La Quinta Agreement and the Hawthorn Agreement terminate simultaneously, then the \$250,000 minimum described in Section 12.1 of the La Quinta Agreement shall not apply and the minimum amount of Liquidated Damages owed shall be calculated in accordance with each Agreement on a per room basis as described in Section 12.1 of each Agreement.</p>
<p>Property Management System Setup and Ongoing Fees</p>	<p>Unless otherwise approved by both Franchisors, Franchisee shall pay separate Property Management System (“PMS”) Setup and Ongoing Support Fees pursuant to separate PMS Agreements signed for each of the La Quinta Facility and the Hawthorn Facility.</p>



Location: \_\_\_\_\_  
Site No.: \_\_\_\_\_

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_, a \_\_\_\_\_ (“Assignor”), \_\_\_\_\_, a \_\_\_\_\_ (“Assignee”), and \_\_\_\_\_, a \_\_\_\_\_ (“Company”).

Recitals. Assignor is the “Franchisee” under a franchise agreement, dated as of \_\_\_\_\_, 20\_\_ (the “Franchise Agreement”) and certain related ancillary agreements with Company or its affiliates. The Franchise Agreement, along with all amendments and the ancillary agreements, will be referred to, collectively, as the “Primary Agreements.” The Franchise Agreement is attached to this Agreement as Exhibit A and relates to the granting of a \_\_\_\_\_ franchise for a lodging facility designated as Site No. \_\_\_\_\_ (the “Facility”) located at \_\_\_\_\_. Assignor is conveying the Facility to Assignee. Assignor desires to assign the Primary Agreements to Assignee, which desires to assume and accept the rights and obligations under the Primary Agreements, effective as of the date of this Agreement. Capitalized terms not defined in this Agreement have the meanings given to them in the Franchise Agreement.

IN CONSIDERATION of the mutual promises in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, it is agreed as follows:

1. Assignor assigns, transfers, bargains, sells, and delegates to Assignee all of its rights, title, and interest in and to the Primary Agreements and its obligations existing and arising in the future under the Primary Agreements.

2. Assignee accepts and assumes the rights, benefits and obligations of Assignor under the Primary Agreements, effective as of the date of this Agreement, including all existing and future obligations to pay and perform under the Primary Agreements. Assignor shall remain secondarily liable for payment of and performance under the Primary Agreements. The owners of Assignee have executed the Guaranty attached to this Agreement as Appendix A.

3. To induce Company to consent to this Agreement and the assignment of the Primary Agreements, as of the effective date of this Agreement, Assignee adopts and makes to Company the representations and warranties of Assignor, as Franchisee, set forth in Section 14 of the Franchise Agreement. As of the effective date of this Agreement, Assignee is the owner of fee simple title to the Facility or is otherwise entitled to possession of the Facility for the remainder of the Term of the Franchise Agreement. Assignee’s owners are shown on Exhibit B attached to this Agreement, which amends Schedule B of the Franchise Agreement.

4. Assignee will deliver, together with this Agreement, evidence of insurance meeting System Standards, as contemplated under the Franchise Agreement and the System Standards.

5. This Agreement shall be deemed a supplement to and modification of the Primary Agreements, as previously modified by any prior amendments and addenda and this Agreement. Except as expressly stated in this Agreement, no further supplements to or modifications of the Primary Agreements are contemplated by the parties. There are no oral or other written arrangements between Company and Assignor except as expressly stated in the Primary Agreements and any written amendment or addendum thereto. The Primary Agreements, as previously modified, are incorporated by this reference and have been provided by Assignor to Assignee.

6. Assignor and Assignee acknowledge that Company has not participated in the negotiation or documentation of the transfer transaction between the Assignor and Assignee, and that Company has not made any representation or warranty nor furnished any information to either party. Assignee waives any and all claims against Company, its affiliates, and their respective officers, directors, shareholders, affiliated corporations, employees, and agents, arising out of the transfer of the Facility. Assignee expressly acknowledges that Company was not a participant in such transaction and that Company has no liability in connection with such transaction. Assignee acknowledges that it has made all investigation of Assignor and the Facility as it believes appropriate.

7. Any notice required under the Primary Agreements to be sent to Assignee shall be directed to:

**ASSIGNEE:**

Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State & Zip: \_\_\_\_\_  
Attention: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

In addition, upon execution of this Agreement, Assignor will provide Company, in writing, with its address, telephone number, and e-mail address for any notices relating to the Primary Agreements that may be sent following the date of this Agreement. Assignor consents to receive such electronic mail from Company.

8. Subject to the terms of this Agreement, Company consents to the assignment and assumption of the Primary Agreements as provided in this Agreement. No waivers of performance or extensions of time to perform are granted or authorized. Company will treat Assignee as the “Franchisee” under the Primary Agreements. The rights of Assignor to the Franchise under Section 1 of the Franchise Agreement or to any rights licensed to Assignor under any of the Primary Agreements will be terminated effective as of the date of this Agreement.

9. Assignee agrees that, notwithstanding anything to the contrary in the Primary Agreements, it will report and pay to Company all Recurring Fees and other fees and charges

due under the Primary Agreements online via Company's self-service Electronic Invoice Presentment and Payment tool accessible through Company's Chain intranet, or such other method as Company may designate. Company reserves the right to change or direct, from time to time, the technologies or other means for reporting and paying fees by amending System Standards or upon written notice to Assignee.

10. **[INSERT If there is a Development Incentive Note]** Assignee and its owners (and their respective spouses, as to any owner who resides in a community property state or certain other states) have executed and delivered to Company an Assumption of Development Incentive Note in the form attached to the Development Incentive Note of Assignor or otherwise provided by Company provided, however, that such Assumption does not discharge or release Assignor or any co-makers of the Development Incentive Note from liability under such note.]

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement effective as of the date first above written.

**COMPANY:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNOR:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A - Franchise Agreement

Exhibit B - Owners of Assignee

Appendix A - Guaranty

**EXHIBIT A**

**THE FRANCHISE AGREEMENT**

A copy of the Franchise Agreement follows this page.

**EXHIBIT B**

Part I of Schedule B of the Franchise Agreement (“YOUR OWNERS”) is hereby amended as follows:

Name and Address	Ownership Percentage	Type of Equity Interest	Office Held (Title)
<hr/>			
<hr/>			
<hr/>			
<hr/>			

**APPENDIX A**

(additional signature pages to be affixed, as applicable)

**GUARANTY**

To induce Hawthorn Suites Franchising, Inc., its successors, assigns, and affiliates (“Company”) to consent to the assignment and assumption of the Primary Agreements (as defined in the Assignment and Assumption Agreement (the “Agreement”) to which this Guaranty is attached), the undersigned, personally, jointly and severally (“we,” “our,” or “us”) irrevocably and unconditionally (i) warrant to Company that Assignee’s representations and warranties in the Agreement and in the Franchise Agreement are true and correct as stated; and (ii) guaranty that all of Franchisee’s obligations under the Primary Agreements will be punctually paid and performed, from and after the time Assignee becomes the Franchisee under the Franchise Agreement. Capitalized terms not defined in this Guaranty have the meanings given to them in the Agreement.

Upon default by Franchisee and notice from Company, we will immediately make each unpaid payment and perform, or cause Franchisee to perform, each unperformed obligation of Franchisee under the Primary Agreements. Without affecting our obligations under this Guaranty, without notice to us, Company may extend, modify or release any indebtedness or obligation of Franchisee, or settle, adjust or compromise any claims against Franchisee. We waive notice of any amendment to the Agreement and the Primary Agreements, and we acknowledge that the provisions of Section 17 of the Franchise Agreement, including but not limited to Section 17.4 (Remedies) and Section 17.6 (Choice of Law; Venue; Dispute Resolution, including but not limited to Section 17.6.4 (Waiver of Jury Trial)), apply to this Guaranty.

Upon the death of an individual guarantor, the estate of the guarantor will be bound by this Guaranty for obligations of Franchisee to Company existing at the time of death, and the obligations of all other guarantors will continue in full force and effect.

This Guaranty may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

Site No.: \_\_\_\_\_

IN WITNESS WHEREOF, each of us has signed this Guaranty effective as of the date of the Agreement.

**GUARANTORS:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_



**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
CALIFORNIA FRANCHISE INVESTMENT LAW**

This Addendum to the Franchise Agreement by and between HAWTHORN SUITES FRANCHISING, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

Notwithstanding anything to the contrary set forth in the Franchise Agreement, the following provisions shall supersede and apply:

1. Our right to terminate the Franchise Agreement under Section 11.2 if you commence a bankruptcy proceeding may not be enforceable under federal bankruptcy law.
2. Under Section 1671 of the California Civil Code, certain liquidated damages clauses are unenforceable.
3. The California Franchise Relations Act (Business and Professions Code Section 20000 through 20043) provides rights to you concerning termination, transfer, or nonrenewal of a franchise. If the Franchise Agreement is inconsistent with the law, the law will control.
4. If the Franchise Agreement requires you to execute a general release of claims upon renewal or transfer of the Franchise Agreement, California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order thereunder is void. Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Section 31000-31516). California Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000-20043). To the extent required by such laws, Franchisee shall not be required to execute a general release.
5. The highest interest rate allowed by law in California is currently 10% annually.
6. All other rights, obligations, and provisions of the Franchise Agreement shall remain in full force and effect. Only the Sections specifically added to or amended by this Addendum shall be affected. This Addendum is incorporated in and made a part of the Franchise Agreement for the State of California.
7. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.
8. Section 17.7 of the Franchise Agreement is deleted in its entirety.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

WE:  
HAWTHORN SUITES FRANCHISING, INC.

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

YOU:  
  
\_\_\_\_\_

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

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
ILLINOIS LAW**

This Addendum to the Franchise Agreement, the Master Information Technology Agreement, Signature Reservation Service Agreement, Hotel Revenue Management Agreement, Three Party Agreement, Lender Notification Agreement, Termination and Release Agreement and Assignment and Assumption Agreement by and between HAWTHORN SUITES FRANCHISING, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

Illinois law governs the Franchise Agreement.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in the Franchise Agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, the Franchise Agreement may provide for arbitration to take place outside of Illinois.

Franchisees’ rights upon termination and non-renewal are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with Section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

WE:  
HAWTHORN SUITES FRANCHISING, INC.

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

YOU:  
  
\_\_\_\_\_

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

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

This Addendum to the Franchise Agreement by and between HAWTHORN SUITES FRANCHISING, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

1. Notwithstanding anything to the contrary set forth in the Franchise Agreement, the following provision shall supersede and apply to all franchises offered and sold under the laws of the State of Maryland:

No release language set forth in Sections 5, 9 or elsewhere in the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Maryland. Pursuant to the Maryland Franchise Registration and Disclosure Law, any claim by you under such law must be brought within three years of the grant of the franchise. You may file this action in any Maryland court or Federal court located in Maryland.

2. Section 11.2 of the Franchise Agreement provides that the Franchise will automatically terminate upon your bankruptcy. This provision may not be enforceable under Federal bankruptcy law (11 U.S.C. Section 101 et seq.).

3. The Franchise Agreement states that New Jersey law generally applies. However, the conditions under which your franchise can be terminated and your rights upon nonrenewal may be affected by Maryland laws, and we will comply with that law in Maryland.

4. Notwithstanding anything to the contrary stated in Section 17.6.3, you may bring a lawsuit in Maryland against us for claims arising under the Maryland Franchise Registration and Disclosure Law.

5. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

6. Section 17.7 of the Franchise Agreement is deleted in its entirety.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

WE:  
HAWTHORN SUITES FRANCHISING, INC.

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

YOU:

\_\_\_\_\_

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

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE MINNESOTA FRANCHISE INVESTMENT LAW**

This Addendum to the Franchise Agreement by and between Hawthorn Suites Franchising, Inc. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

Notwithstanding anything to the contrary set forth in the Franchise Agreement, the following provisions shall supersede and apply:

1. In compliance with Minnesota Rule 2860.4400J, the eleventh sentence in Subsection 11.4 of the Franchise Agreement is amended to read as follows:

You recognize that any use of the System not in accord with this Agreement will cause us irreparable harm for which there is no adequate remedy at law, entitling us to seek both temporary and permanent injunctive relief against you from any court of competent jurisdiction, which may require us to post a bond.

In addition, the following language is added at the end of Section 17.6.3 of the Franchise Agreement:

Minnesota Statutes, Section 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. Nothing in the Franchise Disclosure Document or this Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of Minnesota.

2. Minnesota law provides franchisees with certain termination, non-renewal and transfer rights. Minnesota Statutes, Section 80C.14, Subdivisions 3, 4 and 5 require, except in certain specified cases, that a franchisee be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the Franchise Agreement and that consent to the transfer of the franchise will not be unreasonably withheld.

3. We will not require you to assent to a release, assignment, novation or waiver that would relieve any person from liability imposed by Minnesota Statutes, Sections 80C.01 to 80C.22, provided that the foregoing shall not bar the voluntary settlement of disputes.

4. You understand that Minnesota law limits you to a three-year period from the date a claim accrues in which to bring any claim against us for a violation of Minnesota Statutes, Section 80C.17.

5. To the extent required by the Minnesota Franchise Act, we will protect your rights to use the trademarks, service marks, trade names, logo types or other commercial symbols related to the trademarks or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the trademarks, provided you are using the names and marks in accordance with the Franchise Agreement.

6. All other rights, obligations, and provisions of the Franchise Agreement shall remain in full force and effect. Only the Sections specifically added to or amended by this Addendum shall be affected. This Addendum is incorporated in and made a part of the Franchise Agreement for the State of Minnesota.

7. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any

applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

WE:  
HAWTHORN SUITES FRANCHISING, INC.

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

YOU:  
  
\_\_\_\_\_

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

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE NEW YORK GENERAL BUSINESS LAW**

This Addendum to the Franchise Agreement by and between HAWTHORN SUITES FRANCHISING, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

1. Section 9.3 is amended by adding the following statement immediately after the first sentence of such Section:

However, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the related regulations shall remain in force; it being the intent of this proviso to satisfy the non-waiver provisions of GBL, Sections 687.4 and 687.5.

2. Section 10 is amended by adding the following statement immediately after the first sentence of such Section:

However, no assignment shall be made except to an assignee who, in our good faith judgment, is willing and able to assume our obligations under this Agreement.

3. You acknowledge that, pursuant to Section 1136 of the New York Tax Law, we are obligated to file an annual information return with the New York State Department of Taxation and Finance which identifies, among other things, the “gross sales” of your franchise as you reported such “gross sales” to us. You release any claim against us or our agents relating to our filing of an information return pursuant to Section 1136 of the New York Tax Law.

4. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

[Remainder of Page Left Blank]



IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

WE:  
HAWTHORN SUITES FRANCHISING, INC.

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

YOU:  
  
\_\_\_\_\_

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

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
NORTH DAKOTA FRANCHISE INVESTMENT LAW**

This Addendum to the Franchise Agreement by and between HAWTHORN SUITES FRANCHISING, INC. (“we,” “our” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_\_\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

1. Liquidated damages are prohibited by law in the State of North Dakota.
2. The Franchise Agreement will be governed and construed under the laws of the State of North Dakota. Any provision in the Franchise Agreement which designates jurisdiction or venue, or requires you to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from any Franchise Agreement issued in the State of North Dakota. Any non-competition covenants contained in the Franchise Agreement shall be subject to the North Dakota laws on franchising.
3. Any provisions in the Franchise Agreement (including but not limited to Section 17.6.4) which require you to waive the right to a jury trial, or exemplary or punitive damages are deleted from any Agreements issued in the State of North Dakota.
4. Section 5 of the Franchise Agreement is revised to provide that a general release shall not be required as a condition to renewal.
5. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

WE:  
HAWTHORN SUITES FRANCHISING, INC.

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

YOU:  
\_\_\_\_\_

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

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
RHODE ISLAND FRANCHISE INVESTMENT ACT**

This Addendum to the Franchise Agreement by and between HAWTHORN SUITES FRANCHISING, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

Notwithstanding anything to the contrary stated in Section 17.6.1 or elsewhere in the Franchise Agreement, the Franchise Agreement shall be governed by Rhode Island law with respect to any claim enforceable under the Rhode Island Franchise Investment Act.

Sections 17.6.1 and 17.6.3 of the Franchise Agreement are supplemented by the addition of the following:

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that a provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under the Act.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

WE:  
HAWTHORN SUITES FRANCHISING, INC.

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

YOU:  
  
\_\_\_\_\_

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

**ADDENDUM TO THE FRANCHISE AGREEMENT AND RELATED AGREEMENTS  
PURSUANT TO  
THE WASHINGTON FRANCHISE INVESTMENT PROTECTION ACT**

This Addendum to the Franchise Agreement and Related Agreements by and between HAWTHORN SUITES FRANCHISING, INC. (“we,” “our,” or “us”) and \_\_\_\_\_ (“you”) is dated \_\_\_\_\_, 20\_\_.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor’s reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee’s earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor’s earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

Section 17.7 of the Franchise Agreement is deleted in its entirety.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

The following sentence is deleted from Section 2 of the Franchise Agreement.

You irrevocably waive any right to seek or obtain the benefits of any policy we now follow or may in the future follow to notify you about proposed Chain Facilities in the general area of the Facility, solicit information about the effect of the proposed Chain Facility on the revenue or occupancy of the Facility or decide whether to add the proposed Chain Facility to the Chain based on the potential effect of the proposed Chain Facility on the Facility or its performance.

Nothing in the Franchise Agreement is intended to waive any liability we may have under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

The undersigned does hereby acknowledge receipt of this Addendum.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WE:  
HAWTHORN SUITES FRANCHISING, INC.

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

YOU:  
  
\_\_\_\_\_

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

**This application is to be completed online via the Wyndham Community internet portal. The online version appears in a different format. As an alternative, we may provide a paper application. We may update or modify this application at any time.**

**WYNDHAM FRANCHISE APPLICATION**

**The following information will be collected during the application process:**

- **General Information**  
Information for the individual completing the application and the individual who will serve as the entity principal contact.
- **Hotel Experience**  
Please provide a listing of any current or past hotel ownership experience for each individual with any ownership interest in the hotel.
- **Property Information**  
Details about the hotel location, current affiliation (if any) and room count.
- **Property Contacts**  
Contact information for various roles at the hotel (GM, Site Principal, etc.).
- **Entity Information**  
Details about the entity that owns or otherwise has the right to possess the hotel.
- **Entity Ownership**  
Specifics of any beneficial ownership of the hotel, including names, addresses and ownership percentages.
- **Application Supporting Documentation**  
Documentation required to confirm and supplement the completed application information.

**General Information:**

Applicant name	
Entity principal first name (The primary contact designated by ownership to represent the organization.)	
Entity principal last name	
Entity principal e-mail	
Entity principal phone number	
Entity principal phone type	
Entity principal country	
Entity principal street address line 1	
Entity principal street address line 2	
Entity principal city	
Entity principal state	
Entity principal ZIP / postal code	

**Hotel Experience:**

Do you or your co-owners have prior hotel experience?

Yes  No

How many Wyndham properties do you and your co-owners currently own/operate? \_\_\_\_\_

Brand	
City	
State	

How many non-Wyndham properties do you and your co-owners currently own/operate? \_\_\_\_\_

Hotel / Brand Name	
City	
State	

**Property Information:**

Does your property have a finalized address?

Yes  No

Closest major intersection or landmark (Please enter the name of the closest landmark or intersection to your property if address is not yet confirmed): \_\_\_\_\_

Current facility / brand affiliation name (if any)	
Property phone	
Phone type	
Property country	
Property street address line 1	
Property street address line 2	
Property city	
Property state / province / region	
Property county	
Property ZIP / postal code	
Total number of guest rooms (including any currently unrentable rooms such as storage, manager accommodations, etc.)	
Total number of rentable guest rooms (excluding guest rooms currently used as storage, manager accommodations, etc.)	

**Property Contacts:**

**Site Principal:**

The site principal is designated as the legal contact for the franchisee / licensee/ member, meaning they will receive any formal notices issued pursuant to the franchise / license / membership agreement, and their contact information will be shared with third parties seeking information about the franchisee / licensee / member.

First name	
------------	--

Last name	
Title	
Company	
E-mail Address	
Phone number	
Phone type	
Country	
Street address line 1	
Street address line 2	
City	
State	
ZIP / postal code	

**General Manager:**

The designated General Manager

First name	
Last name	
Title	
Company	
E-mail Address	
Phone number	
Phone type	
Country	
Street address line 1	
Street address line 2	
City	
State	
ZIP / postal code	

Has this person previously completed Hospitality Management Program (HMP) for any other site(s) within Wyndham Hotels & Resorts?

Yes     No

(If yes, please provide)

Site # / brand	
Date of class	
Location of class	

**Entity Information:**

If the proposed purchaser of the franchise or membership will be an entity, please (select yes and) provide the entity details.

Yes     No

(If yes, please provide)

Entity Name	
-------------	--



Entity phone	
Entity phone type	
Entity e-mail address	
Entity country	
Entity street address line 1	
Entity street address line 2	
Entity city	
Entity state	
Entity ZIP / postal code	

**Entity Ownership:**

Please provide a list of all owners, including their contact information and percentage owned. If you are a sole proprietor, simply list your contact information; to enter additional owners, please select “Add Another Owner” and complete the required details for each. Note: Ownership information must be verified via appropriate documentation and, prior to entering into any agreement, you must identify all individuals with 10% or greater ultimate beneficial ownership interest in your hotel.

Entity owner type

Individual  Organization

(For each Organization, please provide the following)

Organization name	
Organization ownership percentage	
Organization e-mail address	
Organization phone number	
Organization phone type	
Organization country	
Organization street address line 1	
Organization street address line 2	
Organization city	
Organization state / province / region	
Organization ZIP / postal code	

(For each Individual, provide the following)

Owner first name	
Owner last name	
Ownership percentage	
Owner e-mail address	
Owner phone number	
Owner phone type	
Owner country	
Owner street address line 1	
Owner street address line 2	
Owner city	
Owner state / province / region	

## **Finalize Your Application Submission:**

Applicant represents and warrants to Wyndham Hotel Group, LLC that the enclosed information is true, complete, and correct as of the date of the Application, and agrees to supply such additional information, documents, statements or data as may be requested by Wyndham Hotel Group, LLC, and to supplement and correct the information supplied promptly after any earlier submission becomes inaccurate or incomplete. As part of the application process, the undersigned, acting for any entity that is the applicant and as agent for the persons listed as owners of the entity or as participants in the proposed franchise, authorizes Wyndham Hotel Group, LLC and its affiliates to conduct a background investigation of the financial condition, general character and reputation of the applicant, its officers, partners, directors, shareholders, owners and managers. The undersigned authorizes the release of such information to Wyndham Hotel Group, LLC and its affiliates by all financial institutions, credit bureaus, other public and private reporting organizations, government, regulatory entities, employers, and other references contacted by Wyndham Hotel Group, LLC or its affiliates in connection with this application. The undersigned further authorizes Wyndham Hotel Group, LLC to communicate to the applicant and all persons or entities named in this application via electronic mail.

Completion of an application is not an offer. Federal and certain state laws regulate the offer and sale of franchises. An offer will only be made in compliance with those laws and regulations, which may require we provide you with a Franchise Disclosure Document. For a copy contact Wyndham Hotel & Resorts, Inc. at 22 Sylvan Way, Parsippany, NJ 07054. All hotels are independently owned and operated with the exception of certain hotels managed or owned by a subsidiary of the company.

© 2024 Wyndham Hotels & Resorts, Inc. All rights reserved.

Check here to confirm you have read and agree to the Application Submission terms described above.

Confirm Submission

## **Application Supporting Documentation:**

Your application has been submitted! Please proceed to provide your application documentation. There are documents required to process your application as well as additional documentation that must be provided once available.

Proceed to submit Documentation.

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**EXHIBIT C-2**

Location: \_\_\_\_\_  
Unit No.: \_\_\_\_\_

## MASTER INFORMATION TECHNOLOGY AGREEMENT

This Master Information Technology Agreement (“**Agreement**”), effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), by and between \_\_\_\_\_, a \_\_\_\_\_ corporation (including its Affiliates, “**Service Provider**,” “**we**,” “**our**,” or “**us**”), and \_\_\_\_\_, a \_\_\_\_\_, \_\_\_\_\_ (“**Franchisee**,” or “**Member**,” “**you**,” or “**your**”), governs your access to and use of the Products and/or Services as described herein. We and you shall each be referred to herein as a “**Party**” and together as the “**Parties**” to this Agreement. This Agreement pertains exclusively to the lodging facility located at \_\_\_\_\_ (the “**Location**”).

For and in consideration of the mutual covenants, representations and promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the foregoing and as follows:

### 1. **GENERAL**

**1.1 Definitions.** Capitalized terms used herein shall have the meanings ascribed to them in this Agreement, including Attachment 1.1, or in any Schedules attached hereto or any Service Offerings, as may be updated or supplemented by us from time to time. All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Franchise Agreement between us and you and are incorporated herein by reference.

**1.2 Conflicts in Interpretation.** The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any Service Offerings issued pursuant to this Agreement: (a) first, the terms of the Service Offerings issued pursuant to this Agreement attached; and (b) second, the terms contained in the body of this Agreement, provided that no order of precedence shall be applied among such Service Offerings.

### 2. **DESCRIPTION OF PRODUCTS AND SERVICES; SCHEDULES AND SERVICE OFFERINGS; ACTIVITIES**

**2.1 Products and Services.** During the Term of this Agreement, and in exchange for you paying us the Fees described in this Agreement, we (or our authorized Third-Party Product or Service providers) will (a) perform for you various consulting, information technology, development, data processing, webhosting, maintenance, and support services (“**Services**”); and/or (b) license, lease, sell or otherwise provide you with equipment, materials, software (including Software-as-a-Service and/or cloud-based software (“**SaaS**”)), and other such items (collectively, “**Products**”), as more fully described in this Agreement and/or an applicable Service Offering (as defined below). We may add or remove Products and/or Services from time to time, in our discretion, upon prior written notice to you.

**2.2 Schedules and Service Offerings.** Any and all Products and/or Services provided by us to you under this Agreement shall be set forth in a written schedule(s) (“**Schedule**”) or other document agreed upon by you and us (collectively referred to as “**Service Offering(s)**”). A Service Offering may be presented to you in an electronic format. As part of a Service Offering, and in order for you to access, use or otherwise benefit from the Products and/or Services, you may be

presented with special terms and conditions. You also may be asked to “click to accept” such special terms and conditions, or otherwise acknowledge that you are subject to such special terms and conditions in order for you to access, use or otherwise benefit from the Products and/or Services. Your access and/or use of the Products and/or Services may constitute your acceptance of any such special terms and conditions. In the event these special terms and conditions are provided to you by our Third-Party Product or Service providers, such special terms and conditions are between you and such Third-Party Product or Service providers, and not by us.

**2.3 Collection of Fees.** We have entered, or in the future may enter, into an arrangement with Third-Party Product or Service providers wherein we will collect fees from you for those respective Third-Party Products and/or Services. If we do so, you will see such fees reflected on the monthly invoice you receive from us and, we may retain a percentage of fees collected to reimburse us for our costs associated with such collection. We may modify this payment arrangement in our sole discretion from time to time.

### **3. GRANT OF RIGHTS.**

**3.1 License.** Subject to payment of all applicable Fees, we hereby grant you a limited, non-transferable, non-exclusive license, to access, use and display the Products and/or Services, as applicable, solely for the Permitted Use, solely by your Permitted Users, and solely in accordance with the terms and conditions set forth in this Agreement and/or any applicable Service Offering. For Products and/or Services that have a term associated with them, the license granted to you shall be limited to the term identified in an applicable Service Offering.

**3.2 Restrictions.** In addition to any terms, conditions or restrictions set forth in this Agreement and any applicable Service Offering, you shall not: (a) permit any person or entity, other than a Permitted User, to access or use the Products and/or Services; (b) create or attempt to create any derivative works based on the Products and/or Services; (c) copy, frame or mirror any part or content of the Products and/or Services; (d) disassemble, decompile, reverse engineer or otherwise attempt to recreate the Products and/or Services; or (e) access, use or otherwise manipulate the Products and/or Services in order to create a competitive product or service or to copy any features, functions or graphics of the Products and/or Services. Service Provider may, at its sole discretion and without prior notice to you, conduct audits of your hardware, computer systems and applications, including audits by electronic and remote means, to verify conformance with this Agreement and/or any Service Offering. You shall not load, store or otherwise use any products and/or software on or with the Products and/or Services, without Service Provider’s prior written consent, as the use of such products and/or software may adversely affect the operation and functionality of the Products and/or Services. If you violate this Section, the warranties set forth in this Agreement shall be void, and you shall be solely responsible for the cost of repair or replacement of the Products and/or Services, if any.

**3.3 Title.** Except as provided in Section 3.1, all rights, title, interests in and to, and ownership of, the Products and/or Services, including all Intellectual Property rights therein, are and shall remain with us, our Affiliates and/or any Third-Party Product or Service providers who license or otherwise provide Products and/or Services to us or you. You shall at all times protect and defend us, our Affiliates, and/or any Third-Party Product or Service providers who license or otherwise provide Products and/or Services, at your own cost and expense, against all claims, liens and legal processes of your creditors arising out of your use of the Products and/or Services.

**3.4 Suggestions.** Any suggestions and feedback relating to the Products and/or Services or

relating to any desired or recommended additional features, enhancements or modifications to the Products and/or Services that are provided by or through you or your Affiliates to us or our Third-Party Product and Service providers shall be the exclusive property of us or our Third-Party Product and Service providers, as applicable, as of the date it is offered to us or our Third-Party Product and Service providers, as applicable, and you and your Affiliates hereby assign all rights and interests in and to such suggestions and feedback to us or our Third-Party Product and Service providers, as applicable, as of the date it is offered to us or our Third-Party Product and Service providers, as applicable.

**3.5 Access Credentials.** We, directly or indirectly, may provide Access Credentials to you. We may, from time to time and in our sole discretion, change or require you to change your Access Credentials. You must follow all security procedures and protocols that we may from time to time establish or modify. You shall not permit the Products and/or Services to be accessed in violation of the security procedures and protocols as set forth herein or as we may otherwise establish. You shall safeguard any Access Credentials that we provide to you as a trade secret, and shall reveal such information only to Permitted Users on a need-to-know basis. You shall immediately inform us if you have knowledge or a reasonable basis to believe that your Access Credentials have been lost, stolen, misappropriated or compromised in any way or manner, and you shall strictly follow our instructions regarding any replacement Access Credentials. You shall be responsible for all access or use through your Access Credentials.

**3.6 Your Responsibilities.** You shall: (a) be fully responsible for your Permitted Users' compliance with this Agreement and any applicable Service Offering; (b) be responsible for the accuracy, quality and legality of Guest Information, to the extent collected by you or your employees, agents or representatives, and for the means by which you or your employees, agents or representatives acquires Guest Information; (c) prevent unauthorized access to or use of the Products and/or Services, and notify us promptly of any such unauthorized access or use; and (d) use the Products and/or Services only in accordance with this Agreement, any applicable Service Offering, and applicable laws and government regulations. You shall not: (i) make the Products and/or Services available to anyone other than your Permitted Users, unless expressly permitted in an applicable Service Offering; (ii) sell, resell, rent or lease the Products and/or Services; (iii) use the Products and/or Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights of any Third Party; (iv) use the Products and/or Services to store or transmit software viruses, malicious code or other harmful files; (v) interfere with or disrupt the integrity or performance of the Products and/or Services or the data of any Third Party contained therein; or (vi) attempt to gain unauthorized access to the Products and/or Services or any related networks.

#### **4. FEES AND PAYMENTS**

**4.1 Fees.** You shall pay all amounts specified in the applicable Service Offering for the Products and/or Services (“Fees”), for the duration of the applicable Service Offering Term and in accordance with this Agreement. If your franchise or membership involves the transfer of an existing Chain Facility to you or changing affiliation of the Facility from one Wyndham Hotels & Resorts, Inc.-owned franchise or membership system to another, you may be charged a transfer fee, which transfer fee shall be set forth in an applicable Service Offering (“Transfer Fee”).

**4.2 Payments.** Unless otherwise set forth in an applicable Service Offering, you shall pay us the Fees each month of the Service Offering Term. Except as otherwise noted, all Fees and charges described in this Agreement are expressed and payable in U.S. dollars (or such other currency as we may direct if the Facility is outside the United States). All Fees are payable by you three (3) days after the month in which they accrue, without billing or demand. We may apply any amounts received to

any outstanding invoices in any order. If you do not make all payments to us when due, then, upon written notice to you, we may withhold implementation, suspend the provision of Products and/or Services (subject to Section 4.4 below) or terminate this Agreement or any applicable Service Offering, at our sole discretion. We may increase the ongoing Fees on an annual basis, providing we make the same change to similarly-situated chain Facilities; provided, however, that we shall notify you no less than thirty (30) days prior to any such increase taking effect.

**4.3 Overdue Charges.** If any Fees or charges are not received from you by the due date, then, at our sole discretion, (a) such Fees and/or charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) we may condition future Service Offering or subscription renewals on payment terms shorter than those specified herein.

**4.4 Suspension of Service and Acceleration.** You will be in default of this Agreement if you do not pay us when a payment is due under this Agreement. If your default is not cured within ten (10) days after you receive written notice from us that you have not paid us any Fees or amount that is due, we may, without limiting any other rights and remedies we may have, accelerate your unpaid payment obligations under this Agreement so that all such obligations become immediately due and payable, and/or suspend the Products and/or Services to you until such amounts are paid in full.

**4.5 Taxes.** Unless otherwise stated, our Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “Taxes”). You are responsible for paying all Taxes associated with its purchases hereunder. If we have the legal obligation to pay or collect Taxes for which you are responsible under this section, the appropriate amount shall be invoiced to and paid by you, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable based on our income, property and employees.

## **5. TECHNICAL SPECIFICATION REQUIREMENTS**

**5.1 Minimum Technical Requirements.** In order to access and/or use the Products and/or Services, you may be required to satisfy and/or maintain certain minimum technical requirements. Any such requirements shall be set forth in the applicable Service Offering, or as may be agreed upon in writing by us and you from time to time. If any Third-Party Product or Service provider(s) (including without limitation, any Third-Party Product or Service provider made available by us), at your request, attempts to integrate hardware or other products and/or services with the Products and/or Services we provide to you, we shall not be liable for any injury or damage to either the hardware or such Third-Party Products or Services, unless such injury or damage is due to our gross negligence or willful misconduct. For the avoidance of doubt, the warranties and support described in this Agreement do not apply to any hardware or products and/or services not provided to you by us.

## **6. ADDITIONAL OFFERINGS**

**6.1 Acquisition of additional Products and/or Services.** We or a Third Party may from time to time make available to you offerings designed to interoperate with the Products and/or Services (“Additional Offerings”). Any acquisition by you of such Additional Offerings from a Third Party, and any exchange of data between you and any Third-Party provider of such Additional Offerings, is solely between you and the Third Party that provides the applicable Additional Offerings.

**6.2 No Representation or Warranty.** We do not warrant or support any Third-Party Additional Offerings. Any Third-Party Additional Offerings shall be governed exclusively by any agreement



entered into between you and the Third Party that offers the applicable Additional Offerings. If the provider of any Additional Offerings ceases to make such Additional Offerings available for interoperation with the Products and/or Services on reasonable terms, we may, in our sole discretion, cease providing access to such Additional Offerings without entitling you to any refund, credit, or other compensation.

## 7. **CONFIDENTIALITY**

**7.1 Definition of Confidential Information.** As used herein, “**Confidential Information**” means all confidential information disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Service Provider’s Confidential Information shall include the Products and/or Services. Confidential Information of each Party shall include the terms and conditions of this Agreement, the terms and conditions of any and all Service Offerings, as well as business and marketing plans, technology and technical information, product plans and designs, Personal Information, and business processes disclosed by such Party (or a Party’s Affiliate). However, Confidential Information shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a Third Party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party. “**Personal Information**” means any information about an identifiable individual. Examples of Personal Information include, but are not limited to, names, phone numbers, addresses, credit card information, social security numbers, and/or account or financial information of Service Providers or its Affiliates, employees, franchisees, members, sales associates, brokers, or customers.

**7.2 Protection of Confidential Information.** The Receiving Party shall: (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement (including any and all Service Offerings); and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither Party shall disclose the terms of this Agreement (including any and all Service Offerings) to any Third Party, other than its Affiliates and their legal counsel and accountants without the other Party’s prior written consent.

**7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

**7.4 Equitable Relief.** The Parties acknowledge and agree that, given the unique and proprietary nature of the Confidential Information, monetary damages may not be calculable or a sufficient remedy for any breach of this Section 7 by the Receiving Party, and that the Disclosing Party may suffer great

and irreparable injury as a consequence of such breach. Accordingly, each Party agrees that, in the event of such a breach or threatened breach, the Disclosing Party shall be entitled to seek equitable relief (including, but not limited to, injunction and specific performance) in order to remedy such breach or threatened breach. Such remedies shall not be deemed to be exclusive remedies for a breach by the Receiving Party but shall be in addition to any and all other remedies provided hereunder or available at law or equity to the Disclosing Party.

**7.5 Regulatory Considerations.** Notwithstanding anything set forth to the contrary, an employee of the Disclosing Party, including an individual who would be considered an employee pursuant to 18 U.S.C. §1833(b)(4), shall not be held criminally or civilly liable under any U.S. federal or state trade secret law for the disclosure of Confidential Information if such disclosure is made in confidence to a government official, either directly or indirectly, or to that individual's attorney, if such disclosure is made solely for the purpose of reporting or investigating a suspected violation of law or if the disclosure is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Moreover, an individual who files a lawsuit for retaliation claiming that retaliation against said individual for reporting a suspected violation of law may disclose Confidential Information to his or her attorney and may use it in the court proceeding, provided any document containing the Confidential Information is filed under seal and the individual does not disclose the Confidential Information, except pursuant to court order.

## **8. DATA PRIVACY**

**8.1 Data Policies.** You shall at all times comply with all applicable privacy laws and our and our Affiliates' guidelines for privacy, information protection, and data and systems security, including any data and privacy policy or policies we may establish from time to time (the "**Data Policies**"). Service Provider may, at its sole discretion and without prior notice, update from time to time. If there is a conflict between the Data Policies and applicable law, you should comply with applicable law and immediately notify us in writing of such conflict.

**8.2 Guest Information.** We and/or our Affiliates shall own all Guest Information that is within our possession and/or the possession of our Affiliate or any service provider holding such information on our or our Affiliate's behalf, and you shall own all Guest Information that is within your possession or the possession of any service provider of yours holding such information on your behalf. To the extent that we (including our Affiliates) and you both possess identical Guest Information, our (including our Affiliates') and your respective ownership rights with regard to such Guest Information shall be separate and independent from one another. You acknowledge and agree that: (a) you shall take all commercially reasonable steps to assure the timely and accurate collection, recording, processing and transmittal of the Guest Information to the Products and/or Services at all times; and (b) with respect to your use of the Guest Information, you shall comply with all applicable laws, our Data Policies and any contract or promise you make with or to any of the guests of the Facility.

**8.3 Non-Owned Information.** Other than the Guest Information, you shall not use any information you obtain from any Service, including but not limited to any information that we append to the Guest Information ("**Non-Owned Information**"), for the benefit of any business, enterprise or activity other than the business of the Facility, and in accordance with all applicable laws and our Data Policies. You shall not disclose, copy, assign, transfer, lease, rent, sell, donate, disseminate or otherwise commercialize any Guest Information or any Non- Owned Information for any other purpose without our prior written consent, which we may withhold at our sole discretion.

**8.4 Dummy Information.** Any information provided to you from the Products and/or Services

may contain “dummy” information, special codes or other devices to ensure compliance with this Agreement and monitor possible unauthorized use of the Products and/or Services. You shall be conclusively presumed to have violated this Agreement if we discover any unauthorized mail or contacts from information provided only to you or the Facility.

**8.5 Improper Access.** If you should obtain access to Non-Owned Information in violation of the Data Policies or this Agreement, you shall be a trustee of that information and must act in a fiduciary capacity to protect the information from further unauthorized use or disclosure, and take all commercially reasonable efforts to return the information to us as soon as possible.

## **9. NO WARRANTIES**

**9.1** EXCEPT AS MAY OTHERWISE BE SET FORTH IN AN APPLICABLE SERVICE OFFERING AND/OR WHERE SUCH WARRANTIES OR REPRESENTATIONS ARE REQUIRED TO BE GIVEN OR MADE BY APPLICABLE LAW, (A) WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ABOUT THE PRODUCTS AND/OR SERVICES, THEIR MERCHANTABILITY, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, OR THEIR CONFORMANCE TO THE PROVISIONS AND SPECIFICATIONS OF ANY SERVICE OFFERING OR DOCUMENTATION; (B) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE VOLUME OF RESERVATIONS OR AMOUNT OF REVENUES THAT YOU MAY ATTAIN THROUGH THE USE OF THE PRODUCTS AND/OR SERVICES OR THAT YOUR RESERVATIONS OR REVENUE WILL INCREASE; AND (C) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY OF THE DATA THAT YOU MAINTAIN OR THE PREVENTION OF ANY VIRUSES OR MALWARE, AND WE ARE NOT RESPONSIBLE FOR THE LOSS OF ANY DATA OR THE INTRODUCTION OF ANY VIRUSES OR MALWARE, EVEN IF SUCH LOSS OR INTRODUCTION RESULTS FROM AND PRODUCTS AND/OR SERVICES HEREUNDER. YOU ARE RESPONSIBLE FOR ENSURING THAT YOUR DATA IS ADEQUATELY BACKED UP AND THAT YOU MAINTAIN CURRENT UPDATED ANTI-VIRUS/ANTI-MALWARE SOFTWARE.

**9.2** YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION THAT YOU MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE PRODUCTS AND/OR SERVICES UNLESS DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## **10. INDEMNIFICATION**

**Indemnification.** You shall indemnify, defend and hold harmless us, our Affiliates, our licensors and their successors and assigns and each of the respective directors, officers and employees associated with them against all claims, actions or proceedings, arising out of or related to your operation, use or non-use of the Products and/or Services (including your failure to comply with this Agreement and any applicable Service Offering); your use of the Guest Information; any Third-Party data or system security breaches; and/or any Additional Offerings or agreements for such Additional Offerings. We shall not be liable to you or any other person or entity for personal injury or property loss, including but not limited to, damage to the Facility. You are not obligated to indemnify us for our own intentional misconduct.

## **11. NO LIABILITY FOR INFORMATION**

WE SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES RESULTING FROM ANY INCORRECT INFORMATION GIVEN TO US OR INPUT INTO THE PRODUCTS AND/OR SERVICES BY ANY PERSON THAT IS NOT US. SUPPORT OR SERVICES HEREUNDER NECESSITATED BY COMPUTER VIRUSES, OR BY ANY FAILURE OR BREACH OF YOUR SECURITY FOR ITS SYSTEMS OR DATA, INCLUDING, WITHOUT LIMITATION, DAMAGE CAUSED BY PERSONS LACKING AUTHORIZED ACCESS, ARE NOT COVERED UNDER THIS AGREEMENT. YOU WAIVE ANY CLAIMS HEREUNDER AGAINST US TO THE EXTENT ARISING FROM YOUR FAILURE TO HAVE OR MAINTAIN CURRENT VIRUS PROTECTION, OR TO THE EXTENT ARISING FROM A FAILURE OR BREACH OF YOUR SECURITY FOR ITS SYSTEMS OR DATA, OR AS A RESULT OF ANY UNAUTHORIZED ACCESS TO YOUR SYSTEMS.

**12. DAMAGE LIMITATION**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER WE NOR OUR AFFILIATES SHALL BE LIABLE TO YOU FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST REVENUE (COLLECTIVELY REFERRED TO AS “**INDIRECT DAMAGES**”) IN CONNECTION WITH THE PRODUCTS AND/OR SERVICES OR THIS AGREEMENT, EVEN IF WE HAD BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE REASONABLY FORESEEN SUCH DAMAGES. IN ADDITION, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FOR DIRECT DAMAGES CAUSED BY US (AND ANY INDIRECT DAMAGES TO THE EXTENT THAT THE ABOVE LIMITATION IS NOT RECOGNIZED BY A COURT OR OTHER AUTHORITY) ANY CLAIM SHALL BE LIMITED TO THE TOTAL AMOUNT PREVIOUSLY PAID BY YOU TO FOR THE PREVIOUS TWELVE (12) MONTH PERIOD. THE ABOVE LIMITATIONS ON LIABILITY APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE.

**13. TERM; TERMINATION AND SUSPENSION**

**13.1 Term.** This Agreement shall be effective as of the Effective Date and shall continue in full force and effect until expiration and/or termination of the Franchise Agreement, unless earlier terminated in accordance with the terms and conditions of this Agreement (“**Agreement Term**”). The Service Offering(s) shall commence as of the effective date(s) set forth therein, and shall continue in full force and effect until expiration and/or termination of such applicable Service Offering(s), unless earlier terminated or extended in accordance with the terms and conditions of the applicable Service Offering(s), this Agreement or the Franchise Agreement (“**Service Offering Term**”).

**13.2 Our Right to Terminate.** If any one of the following events occurs, then to the extent permitted by applicable law, we shall have the right, at our option and without liability or further obligation to you, to immediately terminate this Agreement (including any of the applicable Service Offering(s)): (a) you fail to make any payment when due under this Agreement (including any of the applicable Service Offering(s)), the Franchise Agreement or any other agreement between you and us; (b) you breach any covenant, warranty or terms and conditions set forth in this Agreement (including any of the applicable Service Offering(s)), the Franchise Agreement or any other agreement between you and us; (c) we cease to provide the Products and/or Services; (d) the Franchise Agreement expires or terminates for any reason; or (e) we assign, transfer, dissolve, terminate, or wind-down our business, under applicable law. We may terminate this Agreement for convenience at any time provided that we shall provide you with no less than sixty (60) days’ advance

notice.

**13.3 Termination Due to Bankruptcy or Insolvency.** Either Party shall have the right to immediately terminate this Agreement in the event (a) a bankruptcy, reorganization, receivership, insolvency or other similar proceeding for the arrangement of such Party's obligations is instituted by such Party, or involuntarily against such Party and not dismissed within ninety (90) days; (b) the other Party is unable to pay its debts as they become due or admits in writing its inability to pay its debts generally; or (c) the other Party becomes subject to any statutory, administrative or court order or other official action which prevents either from continuing to fulfill its obligations under this Agreement.

**13.4 Suspension.** In addition to the right to terminate this Agreement, we may suspend your access to the Products and/or Services upon the occurrence of any of the events described in Section 13.2 until your violation is cured and you have agreed in writing to engage in no conduct that will cause a repeat violation to occur. If you violate such a restoration agreement, we may suspend or terminate your access to the Products and/or Services permanently or for an indefinite period. Because we still incur costs on your behalf, you must continue to pay all Fees associated with Products and/or Services under this Agreement (including any of the applicable Service Offering(s)) during any such suspension period.

**13.5 Upon Termination.** Upon termination of this Agreement: (a) Any and all licenses granted to you under this Agreement (including any applicable Service Offering) shall end and you shall immediately cease using any Products and/or Services licensed to you by us or a Third Party pursuant hereto; (b) you shall immediately cease using any and all Access Credentials that provided access and use of the Products and/or Services; (c) you shall promptly (but in no event later than thirty (30) days) return or destroy any and all Confidential Information of ours, whether in written or electronic form, and neither you nor any of your employees or agents shall retain any copies, extracts, derivatives, or other reproductions of our Confidential Information (in whole or in part) in any form whatsoever; and (d) you shall take reasonable steps to assure that any and all documents, memoranda, notes, and other writings or electronic records prepared or created by us, which include or reflect our Confidential Information, are destroyed. Within thirty (30) days after expiration and/or termination of this Agreement, you shall certify to us in writing that the original and all copies have been returned to us or destroyed. YOU EXPRESSLY WAIVE ANY RIGHT TO NOTICE OF OR ANY HEARING WITH RESPECT TO REPOSSESSION AND CONSENT TO ENTRY INTO THE FACILITY BY OUR AGENTS OR REPRESENTATIVES OR ANY PREMISES WHERE ANY PRODUCTS AND/OR SERVICES THAT ARE RENTED BY YOU FROM US OR A THIRD-PARTY PROVIDER MAY BE LOCATED AND REMOVING THEM WITHOUT JUDICIAL PROCESS. If you fail or refuse to permit the peaceable entry by our agents to take possession of such Products and/or Services, you shall be liable for rental of the Products and/or Services at the rate of \$500.00 per week from the date that we first attempt to retake the Products and/or Services. We may, in our sole discretion, embed within the Products and/or Services various security devices that will render the Products and/or Services unusable and the data stored by the hardware or the Products and/or Services inaccessible if this Agreement terminates.

## 14. **NOTICES**

**14.1 General.** All notices and other communications in connection with this Agreement shall be in writing and shall be sent to the respective Parties at the addresses set forth below or to such other addresses as may be designated by each Party in writing from time to time in accordance with this section. All notices and other communications shall be sent by registered or certified air mail, postage prepaid, or by express courier service, service fee prepaid. All notices and other communications shall be deemed received: (a) immediately upon delivery, if hand delivered; (b) five business days

after depositing in the mail, if delivered by mail; or (c) the next business day after delivery to express courier service, if delivered by express courier service.

**If to Us:**

22 Sylvan Way

Parsippany, NJ 07054

Attn: Vice President, Contracts Compliance

**If to You:**

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**With a copy to:**  
Wyndham Hotel Group, LLC  
22 Sylvan Way  
Parsippany, NJ 07054  
Attn: General Counsel

**With a copy to:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**15. MISCELLANEOUS**

**15.1 Force Majeure.** If performance by either Party is delayed or prevented (excluding the obligation to make payments under this Agreement) because of strikes, inability to procure labor or materials, defaults of suppliers or subcontractors, delays or shortages of transportation, failure of power or communications systems, restrictive governmental laws or regulations, weather conditions, or other reasons beyond the reasonable control of the Party, then performance of such acts will be excused and the period for performance will be extended for a period equivalent to the period of such delay. Delays or failures to pay resulting from lack of funds will not be deemed delays beyond your reasonable control.

**15.2 Entire Agreement.** This Agreement and any attachments hereto, constitutes the entire, final and exclusive agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous statements, representations, negotiations, discussions, understandings and agreements, whether oral or written, with respect to the subject matter of this Agreement. Nothing in the foregoing, no provision in this or any related agreement is intended to disclaim the express representations made in any Franchise Disclosure Document provided to you by us or one of our Affiliates.

**15.3 Your Forms.** We are not bound by any terms of your purchase order forms or notices of acceptance which attempt to impose any conditions at variance with the terms and conditions of this Agreement or with our invoices, standards manuals or technical specifications. Our failure to object to any provision contained in your printed form is not a waiver of any provision of this Agreement.

**15.4 No Third-Party Beneficiary.** The Agreement is intended for the sole benefit and protection of the named Parties, their successors and permitted assigns, and no Third Party shall have any cause of action or right to payments made or received herein except for any owners of any Products and/or Services who have licensed or authorized us to provide the same to you.

**15.5 Prevailing Party Attorneys' Fees.** In the event of an alleged breach of this Agreement, the prevailing Party shall be entitled to reimbursement of all of its costs and expenses, including reasonable attorneys' fees, incurred in connection with such dispute, claim or litigation, including any appeal therefrom. For purposes of this Section, the determination of which Party is to be considered the prevailing Party shall be decided by the court of competent jurisdiction that resolves such dispute, claim or litigation.

**15.6 Other Relief.** We may obtain the remedy of injunctive relief without the posting of a bond if you violate its obligations regarding confidentiality, non-disclosure, transfer or limitations on the Products and/or Services use under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, each Party shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit such Party to seek such equitable relief in a court of competent jurisdiction.

**15.7 Modifications.** This Agreement may not be amended, modified or rescinded except in

writing, signed by both Parties, and any attempt to do so shall be void and of no effect. This Agreement may be modified or amended only pursuant to a separate writing mutually agreed upon and signed by both Parties. The Parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) any oral modifications to this Agreement; and (b) any other amendments that are based on course of dealing, waiver, reliance, estoppel or other similar legal theory. The Parties expressly disclaim the right to enforce any rule of law that is contrary to the terms of this Section.

**15.8 Governing Law; Exclusive Jurisdiction.** The validity, construction and performance of this Agreement, and the legal relations among and any disputes between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of New Jersey, excluding that body of law applicable to conflicts of law that would apply the substantive law of another jurisdiction. Any suit or proceeding relating to this Agreement shall be brought only in the state and federal courts located in the State of New Jersey. The Parties hereby expressly consent to the exclusive personal jurisdiction of the New Jersey state courts situated in Morris County, New Jersey, and the United States District Court for the District of New Jersey. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens or to object to venue with respect to any suit or proceeding brought under this Agreement.

**15.9 Waiver.** If either Party fails to exercise any right or option at any time under this Agreement, such failure will not be deemed a waiver of the exercise of such right or option at any other time or the waiver of a different right or option. Termination of this Agreement by either Party will not waive your obligation to make any payments to us under this Agreement.

**15.10 Headings.** The division of this Agreement into sections and the use of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “Agreement,” “herein,” “hereof,” “hereunder” and similar expressions refer to this Agreement and not to any particular section or other portion hereof and include any Schedules or agreements supplemental hereto (including any Service Offering). Unless something in the subject matter or context is inconsistent therewith, references herein to sections are to sections of this Agreement.

**15.11 No Construction Against Drafter.** The Parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement.

**15.12 Counterparts.** This Agreement may be executed in one (1) or more duplicate originals, all of which together shall be deemed one and the same instrument.

**15.13 Severability.** If any provision of this Agreement is determined to be void or unenforceable, the provision shall be deemed severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

**15.14 Successors and Assigns.** You agree that we may assign this Agreement or any of our rights and obligations hereunder without your consent. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and permitted assigns. Notwithstanding the above, you may not assign this Agreement or any of your rights or obligations hereunder without our express written consent.

**15.15 Mediation.** The Parties agree that all disputes arising under this Agreement or associated with the Products and/or Services may be submitted through non-binding mediation. Either party may request mediation which shall be conducted by a mutually acceptable and neutral Third-Party



organization. If the Parties cannot resolve the dispute through negotiation or mediation, or choose not to negotiate or mediate, either Party may pursue litigation.

**15.16 Survival.** The provisions of this Agreement that due to their content should have continuing life shall survive the termination of this Agreement.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the Effective Date.

\*By signing this Agreement, you represent that you are authorized to enter into this Agreement on behalf of the Franchisee or Member named herein.

We: \_\_\_\_\_

You: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **ATTACHMENT 1.1**

### **Definitions**

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify Permitted Users’ identity and authorization to access and use the SaaS Solution.

“**Affiliate**” means any and all subsidiaries, affiliates, corporations, limited liability companies, partnerships, firms, associations, businesses, organizations, and/or other entities that directly or indirectly (either presently or in the future and/or through one or more intermediaries) control, are controlled by, or are under common control with, the subject entity (with respect to us, including our parent company, Wyndham Hotels & Resorts, Inc. and/or such entities).

“**Facility**” means the Location (as defined in the preamble to this Agreement), together with all improvements, buildings, common areas, structures, appurtenances, facilities, entry/exit rights, parking, amenities, FF&E and related rights, privileges and properties existing or to be constructed at the Location on or after the effective date of the Franchise Agreement.

“**Franchise Agreement**” means the franchise agreement and/or license (however named) between you and us granting to you the non-exclusive right to operate the Facility under the System.

“**Guest Information**” means any names, e-mail addresses, phone numbers, mailing addresses and other information about guests and customers of the Facility, including, without limitation, stay information, that we or you, or a person acting on behalf of us or you, receives from or on behalf of the other or on behalf of any guest or customer of the Facility.

“**Hardware**” means the computer hardware, peripheral equipment, ancillary equipment, the operating system software and related documentation that you use for purposes of accessing and using the Products and/or Services.

“**Intellectual Property**” means any and all rights existing from time to time under patent law, copyright law, trademark law, trade secret law, and any other proprietary rights laws and regulations as well as any related applications, reissuances, continuations, continuations-in-part, divisionals, renewals, extensions, and restorations thereof, now or hereafter in force and effect anywhere in the world.

“**Permitted Use**” means use of the Products and/or Services by Permitted Users for the benefit of you solely in or for your business operations as contemplated for and in accordance with the Franchise Agreement.

“**Permitted User**” means a person who is authorized by us, or who is otherwise permitted under this Agreement, to access and use the Products and/or Services, including without limitation, You.

“**Third Party**” and “Third-Party” means persons and entities other than us or you or our respective Affiliates.

Location: \_\_\_\_\_  
Unit No.: \_\_\_\_\_

**SCHEDULE TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES**

This Schedule (“**Schedule**”), effective as of \_\_\_\_\_ (“**Schedule Effective Date**”), by and between \_\_\_\_\_, a \_\_\_\_\_ (“**Service Provider**,” “**we**,” “**our**,” or “**us**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**you**” or “**your**”) is issued pursuant to and incorporates by reference the terms and conditions of the Master Information Technology Agreement, dated as of \_\_\_\_\_, entered into by and between us and you (“**Agreement**”) for a \_\_\_\_\_® Facility. We and you shall each be referred to herein as a “**Party**” and together as the “**Parties**” to this Schedule.

**1. GENERAL**

1.1 **Definitions.** Capitalized terms used in this Schedule shall have the meanings ascribed to them in this Schedule, the attached Attachment 1.1, or the Agreement, as applicable, which may be updated or supplemented by us from time to time. All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Franchise or Membership Agreement and are incorporated herein by reference.

1.2 **Conflicts in Interpretation.** The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any Schedules attached hereto: (a) first, the terms contained in this Schedule; and (b) second, the terms of the Agreement, provided that no order of precedence shall be applied among any such Schedules.

1.3 **Overview.** The purpose of this Schedule is for us to provide you certain Products and/or Services offered by Oracle America, Inc. (the “**Oracle Products and/or Services**”) and for Products and/or Services we offer you in connection with the Oracle Products and/or Services (“**Our Products and/or Services**”), as further set forth in this Schedule.

**2. DESCRIPTION OF PRODUCTS AND/OR SERVICES**

2.1 **Authorization.** Pursuant to the terms and conditions set forth in the Agreement and this Schedule, you authorize us to provide to you the Products and/or Services that are described in this Schedule and we agree to provide you with the Products and/or Services that are described in this Schedule.

2.2 **Oracle Products and/or Services.** We shall provide you with the Oracle Products and/or Services set forth in the attached Attachment 2.2.

2.3 **Our Products and/or Services.** We will provide you with Our Products and/or Services

set forth in the attached Attachment 2.3. Our Products and/or Services include, but are not limited to, support for technology applications we may offer you from time to time, such as our Reservation System, as well as support of tools such as the Brand Information Source Portal, and activities related to PMS Vendor Management. For the avoidance of doubt, Our Products and/or Services do **not** include: (a) support relating to the OPERA databases, servers, application servers and/or storage, each of which are housed at a Oracle data center and not at the Facility; or (b) services relating to data backups, which shall be the Facility's responsibility.

2.4 Rate and Inventory Consulting Services. From time to time, we may provide services to you under our Central Rate and Inventory Support Program (the "**CRISP Services**") as described in Attachment 2.4 attached hereto, which we may update or supplement from time to time.

2.5 Additional Services. We may perform additional Services agreed to in writing by you and us from time to time, which may include additional fees to be agreed to by you and us.

### 3. **GRANT OF RIGHTS**

3.1 License. Subject to payment of all applicable Fees, we hereby grant to you the right to access, use and display the use the Products and/or Services, including the Oracle Product and/or Services, during the Term solely for the Permitted Use, solely by your Permitted Users and solely in accordance with the terms and conditions set forth in the Agreement and this Schedule. Except for the limited right expressly granted by the foregoing, all rights, title and interests in and to the Products and/or Services, including the Oracle Products and/or Services, are reserved to us or to any Third Party who licenses the Products and/or Services to us or to our Affiliates.

3.2 Our Responsibilities. We shall: (a) use commercially reasonable efforts to make the Products and/or Services available twenty-four (24) hours a day, seven (7) days a week, except for: (i) planned downtime, or (ii) any unavailability caused by circumstances beyond our reasonable control, including without limitation, acts of nature, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, labor strikes, Internet service provider failures or delays, or denial of service attacks; and (b) provide the Products and/or Services only in accordance with applicable laws and government regulations that govern the implementation of the Products and/or Services.

3.3 Your Responsibilities.

3.3.1 You shall: (a) be fully responsible for your Permitted Users' compliance with the Agreement and this Schedule, as applicable; (b) be responsible for the accuracy, quality and legality of Guest Information, to the extent collected by you or your employees, agents or representatives, and for the means by which you or your employees, agents or representatives acquire Guest Information; (c) prevent unauthorized access to or use of the Products and/or Services, and notify us promptly of any such unauthorized access or use; and (d) use the Products and/or Services only

in accordance with the Agreement, this Schedule, and applicable laws and government regulations. You shall not: (i) make Products and/or Services available to anyone other than your Permitted Users; (ii) sell, resell, rent or lease the SaaS Solution; (iii) use the Products and/or Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights of any Third Party; (iv) use the Products and/or Services to store or transmit software viruses, malicious code or other harmful files; (v) interfere with or disrupt the integrity or performance of the Products and/or Services or the data of any Third Party contained therein; or (vi) attempt to gain unauthorized access to the Products and/or Services or any related networks.

3.3.2 Your access and/or use of the Oracle Products and/or Services is governed by the service specifications and related documents that may be accessed at <https://www.oracle.com/corporate/contracts/cloud-services> (the “**Service Specifications**”), and you agree to comply with and be bound by such Service Specifications at all times while accessing or otherwise using the Oracle Products and/or Services. Any breach by you or your Permitted User shall be considered a material breach of the Agreement and this Schedule. Further, (i) Oracle will not create a separate Services environment for you, and all content (including your content and personal data) of yours will reside in a single, shared Services environment, and we and you and may be able to access, view, commingle, use, create, modify, delete, and transfer each other’s content (including your content and personal data) in such Services environment; (ii) we will provide required notices and obtain required consents and/or authorizations to make such content available in the manner set forth in (i); (iii) content of yours may not be able to be exported, deleted or rendered inaccessible in, or made available for retrieval in its entirety outside of, the Services environment; (iv) your use of the Oracle Products and/or Services must not exceed the quantities and usage limits of such Oracle Products and/or Services ordered by you (including as described in the Service Specifications); (v) the Oracle Products and/or Services will be provided to you and your Permitted Users in accordance with standard capabilities and management, pursuant to the configurations established by us and under the same customer support identifier assigned to us; and (vi) we are the data controller (and Oracle is a data processor) for purposes of the Oracle Products and/or Services ordered and all rights and obligations under any data processing agreement are exercisable exclusively by us (including the right and responsibility of providing any instructions, including for data processing requirements, to Oracle), and Oracle has no obligation to ensure the compatibility or accuracy of the instructions provided to Oracle by us to you, and Oracle is not responsible for the effect of any conflicting instructions.

#### 4. **FEES AND PAYMENTS**

4.1 **Fees.** You shall pay all fee amounts specified in Attachment 4.1 to this Schedule for the Products and/or Services set forth in the Schedule, including the Oracle Products and/or Services (“**Fees**”). If your franchise or membership involves the transfer of an existing Chain Facility to us or changing affiliation of the Facility from one Wyndham Hotels & Resort, Inc.-owned

franchise or membership system to another, you will be charged a transfer fee (“**Transfer Fee**”). You will also pay for all Additional Services as applicable.

4.2 Invoicing and Payments. Invoicing from us to you for the Product and/or Services under this Schedule shall be in accordance with the Agreement. Payments from you to us for the Product and/or Services under this Schedule shall be in accordance with the Agreement.

5. **DISCLAIMER; NO WARRANTIES; TECHNICAL SPECIFICATIONS REQUIREMENTS**

5.1 Disclaimer. We are not responsible for the loss of any data or for any viruses or malware infecting your systems. It is your responsibility to ensure that the Facility’s data is adequately backed up at all times and that you maintain current updated anti-virus/anti-malware software at all times. Assistance with restoring lost data or with addressing an infected system may be provided as Additional Services.

5.2 No Warranties. **EXCEPT WHERE SUCH WARRANTIES OR REPRESENTATIONS ARE REQUIRED TO BE GIVEN OR MADE BY APPLICABLE LAW, (A) WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ABOUT THE PRODUCTS AND/OR SERVICES, ORACLE PRODUCTS AND/OR SERVICES, CRISP SERVICES OR ADDITIONAL SERVICES, THEIR MERCHANTABILITY, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, OR THEIR CONFORMANCE TO THE PROVISIONS AND SPECIFICATIONS OF ANY ORDER OR DOCUMENTATION; (B) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE VOLUME OF RESERVATIONS OR AMOUNT OF REVENUES THAT THE FACILITY MAY ATTAIN THROUGH THE USE OF THE CRISP SERVICES OR THAT YOUR RESERVATIONS OR REVENUE WILL INCREASE; AND (C) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY OF THE DATA THAT YOU MAINTAIN OR THE PREVENTION OF ANY VIRUSES OR MALWARE, AND WE ARE NOT RESPONSIBLE FOR THE LOSS OF ANY DATA OR THE INTRODUCTION OF ANY VIRUSES OR MALWARE, EVEN IF SUCH LOSS OR INTRODUCTION RESULTS FROM OUR PERFORMANCE OF SERVICES HEREUNDER. YOU ARE RESPONSIBLE FOR ENSURING THAT YOUR DATA IS ADEQUATELY BACKED UP AND THAT YOU MAINTAIN CURRENT UPDATED ANTI-VIRUS/ANTI- MALWARE SOFTWARE. YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION THAT YOU MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE PRODUCTS AND/OR SERVICES (INCLUDING THE ORACLE PRODUCTS AND/OR SERVICES) UNLESS DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

5.3 Technical Specification Requirements. To access and use the Product and/or Services, you must meet the technical specification requirements set forth on Attachment 5.3.

## 6. INDEMNIFICATION AND DAMAGE LIMITATION

6.1 Indemnification. In addition to your indemnification obligations set forth in the Agreement, you shall indemnify, defend and hold harmless us, our Affiliates, successors and assigns and each of the respective directors, officers and employees associated with them against all claims of employees, agents, guests, and all other persons and entities, arising out of the Products and/or Services (including the Oracle Products and/or Services), including, but not limited to, your failure to comply with this Schedule (which for purposes of clarity shall be deemed to include the Service Specifications). We shall not be liable to you or any other Third Party, person or entity for personal injury or property loss, including but not limited to, damage to the Facility. You are not obligated to indemnify us for our own negligence or our intentional misconduct.

## 7. TERM AND TERMINATION

7.1 Term. This Schedule will be effective from the Schedule Effective Date, and unless earlier terminated in accordance with this Schedule, shall continue in full force and effect for a period of three (3) years (“**Initial Term**”). After the Initial Term, this Schedule shall automatically renew for successive one (1) year periods unless either party provides not less than thirty (30) days’ written notice of its desire not to renew.

7.2 Termination. In accordance with the Agreement.

[Signature Page Follows]



**IN WITNESS WHEREOF**, the parties have executed and delivered this Schedule as of the Schedule Effective Date.

\*By signing this Schedule, you represent that you are authorized to enter into this Schedule on behalf of the Franchisee or Member.

**We:** \_\_\_\_\_

**You:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Our address:**

**22 Sylvan Way**

**Parsippany, NJ 07054, USA**

**Your address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT

ORACLE PRODUCTS AND/OR SERVICES

ATTACHMENT 1.1

Definitions

“**Additional Services**” means services performed pursuant to this Schedule that are in addition to CRISP Services and Our Services, and may include, without limitation, services relating to hardware installation, hardware upgrades, data recovery, configuration, training, and debugging.

“**Brand Information Source Portal**” means an online gateway for communications and important notifications between us and you by providing access to reports, guest feedback, marketing resources, brand standards, quality assurance, training resources and online bill payment. As of the date of this Schedule, the Brand Information Source Portal is currently called MyPortal.

“**Brand System**” means the business format franchise or membership system and method of doing business defined under the Franchise or Membership Agreement.

“**CRISP Services**” means the Rate and Inventory Consulting Services as described above in Section 2.4 and in the attached Attachment 2.4 attached hereto, which we may update or supplement from time to time.

“**Franchisee**” means the person or entity set forth in the introductory paragraph of this Agreement, its successors and assigns, as permitted in the Franchise or Membership Agreement.

“**Our Products and/or Services**” means the Products and/or Services that we may provide to the Facility as described above in Section 2.3 and in the attached Attachment 2.3.

“**PMS Vendor Management**” means coordination of vendors in support of troubleshooting issues related to the Services.

“**Products and/or Services**” means the Oracle Products and/or Services and Our Products and/or Services, including the CRISP Services, as described in Section 2, and Attachment 2.2, Attachment 2.3 and Attachment 2.4, respectively, as well as any Additional Services.

“**Reservation System**” means the applicable computerized central reservation system, or any replacement thereof, that we maintain (directly or by subcontracting with an affiliate or one or more third parties) and/or use, for the purpose of allowing the placing and receiving of lodging reservations, as well as such other services as we may develop and provide in the future, upon conditions including fees which we, in our sole discretion, may place in effect under the Franchise or Membership Agreement.

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**ORACLE PRODUCTS AND/OR SERVICES**

**ATTACHMENT 2.2**

**Oracle Products and/or Services**

**OPERA Foundation**

Oracle OPERA Foundation is the basis of the Oracle Hospitality OPERA Suite offering a cloud-based property management system that offers, among other things, the following features and functionality:

- Access to application suite enabling common property management functions, up to a maximum of 30 functions;
- Access to standard reporting and integration platforms; and
- Access to standard online learning materials.

**OPERA Standard**

- Oracle OPERA Standard adds additional modules to OPERA Foundation and enables an additional 25 functions for a maximum of 55 functions of the Oracle OPERA Hospitality Suite.

**OPERA Premium**

- Oracle OPERA Premium adds additional modules to OPERA Foundation and enables access to more than 150 functions of the Oracle OPERA Hospitality Suite.

Either Oracle or we shall, as appropriate, provide first-level support for the Products and/or Services, which shall include OPERA and any additional interfaces included in the Oracle Products. Oracle may also provide various support Services, as may be necessary for the OPERA Products, including, among other things, Application provisioning, Product or interface installation Services, and training Services, as we may request of Oracle from time to time.

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**ORACLE PRODUCTS AND/OR SERVICES**

**ATTACHMENT 2.3**

**Our Products and/or Services**

Our Products and/or Services include the following:

1. Partnering with product and/or service providers to diagnose and resolve hotel facing network problems per established troubleshooting procedures.
2. Partnering with product and/or service providers to diagnose and resolve hotel facing interface problems per established troubleshooting procedures.
3. Partnering with product and/or service providers to diagnose and resolve hotel facing workstation configuration and environment problems.
4. Partnering with product and/or service providers to diagnose and resolve hotel facing host reservation services communication issues per established troubleshooting procedures.
5. Maintaining automated tracking support of all significant incidents.
6. Maintaining staff proficient on current software and functionality.
7. Partnering with product and/or service providers to diagnose and resolve issues related to tools that interface with the services and coordinating with third-party providers when necessary.
8. Providing either through us or Oracle, as appropriate, first-level support for the Products and/or Services, which shall include OPERA and any additional interfaces included in the Oracle Products.

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ATTACHMENT 2.4**

**ORACLE PRODUCTS AND/OR SERVICES**

**CRISP SERVICES**

**Terms of CRISP Services**

Franchisee agrees to establish the best available rate “BAR”; provided, however that Franchisee acknowledges and agrees that it will retain ultimate control over all rate audit decisions. Subject to the foregoing, Franchisee explicitly authorizes Franchisor to make adjustments to the Facility’s rates, inventory and restrictions in order to comply with the Required Policies and Practices without advance notice to Franchisee. Franchisor shall not, however, change the BAR without authorization from Franchisee. In addition, Franchisee may modify or reverse any change Franchisor may make by notifying Franchisor, provided that such modification or reversal is consistent with the Required Policies and Practices. Franchisee’s general manager shall be its primary representative who shall have the authority to make rate audit decisions for the Facility, unless Franchisee designates another Facility representative in writing to Franchisor. Franchisor may communicate with Franchisee’s representative by telephone, e-mail or in another manner, and Franchisor may rely on any communication which Franchisor believes, in good faith, is from Franchisee’s representative. Any know-how, algorithms, formulae, data, recommendations, documentation, software, or other materials or information that Franchisor furnishes to Franchisee in connection with the CRISP Services shall be deemed “Confidential Information” as defined in the Franchise or Membership Agreement and shall be subject to all prohibitions on disclosure, copying or use of Confidential Information under the Franchise or Membership Agreement.

**Overview of CRISP Services**

**Property Audit & Setup**

In consultation with the Facility representative, simplify rates and room type structures by:

- Verifying that all required rate plans are loaded correctly in the SaaS solution;
- Verifying that local rates are available for sale in the distribution channels selected by the Facility;
- Verifying that all brand standard rate plans are available for sale; and
- Verifying that all hotel specific data is accurate and up to date in all systems.

**Rate & Inventory Management**

Review inventory/rate visibility and consistency across all distribution channels. Key services include:

- Monitoring Facility inventory and rate settings in the SaaS solution;
- Identifying and advising Franchisee of erroneous rate plans;
- Monitoring rates across distribution channels and checking for accuracy in third party channels; and
- Coordinating participation in key corporate accounts and marketing programs.

**SCHEDULE TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES  
ATTACHMENT 4.1 – Fees**

The following fees shall be payable by you for the Oracle Products and/or Solutions. Please note that your brand may require a specific level of the OPERA service listed above and may also determine whether set up and installation is remote or on-site.

<b>OPERA FOUNDATION</b>		<b>OPERA STANDARD</b>		<b>OPERA PREMIUM</b>	
<b>Remote and On-site One-Time Set Up &amp; Implementation Fee</b> Additional interface installation fees range from \$525 to \$3,050 per interface. Certain interface installations, such as RevIQ, are mandatory.					
<b>Remote Set up &amp; Installation</b>					
\$10,750		\$13,950		\$21,450	
<b>On-Site Set Up &amp; Installation</b>					
\$15,100		\$18,825		\$28,425	
<b>Monthly Fees</b> Additional monthly interface support fees may apply					
	<b>Licensed Rooms at Facility</b>	<b>Monthly Fee</b>		<b>Monthly Fee</b> \$12.60 per room / per month	
	100 or fewer	\$699 per month			
	101-150	\$750 per month			
	151-200	\$850 per month			
	201 or more	\$1,000 per month			

The following fees shall be payable by you for the RevIQ Products and/or Services and Our Products and/or Services:

<b>RevIQ Standard</b>	Included in monthly fee
<b>RevIQ Premium<sup>1</sup></b>	\$28 per month

<sup>1</sup> RevIQ Premium Service is only available after three months of participation in RevIQ Standard service. We reserve the right to assess your Facility and its performance to determine appropriate service level.

In certain circumstances we may issue you a written quote with Facility-specific fees that differ from those reflected above. Provided that the quote we issue in writing is signed by you, then in the event of any conflict between this Attachment 4.1 and the quote, the quote shall control.

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**ORACLE PRODUCTS AND/OR SERVICES**

**ATTACHMENT 5.3**

**Technical Specification Requirements**

To access and use the Product and/or Services, you must meet the technical specification requirements set forth in the Deployment Information located here:

<https://docs.oracle.com/en/industries/hospitality/opera-cloud/23.1/>

The Deployment Information referenced above is provided by Oracle and may be updated from time to time; we will notify you of any material change to the information when we receive notice of such a change from Oracle.

**SUPPLEMENT TO  
SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES  
REVIQ PRODUCTS AND/OR SERVICES**

This supplement (“**Supplement**”) to Schedule to Master Information Technology Agreement (“**MITA**”) entitled “Oracle Products and/or Services” (“**Oracle Schedule**”), effective as of \_\_\_\_\_ (“**Supplement Effective Date**”), by and between \_\_\_\_\_ (“**Service Provider**,” “**we**,” “**our**,” or “**us**”), and \_\_\_\_\_ (“**you**” or “**your**”) is issued pursuant to and incorporates by reference the terms and conditions of the MITA, dated as of \_\_\_\_\_, entered into by and between us and you (“**Agreement**”) for a \_\_\_\_\_  
® Facility. We and you shall each be referred to herein as a “**Party**” and together as the “**Parties**” to this Supplement.

**1. GENERAL**

1.1 Definitions. Capitalized terms used in this Supplement shall have the meanings ascribed to them in this Supplement, the attached Attachment 1.1, the Oracle Schedule, or the Agreement, as applicable, which may be updated or supplemented by us from time to time. All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Franchise or Membership Agreement and are incorporated herein by reference.

1.2 Conflicts in Interpretation. The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Supplement and the terms of any attachments attached hereto: (a) first, the terms contained in the attachments; and (b) second, the terms of this Supplement, provided that no order of precedence shall be applied among any such attachments.

1.3 Overview. The purpose of this Supplement is for us to provide you with a customized revenue management system known as “RevIQ,” that was designed in collaboration with our third-party vendor, IDEaS, as further set forth in this Supplement (the “**RevIQ Products and/or Services**”) as well as our own products and/or Services (“**Our Products and/or Services**”), which, either individually or collectively, shall be considered Products and/or Services as such term is used in the Agreement and the Oracle Schedule, as applicable.

**2. DESCRIPTION OF PRODUCTS AND/OR SERVICES**

2.1 Authorization. Pursuant to the terms and conditions set forth in the Agreement and this Supplement, you authorize us to provide to you the Products and/or Services that are



described in this Supplement and we agree to provide you with the Products and/or Services that are described in this Supplement.

2.2 RevIQ Products and/or Services. We shall provide you with the RevIQ Products and/or Services set forth in the attached Attachment 2.2.

2.3 Our Products and/or Services. We shall provide you with Our Products and/or Services set forth in the attached Attachment 2.3. For the avoidance of doubt, Our Products and/or Services do **not** include: (a) support relating to the OPERA databases, servers, application servers and/or storage, each of which are housed at an Oracle data center and not at the Facility; or (b) services relating to data backups, which shall be the Facility's responsibility.

2.4 Oracle Schedule. In order to access, use or otherwise benefit from the Products and/or Services pursuant to this Supplement, you must enter into and maintain an Oracle Schedule with us, and any terms and conditions applicable to your ability to access, use and/or otherwise benefit from the Products and/or Services, including the Oracle Products and/or Services, that are set forth in the Agreement or the Oracle Schedule shall apply to your ability to access, use and/or otherwise benefit from the RevIQ Products and/or Services set forth in this Supplement.

2.5 Additional Services. We may perform Additional Services agreed to in writing by you and us from time to time, which may include additional fees to be agreed to by you and us.

### **3. REVIO SYSTEM USE RESTRICTIONS**

3.1 In addition to any restrictions set forth in the Agreement and/or the Oracle Schedule, your and your Permitted Users' access and/or use of the RevIQ Products and/or Services is also subject to the RevIQ System Use Restrictions set forth in Attachment 3.1 (the "**RevIQ System Use Restrictions**"), and you and your Permitted Users agree to comply with and be bound by such RevIQ System Use Restrictions at all times while accessing or otherwise using the RevIQ Products and/or Services. Any breach by you or your Permitted Users shall be considered a material breach of the Agreement, the Oracle Schedule and this Supplement. You further agree that our third-party vendor, IDEaS, shall be a third-party beneficiary of this Supplement and you shall be responsible to, and shall indemnify and hold harmless, both us and IDEaS for any liability or damage incurred or arising from or related to use of the RevIQ Products and/or Services by you or your Permitted Users in a manner that violates the RevIQ System Use Restrictions.

### **4. FEES AND PAYMENTS**

4.1 Fees. You shall pay all fee amounts specified in Attachment 4.1 to this Supplement for the RevIQ Products and/or Services and Our Products and/or Services set forth in the Supplement ("**Fees**"). If your franchise or membership involves the transfer of an existing Chain Facility to us or changing affiliation of the Facility from one Wyndham Hotels &

Resort, Inc.-owned franchise or membership system to another, you will be charged a transfer fee (“**Transfer Fee**”). You will also pay for all Additional Services, as applicable.

4.2 Invoicing and Payments. Invoicing from us to you for the Products and/or Services set forth in this Supplement shall be in accordance with the Agreement. Payments from you to us for the Products and/or Services under this Supplement shall be in accordance with the Agreement.

## **5. NO WARRANTIES: TECHNICAL SPECIFICATIONS REQUIREMENTS**

**5.1 No Warranties. IN ADDITION TO ANY WARRANTY DISCLAIMERS SET FORTH IN THE AGREEMENT AND/OR THE ORACLE SCHEDULE, EXCEPT WHERE SUCH WARRANTIES OR REPRESENTATIONS ARE REQUIRED TO BE GIVEN OR MADE BY APPLICABLE LAW, (A) WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ABOUT THE PRODUCTS AND/OR SERVICES, THE REVIQ PRODUCTS AND/OR SERVICES, OUR PRODUCTS AND/OR SERVICES OR ADDITIONAL SERVICES, THEIR MERCHANTABILITY, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THEIR CONFORMANCE TO THE PROVISIONS AND SPECIFICATIONS OF ANY ORDER OR DOCUMENTATION; (B) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE VOLUME OF RESERVATIONS OR AMOUNT OF REVENUES THAT YOU MAY ATTAIN THROUGH THE USE OF THE PRODUCTS AND/OR SERVICES, THE REVIQ PRODUCTS AND/OR SERVICES, OUR PRODUCTS AND/OR SERVICES, OR ADDITIONAL SERVICES, OR THAT YOUR RESERVATIONS OR REVENUE WILL INCREASE; (C) WE MAKE NO REPRESENTATION OR WARRANTY THAT THE PRODUCTS AND/OR SERVICES, THE REVIQ PRODUCTS AND/OR SERVICES, OUR PRODUCTS AND/OR SERVICES, OR ADDITIONAL SERVICES, WILL (I) MEET YOUR OR ANY OTHER PERSON’S OR ENTITY’S REQUIREMENTS, (II) OPERATE WITHOUT INTERRUPTION, (III) ACHIEVE ANY INTENDED RESULT, (IV) BE ERROR FREE, OR (V) BE COMPATIBLE, WORK WITH OR CONTINUE TO WORK WITH ANY OF YOUR SYSTEMS OR COMPONENTS, AND THE PRODUCTS AND/OR SERVICES, THE REVIQ PRODUCTS AND/OR SERVICES, OUR PRODUCTS AND/OR SERVICES, OR ADDITIONAL SERVICES, ARE PROVIDED ON AN “AS IS,” “WHERE IS,” AND “AS AVAILABLE” BASIS; AND (D) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY OF THE DATA THAT YOU MAINTAIN OR THE PREVENTION OF ANY VIRUSES OR MALWARE, AND WE ARE NOT RESPONSIBLE FOR THE LOSS OF ANY DATA OR THE INTRODUCTION OF ANY VIRUSES OR MALWARE, EVEN IF SUCH LOSS OR INTRODUCTION RESULTS FROM OUR PERFORMANCE OF SERVICES HEREUNDER. YOU ARE RESPONSIBLE FOR ENSURING THAT YOUR DATA IS ADEQUATELY BACKED UP AND THAT YOU MAINTAIN CURRENT UPDATED ANTI-VIRUS/ANTI-MALWARE SOFTWARE. YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION THAT YOU**

**MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE PRODUCTS AND/OR SERVICES, THE REVIQ PRODUCTS AND/OR SERVICES, OUR PRODUCTS AND/OR SERVICES, OR ADDITIONAL SERVICES UNLESS DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

5.2 Technical Specification Requirements. To access, use and/or otherwise benefit from the RevIQ Products and/or Services, you must meet the technical specification requirements set forth on Attachment 5.3.

## **6. INDEMNIFICATION**

6.1 Indemnification. In addition to your indemnification obligations set forth in the Agreement and the Oracle Schedule, you shall indemnify, defend and hold harmless us, our Affiliates, successors and assigns and each of the respective directors, officers and employees associated with them against all claims of employees, agents, guests, and all other persons and entities, arising out of the Products and/or Services set forth in this Supplement (including the RevIQ Products and/or Services, Our Products and/or Services or Additional Services), including, but not limited to, your failure to comply with this Supplement (which for purposes of clarity shall be deemed to include the RevIQ System Use Restrictions). We shall not be liable to you or any other Third Party, person or entity for personal injury or property loss, including but not limited to, damage to the Facility. You are not obligated to indemnify us for our own gross negligence or intentional misconduct.

## **7. TERM AND TERMINATION**

7.1 Term. This Supplement will be effective from the Supplement Effective Date, and unless earlier terminated in accordance with this Supplement, shall continue in full force and effect for a period of one (1) year (“**Initial Term**”). After the Initial Term, this Supplement shall automatically renew for successive one- (1-) year periods unless either Party provides not less than thirty (30) days’ written notice of its desire not to renew.

7.2 Termination. You may terminate this Supplement at any time upon sixty (60) days’ prior written notice to us, but you shall be responsible for any and all Fees for the RevIQ Products and/or Services for the remainder of the then-current Term. Should you terminate this Supplement during an existing Term, you shall remain obligated to us for all Fees due and owing for the remainder of the then-current Term, and such remaining Fees shall become immediately due and payable by you. Any and all Fees set forth under this Supplement are non-refundable.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Supplement as of the Supplement Effective Date.

\*By signing this Schedule, you represent that you are authorized to enter into this Schedule on behalf of the Franchisee or Member.

**We:** \_\_\_\_\_

**You:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Our address:**

**22 Sylvan Way**

**Parsippany, NJ 07054, USA**

**Your address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SUPPLEMENT TO  
SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES**

**REVIQ PRODUCTS AND/OR SERVICES**

**ATTACHMENT 1.1**

**Definitions**

These definitions set forth in this Attachment 1.1 are in addition to the definitions set forth in the Agreement and/or the Oracle Schedule.

**“Additional Services”** means services performed pursuant to this Supplement that are in addition to the RevIQ Products and/or Services and Our Products and/or Services, and may include, without limitation, services relating to data recovery, configuration, training, and debugging.

**“Franchisee”** means the person or entity set forth in the introductory paragraph of this Supplement, its successors and assigns, as permitted in the Franchise or Membership Agreement.

**“Our Products and/or Services”** means the Products and/or Services that we may provide to the Facility as described above in Section 2.3 and in the attached Attachment 2.3 to the Oracle Products and/or Services Schedule to the MITA.

**“Products and/or Services”** means the RevIQ Products and/or Services and Our Products and/or Services, as described in Section 2, and Attachment 2.2, and Attachment 2.3 and Attachment 2.4 to the Oracle Products and/or Services Schedule to the MITA, respectively, as well as any Additional Services.

**SUPPLEMENT TO  
SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES**

**REVIQ PRODUCTS AND/OR SERVICES**

**ATTACHMENT 2.2**

**RevIQ Products and/or Services**

**RevIQ Standard**

- RevIQ Standard is a customized revenue management system that offers, among other things, the following features and functionality:
  - A daily optimization, which generates optimal base-price decisions and hotel-level last room value (“**LRV**”) for the next 365 days
  - Four (4) intra-day optimizations, which generates, optimal base-price decisions and hotel-level LRV for the next fourteen (14) days
  - A daily 365-day hotel-level occupancy forecast
  - Permitted User-configured pricing offsets for all non-base room types
  - Automated daily price decision upload for all room types to Sabre Central Reservations System (“**CRS**”) and Oracle Opera Cloud after each optimization
  - Automated daily hotel-level LRV decision upload to Sabre CRS and Oracle Opera Cloud after each optimization
  - Permitted User-defined “Special Events” configuration
  - Permitted User-defined “Pricing Seasons” configuration
  - Permitted User-configured price “floors” and “ceiling” values for base price decisions by pricing season
  - Access to RevIQ Standard via both desktop and mobile devices
  - Smart alerts functionality for both desktop and mobile devices
  - Reporting capability available via desktop
  - Competitive set configuration displaying pricing from Permitted User configured hotel competitors via both desktop and mobile devices

**RevIQ Premium**

- RevIQ Premium adds additional functionality to RevIQ Standard and includes, among other things the following features and functionality:
  - Up to three (3) priced room classes that may be defined by a Permitted User

- Optimized hotel overbooking
- Permitted User-configured room type overbooking

**SUPPLEMENT TO  
SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES**

**REVIQ PRODUCTS AND/OR SERVICES**

**ATTACHMENT 2.3**

**Our Products and/or Services**

Our Products and/or Services include the following:

- Providing initialization services in conjunction with our third-party partners and/or providers.
- Providing first-level support for the RevIQ Products and/or Services, which shall include:
  - Maintaining tracking system for all significant incidents; and
  - Maintaining staff proficient on current RevIQ Products and/or Services functionality
- In the event our first-level support fails to resolve an incident, we shall partner and/or coordinate with third-party providers, as may be necessary.
- Instructor-led, as well as self-paced, training provided by Wyndham University on the RevIQ Products and/or Services.



**SUPPLEMENT TO  
SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES**

**REVIQ PRODUCTS AND/OR SERVICES**

**ATTACHMENT 3.1**

**RevIQ System Use Restrictions**

- In no instance may the output of the RevIQ Products and/or Services be shared with any third parties (other than Service Provider or your Permitted Users).
- Neither you nor your Permitted User may sell, rent, lease, sublicense or otherwise provide access to the RevIQ Products and/or Services to any third parties (other than providing access to Service Provider (including its Affiliates) or your Permitted Users).
- Neither you nor your Permitted User may attempt to disassemble, decompile, reverse engineer, or otherwise attempt to recreate the source code of the RevIQ Products and/or Services.
- Neither you nor your Permitted User may use the RevIQ Products and/or Services to process third party data or as a service provider on behalf of third parties.
- Except to the extent allowed by law, neither you nor your Permitted User may use the RevIQ Products and/or Services or authorize any other party or entity to use the RevIQ Products and/or Services to develop a commercial offering or product directly or indirectly competing with an offering or product from our third-party vendor, IDEaS.

**SUPPLEMENT TO  
SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES**

**REVIQ PRODUCTS AND/OR SERVICES**

**ATTACHMENT 4.1**

**Fees**

The following fees shall be payable by you for the RevIQ Products and/or Services and **our Products and/or Services**:

<b>Fees</b>	<input type="checkbox"/> <b>RevIQ Standard</b>	<input type="checkbox"/> <b>*RevIQ Premium</b>
Monthly Fee	Included in OPERA monthly fee	\$28

\* RevIQ Premium Service is only available after three months of participation in RevIQ Standard service. We reserve the right to assess your Facility and its performance to determine appropriate service level..

**SUPPLEMENT TO  
SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT  
ORACLE PRODUCTS AND/OR SERVICES**

**REVIQ PRODUCTS AND/OR SERVICES**

**ATTACHMENT 5.3**

**Technical Specification Requirements**

- At the time of activation of the RevIQ\_Products and/or Services, you must have access to the Internet.
- At the time of activation of the RevIQ\_Products and/or Services, you must be operating on a Sabre SynXis CR and Oracle Opera Cloud property management system.
- You must perform nightly financial audits.
- Permitted User(s) must have access to Okta Single Sign On (“SSO”) login functionality.
- Permitted User(s) must have access to the internet via desktop computer.
- Permitted User(s) must complete specified required training for the RevIQ Products and/or Services.

Location: \_\_\_\_\_  
Unit No.: \_\_\_\_\_

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**Mobile Operating Platform**

This Schedule (“**Schedule**”), effective as of \_\_\_\_\_ (“**Schedule Effective Date**”), by and between \_\_\_\_\_ (“**Service Provider**,” “**we**,” “**our**,” or “**us**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**you**” or “**your**”) is issued pursuant to and incorporates by reference the terms and conditions of the Master Information Technology Agreement, dated as of \_\_\_\_\_, entered into by and between us and you (“**Agreement**”). We and you shall each be referred to herein as a “**Party**” and together as the “**Parties**” to this Schedule.

**1. GENERAL**

1.1 Definitions. Capitalized terms used in this Schedule shall have the meanings ascribed to them in this Schedule, the attached Attachment 1.1, or the Agreement, as applicable, , which may be updated or supplemented by us from time to time. All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Franchise or Membership Agreement and are incorporated herein by reference.

1.2 Conflicts in Interpretation. The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any Schedules attached hereto: (a) first, the terms contained in this Schedule; and (b) second, the terms of the Agreement, provided that no order of precedence shall be applied among such Schedules.

1.3 Overview: The purpose of this Schedule is for us to provide you certain Products and/or Services in connection with a Mobile Operating Platform (“**MOP**”), which may include Employee Safety Device features (“**ESD**”) and/or guest interaction texting system software (“**Guest Interaction**”) (together, the MOP, ESD and the Guest Interaction shall be referred to as the “**MOP Products and/or Services**”).

**2. DESCRIPTION OF PRODUCTS AND/OR SERVICES**

2.1 Authorization. Pursuant to the terms and conditions set forth in the Agreement and this Schedule, you authorize us to provide to you the Products and/or Services that are described in this Schedule and we agree to provide you with the Products and/or Services that are described in this Schedule.

2.2 MOP Products and/or Services. We shall provide you with the MOP Products and/or Services set forth in the attached Attachment 2.2.

2.3 Our Product and/or Services. We will provide you with Our Products and/or Services set forth in the attached Attachment 2.3. Our Services include, but are not limited to, implementation services, training services, maintenance and support services, and any Additional Services we may offer from time to time.

2.4 Additional Services. From time to time, we may provide you with Additional Services, for which we may charge you an additional fee. The additional fee, if any, for Additional Services will always be subject to your prior approval on a case-by-case basis.

### 3. GRANT OF RIGHTS

3.1 License. Subject to payment of all applicable Fees, we hereby grant to you the right to access, use and display the use the Products and/or Services, including the MOP Product and/or Services, during the Term solely for the Permitted Use, solely by your Permitted Users and solely in accordance with the terms and conditions set forth in the Agreement and this Schedule. Except for the limited right expressly granted by the foregoing, all rights, title and interests in and to the Products and/or Services, including the MOP Products and/or Services, are reserved to us or to any Third Party who licenses the Products and/or Services to us or to our Affiliates.

3.2 Permitted Use. You shall use the Products and/or Services, including the MOP Product and/or Services, only for the Permitted Use with respect to your business and operations as contemplated in the Franchise or Membership Agreement. You shall not load, store or otherwise use any software on or with the Products and/or Services, without our prior written consent, as the use of such software may adversely affect the operation and functionality of the Products and/or Services. If you violate this Section, the warranties set forth in the Agreement and/or this Schedule, as applicable, shall be void, and you shall be solely responsible for the cost of repair or replacement of the Products and/or Services, if any.

3.3 Your Responsibilities.

3.3.1 You shall: (a) be fully responsible for your Permitted Users' compliance with the Agreement and this Schedule, as applicable; (b) be responsible for the accuracy, quality and legality of Guest Information, to the extent collected by you or your employees, agents or representatives, and for the means by which you or your employees, agents or representatives acquire Guest Information; (c) prevent unauthorized access to or use of the Products and/or Services, and notify us promptly of any such unauthorized access or use; and (d) use the Products and/or Services only in accordance with the Agreement, this Schedule, and applicable laws and government regulations. You shall not: (i) make Products and/or Services available to anyone other than your Permitted Users; (ii) sell, resell, rent or lease the Products and/or Services; (iii) use the Products and/or Services to store or transmit infringing, libelous, or otherwise

unlawful or tortious material, or to store or transmit material in violation of the privacy rights of any Third Party; (iv) use the Products and/or Services to store or transmit software viruses, malicious code or other harmful files; (v) interfere with or disrupt the integrity or performance of the Products and/or Services or the data of any Third Party contained therein; or (vi) attempt to gain unauthorized access to the Products and/or Services or any related networks.

3.3.2 Your access and/or use of the MOP Products and/or Services may also be subject to an End User License Agreement (“EULA”). You agree to comply with, and be bound by, any such EULA at all times while accessing or otherwise using the MOP Products and/or Services. Any breach by you or your Permitted User of the EULA shall be considered a material breach of the Agreement and this Schedule.

3.3.3 Our Right to Obtain Access to Other Accounts and Services. Some of the Products and/or Services may require you to give us access to or require you to provide your login information and/or password information for accounts or Products and/or Services you may have with Third Party providers. When you provide this information to us or give us access to these Third Party accounts or Products and/or Services, you agree that all contracts and written agreements governing such access, login information and passwords provide the required contractual and legal rights to give us such access, login information and passwords. We agree that all such login information and passwords provided by you to us shall be considered your as Confidential Information and be treated as such by us in accordance with the Agreement and this Schedule.

#### 4. FEES AND PAYMENTS

4.1 Fees. You shall pay all fee amounts specified in Attachment 4.1 to this Schedule for the Products and/or Services set forth in the Schedule, including the MOP Products and/or Services (“Fees”). If your franchise or membership involves the transfer of an existing Chain Facility to us or changing affiliation of the Facility from one Wyndham Hotels & Resort, Inc. -owned franchise or member system to another, you will be charged a transfer fee (“Transfer Fee”). You will also pay for all Additional Services as applicable.

4.2 Invoicing and Payments. Invoicing from us to you for the Product and/or Services under this Schedule shall be in accordance with the Agreement. Payments from you to us for the Product and/or Services under this Schedule shall be in accordance with the Agreement.

#### 5. DISCLAIMER; NO WARRANTIES; TECHNICAL SPECIFICATIONS REQUIREMENTS.

5.1 Disclaimer. We are not responsible for the loss of any data or for any viruses or malware infecting your systems. It is your responsibility to ensure that the Facility's data is adequately backed up at all times and that you maintain current updated anti-virus/anti-malware software at all times. Assistance with restoring lost data or with addressing an infected system may be provided as Additional Services.

5.2 No Warranties. EXCEPT WHERE SUCH WARRANTIES OR REPRESENTATIONS ARE REQUIRED TO BE GIVEN OR MADE BY APPLICABLE LAW, (A) WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ABOUT THE PRODUCTS AND/OR SERVICES, MOP PRODUCTS AND/OR SERVICES, CRISP SERVICES OR ADDITIONAL SERVICES, THEIR MERCHANTABILITY, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, OR THEIR CONFORMANCE TO THE PROVISIONS AND SPECIFICATIONS OF ANY ORDER OR DOCUMENTATION; (B) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE VOLUME OF RESERVATIONS OR AMOUNT OF REVENUES THAT THE FACILITY MAY ATTAIN THROUGH THE USE OF THE CRISP SERVICES OR THAT YOUR RESERVATIONS OR REVENUE WILL INCREASE; AND (C) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY OF THE DATA THAT YOU MAINTAIN OR THE PREVENTION OF ANY VIRUSES OR MALWARE, AND WE ARE NOT RESPONSIBLE FOR THE LOSS OF ANY DATA OR THE INTRODUCTION OF ANY VIRUSES OR MALWARE, EVEN IF SUCH LOSS OR INTRODUCTION RESULTS FROM OUR PERFORMANCE OF SERVICES HEREUNDER. YOU ARE RESPONSIBLE FOR ENSURING THAT YOUR DATA IS ADEQUATELY BACKED UP AND THAT YOU MAINTAIN CURRENT UPDATED ANTI-VIRUS/ANTI- MALWARE SOFTWARE. YOU ACKNOWLEDGE AND AGREE THAT THE USE OF MESSAGING SERVICES FOR ELECTRONIC COMMUNICATION, SUCH AS SMS MESSAGING, EMAIL, TEXT MESSAGING OR OTHERWISE, AS A MEANS OF SENDING MESSAGES INVOLVES A REASONABLY LIKELY POSSIBILITY FROM TIME TO TIME OF DELAYED, UNDELIVERED, OR INCOMPLETE MESSAGES AND THAT THE PROCESS OF TRANSMITTING SUCH MESSAGES CAN BE UNRELIABLE AND INCLUDE MULTIPLE THIRD PARTIES THAT PARTICIPATE IN THE TRANSMISSION PROCESS, INCLUDING MOBILE NETWORK OPERATORS AND INTERMEDIARY TRANSMISSION COMPANIES, AS WELL AS OTHER HARDWARE AND SOFTWARE PROVIDERS. YOU FURTHER UNDERSTAND, ACKNOWLEDGE, AND AGREES THAT WE SHALL NOT BE RESPONSIBLE OR HAVE ANY LIABILITY FOR ANY SUCH DELAY, LACK OF DELIVERY, OR INCOMPLETENESS. YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION THAT YOU MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE PRODUCTS AND/OR SERVICES (INCLUDING THE MOP PRODUCTS AND/OR SERVICES) UNLESS DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

5.3 Technical Specification Requirements. To access and use the Product and/or Services, you must meet our technical specification requirements set forth on Attachment

**6. INDEMNIFICATION AND DAMAGE LIMITATION.**

6.1 Indemnification. In addition to the indemnification obligations set forth in the Agreement, you shall indemnify, defend and hold harmless us, our Affiliates, successors and assigns and each of the respective directors, officers and employees associated with them against all claims of employees, agents, guests, and all other persons and entities, arising out of the Products and/or Services (including the MOP Products and/or Services), including, but not limited to, your failure to comply with this Schedule (which, for purposes of clarity, shall be deemed to include the EULA). We shall not be liable to you or any other Third Party, person or entity for personal injury or property loss, including but not limited to, damage to the Facility. You are not obligated to indemnify us for our own negligence or our intentional misconduct.

**7. TERM AND TERMINATION.**

7.1 Term. This Schedule will be effective from the Schedule Effective Date and shall continue in full force and effect until termination of the Franchise or Membership Agreement, unless earlier terminated in accordance with the terms and conditions of this Schedule (“**Term**”).

7.2 Termination. This Schedule may only be terminated in accordance with the Agreement. Notwithstanding the foregoing, unless otherwise required as a brand standard, either you or we may terminate this Schedule or any of the Products and/or Services provided under this Schedule upon not less than thirty (30) days’ written notice to each other, unless a shorter period of time may otherwise be required by law, statute or regulation.

[Signature Page Follows]



**IN WITNESS WHEREOF**, the Parties hereto have executed, or caused to be executed by their duly authorized representatives, this Schedule as of the Schedule Effective Date.

\*By signing this Schedule, you represent that you are authorized to enter into this Schedule on behalf of the Franchisee or Member.

**We:** \_\_\_\_\_

**You:** \_\_\_\_\_

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

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

**Our address:**  
**22 Sylvan Way**  
**Parsippany, NJ 07054, USA**

**Your address:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**MOBILE OPERATING PLATFORM**

**ATTACHMENT 1.1**

**Definitions**

**“Additional Services”** means services performed pursuant to this Agreement that are in addition to CRISP Services and HTCS Services, and may include, without limitation, services relating to hardware installation, hardware upgrades, data recovery, configuration, and debugging.

**“Brand Information Source Portal”** means an online gateway for communications and important notifications between us and you by providing access to reports, guest feedback, marketing resources, brand standards, quality assurance, training resources and online bill payment. As of the date of this Agreement, the Brand Information Source Portal is currently called MyPortal.

**“Brand System”** means the business format franchise or member system and method of doing business defined under the Franchise or Membership Agreement.

**“Our Products and/or Services”** means the Products and/or Services that we may provide to the Facility as described above in Section 2.3 and in the attached Attachment 2.3.

**“PMS Vendor Management”** means coordination of vendors in support of troubleshooting issues related to the Services.

**“Products and/or Services”** means the MOP Products and/or Services and Our Products and/or Services, as described in Section 2, Attachment 2.2 and Attachment 2.3, respectively, as well as any Additional Services.

**“Reservation System”** means the applicable computerized central reservation system, or any replacement thereof, that we maintain (directly or by subcontracting with an affiliate or one or more third parties) and/or use, for the purpose of allowing the placing and receiving of lodging reservations, as well as such other services as we may develop and provide in the future, upon conditions including fees which we, in our sole discretion, may place in effect under the Franchise or Membership Agreement.

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**MOBILE OPERATING PLATFORM**

**ATTACHMENT 2.2  
MOP PRODUCTS AND/OR SERVICES**

<b>Product</b>	<b>Description of Product and/or Services</b>
<b>MOP</b>	<p>MOP is a cloud-based management software system that provides a workflow solution to manage recurring and real-time tasks at a Facility, including housekeeping, front desk and maintenance teams. MOP can be accessed via a browser of a computing device, e.g., a handheld device, laptop, or desktop. MOP currently includes, among other things, the following capabilities, features, and benefits:</p> <ul style="list-style-type: none"> <li>• Streamlines and optimizes commonly executed tasks;</li> <li>• Provides real-time updates in both OPM and SynXis property management system;</li> <li>• Utilizes wireless communications to send and receive updates;</li> <li>• Utilizes a web-based interface that is compatible with any web-enabled device; and</li> <li>• Is customizable to seamlessly integrates with a SynXis property management system.</li> </ul> <p>*Facility will be responsible for providing all computer devices and other software needed to run MOP.</p>
<b>ESD</b>	<p>The ESD is an optional, add-on feature (for an additional fee) that allows Facility staff members, when carrying a handheld device utilizing MOP, to have access to a panic button from whatever screen they are working on. Pushing the “panic button” activates the camera and microphone on a staff member’s device alerting other staff members to the last known location of the staff member who activated the “panic button” within the Facility.</p> <p>The ESD features are not an emergency response system and should not be relied upon in any emergency response plans or policy, but merely meant to supplement a Facility’s worker notification systems. The ESD feature does not contact 911 or any other</p>

	emergency response professionals, nor does it contact anyone outside of the MOP system, and cannot be used for such.
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**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**MOBILE OPERATING PLATFORM  
ATTACHMENT 2.3  
OUR PRODUCTS AND/OR SERVICES**

Our Products and/or Services include the following:

1. Providing installation and implementation Services for the Product and/or Services, as necessary.
2. Providing administrative and staff training and instructional services for the Products and/or Services, as necessary.
3. We will provide first level support for the Products and/or Services. In the event first level support fails to resolve any maintenance or support issues (e.g. Defects and DCRs) for the Products and/or Services, we will provide second level support by submitting a case with the appropriate Third Party provider of the Products and/or Services and provide follow-up.

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**MOBILE OPERATING PLATFORM**

**ATTACHMENT 4.1**

**FEEES**

<input type="checkbox"/> MOP	\$.60 per room per month
<input type="checkbox"/> Plus ESD	Additional \$35 per month

**SCHEDULE  
TO  
MASTER INFORMATION TECHNOLOGY AGREEMENT**

**MOBILE OPERATING PLATFORM  
ATTACHMENT 5.3**

**TECHNICAL SPECIFICATIONS REQUIREMENTS**

1. A property management system approved by us.
2. For MOP:
  - Any tablet or computer utilizing Chrome Browser (Version 60 and above)
3. For ESD:
  - Any Wi-Fi Compatible device (No service plan needed) utilizing Chrome Browser (Version 60 and above)
  - A generic e-mail to be used by each of your Permitted Users
  - A Wi-Fi system at the Facility

**EXHIBIT C-3**



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## HOSTED SERVICES AGREEMENT FOR HOSTED GATEWAY SERVICES

This Hosted Services Agreement for Hosted Gateway Services (this "Agreement") is entered into as of the Effective Date (indicated below) by and between the entity identified below as the Customer and Elavon, Inc. ("Elavon"). This Agreement governs the Customer's receipt and use of the services described below.

This Agreement consists of this signature page and the Terms and Conditions included in Schedule A to the Hosted Services Agreement for Hosted Gateway Services, which is accessible at the URL specified below and incorporated into this Agreement by reference. Customer shall also execute the Safe-T Suite Services Addendum at Appendix A to this Agreement in connection with the tokenization and encryption services being provided thereunder:

**Schedule A - Terms and Conditions, available at <https://www.elavon.com/~media/Files/wyndham.pdf>**

**Appendix A – Safe-T Suite Services Addendum (separately executed)**

### Hosted Gateway Services

Hosted Gateway Services: As further set forth in this Agreement, Elavon will provide Customer the services described in this paragraph (the "Hosted Gateway Services"). The Hosted Gateway Services will support Payment Device authorization data and facilitate the transmission of authorization and settlement information related to Transactions to and from various Origination Points (e.g., property management systems (PMS), point of sale systems (POS) and/or other Payment Device data capture integrations) used by Customer as mutually agreed to between Elavon and Customer. The Hosted Gateway Services shall submit Transactions received from an Origination Point in accordance with this Agreement to the Destination Point (or Payment Services Entity) designated by Customer for authorization, and will return to the Origination Point the authorization response message received from such Destination Point (or Payment Services Entity). A list of Payment Devices and Transaction types supported by the Hosted Gateway Services is available from Elavon upon request.

The Hosted Gateway Services include a browser-based user interface, the Service Web Site that provides Customer with the functionality for batch management, settlement balancing and research and reporting of Transactions. System reporting shall be available to all Authorized Users via secure password and log-on access. Customer acknowledges and agrees that the system reporting and application features and services available to Customer may vary depending on the Elavon Services used by Customer.

Term: Unless otherwise terminated as set forth in the Agreement, this Agreement will remain in effect for a period of five (5) years (the "Initial Term") from the Effective Date. Following the Initial Term, this Agreement will automatically renew for a period of successive one (1) year terms (each a "Renewal Term") and together with the Initial Term, the "Term") unless a party provides written notice to the other party of its intent not to renew this Agreement at least ninety (90) days prior to the expiration of the then current term.

Territory: For purposes of this Agreement, the "Territory" shall be defined as the United States and Canada.

THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, SCHEDULE A, IS THE COMPLETE AND ENTIRE UNDERSTANDING AND AGREEMENT OF THE PARTIES REGARDING THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR WRITTEN OR ORAL AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, ANY PURCHASE ORDER OR PROPOSAL.

[Signature on Next Page]

**IN WITNESS WHEREOF**, Customer has caused a duly authorized representative to execute this Agreement on behalf of Customer as of the date accepted and executed, as provided below.

\_\_\_\_\_,  
(the "CUSTOMER")(DBA Name)

Address:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date:  
("Effective Date")

**SAFE-T SUITE SERVICES ADDENDUM TO HOSTED SERVICES AGREEMENT**

THIS SAFE-T SUITE SERVICES ADDENDUM is entered into as of the Addendum Effective Date indicated below by and between Elavon, Inc. (“Elavon”) and the party identified as “Customer” below. This SAFE-T Suite Services Addendum is an addendum to and supplements that certain Hosted Services Agreement (the “Agreement”) entered into by and between Customer and Elavon and having an Effective Date of \_\_\_\_\_. This SAFE-T Suite Services Addendum is governed by and is part of the Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement (including Schedule A thereto).

This SAFE-T Suite Services Addendum consists of this signature page, the SAFE-T Suite Terms and Conditions and the relevant Exhibits specified below for each of the selected items, each of which is incorporated in full by this reference. The SAFE-T Suite Terms and Conditions and the Exhibits are available at <https://www.elavon.com/~media/Files/wyndham.pdf>.

**Fees:** The following Exhibit shall apply to Customer in connection with this SAFE-T Suite Services Addendum:

- Exhibit A (Fees)

**SAFE-T Suite Services:** Customer will be receiving each of the following Services:

- Tokenization Services
- Encryption Services

**Encryption Services and Simplify Software and Support:** Customer will be receiving each of the following items:

- Encryption Terminal Software Licensed from Elavon (*For this item, Exhibit C shall apply to Customer in connection with this SAFE-T Suite Services Addendum.*)
- Simplify License and Support (*For this item, Exhibit F shall apply to Customer in connection with this SAFE-T Suite Services Addendum.*)

**Terminal Lease or Purchase:** Select whether Customer elects to lease or purchase the terminals:

- Lease – Customer elects to lease the terminals (*if this box is checked, Exhibit D shall apply to Customer in connection with this SAFE-T Suite Services Addendum.*)
- Purchase – Customer elects to purchase the terminals (*if this box is checked, Exhibit E shall apply to Customer in connection with this SAFE-T Suite Services Addendum.*)

**Terminal Type and Bundle Selection:** Please select the applicable option:

- OPTION 1: Ingenico iPP320 EMV Terminal, Simplify License and Support, Voltage Encryption, Cabling, Power Supply, Commbbox, Deployment (when “Lease” is selected above, the Premium Advanced Exchange Program and Premium Repair Warranty Program are included in the bundle).
- OPTION 2: Ingenico ISC250 EMV Terminal, Simplify License and Support, Voltage Encryption, Cabling, Power Supply, Commbbox, Deployment (when “Lease” is selected above, the Premium Advanced Exchange Program and Premium Repair Warranty Program are included in the bundle).

**Number of Terminals:** Please select the number of terminals (minimum of 2 terminals is required; if the number of terminals is not specified, 2 terminals will be deemed to have been selected):

- 2 Terminals
- 3 Terminals
- 4 Terminals
- More than 4 Terminals (insert number of Terminals): \_\_\_\_\_

**Optional Additional Warranty Programs:** This applies for the “Purchase” election only (for the “Lease” election, these items are included in the bundle).

- Premium Advanced Exchange Program and Premium Repair Warranty Program

THIS SAFE-T SUITE SERVICES ADDENDUM, INCLUDING THE SAFE-T SUITE TERMS AND CONDITIONS AND EXHIBITS INCORPORATED HEREIN, IS THE COMPLETE AND ENTIRE UNDERSTANDING OF THE PARTIES REGARDING THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR WRITTEN OR ORAL AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, ANY PURCHASE ORDER OR PROPOSAL.

**IN WITNESS WHEREOF**, Customer has caused a duly authorized representative to execute this SAFE-T Suite Services Addendum on behalf of Customer as of the Addendum Effective Date, as provided below.

\_\_\_\_\_  
"CUSTOMER" (DBA Name)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Printed Name)

Title:

Date: ("Addendum Effective Date")

**EXHIBIT C-4**

## THREE-PARTY AGREEMENT

This Three-Party Agreement (the “Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_ (“Lender”); \_\_\_\_\_ (“Franchisee”); and \_\_\_\_\_ (“Franchisor” or “Company”). Lender, Franchisee, and Franchisor each are referred to as a “Party” and collectively are referred to as the “Parties.”

### RECITALS

**A. The Franchise Agreement.** Franchisee and Franchisor entered into that certain franchise, license or membership agreement, dated \_\_\_\_\_, 20\_\_ (the “Franchise Agreement”), related to a guest lodging facility located at \_\_\_\_\_, designated as Unit # \_\_\_\_\_ (the “Facility”). The Franchise Agreement and certain ancillary agreements related to the Franchise Agreement collectively are referred to as the “Primary Agreements.” Pursuant to the Primary Agreements, Franchisee operates the Facility as a \_\_\_\_\_® franchised location. Capitalized terms used and not defined in this Agreement shall have the meanings given to them in the Franchise Agreement.

**B. The Loan.** Lender has advanced or is about to advance funds to Franchisee and desires to be granted certain rights in respect of the Franchise Agreement as part of the collateral security for its loan. Franchisee has requested that Company consent to the conveyance of a security interest in the Franchise Agreement and grant certain other rights to Lender. Company will issue its consent to the collateral assignment of the Franchise Agreement and will grant such rights subject to the terms and conditions of this Agreement and the undertakings by Lender and Franchisee set forth below.

### AGREEMENT

**NOW, THEREFORE,** in consideration of the foregoing and the terms, conditions, representations, promises, covenants, and consideration set forth below, the sufficiency of which are hereby acknowledged as good, valuable, and adequate consideration, and intending to be legally bound, the Parties agree as follows:

1. **Status of Primary Agreements.**

1.1 Company and Franchisee represent that the Primary Agreements are in full force and effect and there are no uncured notices of default issued by Company or Franchisee under the Primary Agreements as of the date of this Agreement.

1.2 This Agreement is not intended to be, nor shall it be construed to create, a novation, accord and satisfaction, or compromise of the obligations of Franchisee under the Primary Agreements or any other obligation of Franchisee or any Guaranty to Company. Franchisee agrees that the terms of the Franchise Agreement shall be strictly adhered to on and after the date of this Agreement.

2. **Company Consent; No Representations or Warranties.**

2.1. Company consents to the collateral assignment of, and granting of a security interest in, the Franchise Agreement by Franchisee to Lender as partial security for Franchisee’s obligations to Lender, subject to the terms and conditions of this Agreement. Unless and until Lender notifies Company in writing that it has exercised its rights to the collateral as the secured party under the collateral assignment and that it has assumed the benefits and obligations of the Primary Agreements (and without limiting Lender’s obligations under Section 4 of this Agreement), Company may rely on Franchisee’s authority to act on its own behalf on all matters relating

to the Primary Agreements and the franchise relationship between Company and Franchisee.

2.2. Company has not provided, and in entering into this Agreement is not providing, any representation, endorsement, or recommendation to or about any other Party; about any representation that either Lender or Franchisee may have made to the other; or otherwise pertaining to the loan.

2.3. This Agreement shall not be deemed a waiver of or consent by Franchisor or Franchisee to any defaults under the Primary Agreements arising after the date of this Agreement. Franchisee agrees that defaults arising after the date hereof under the Franchise Agreement shall not be deemed to have been waived, released, or cured by virtue of the execution of this Agreement.

3. **Franchisee Defaults.** The following provisions apply to Franchisee's defaults under the Primary Agreements and events that give the Company the right to terminate the franchise relationship:

3.1. If Company issues a notice of default to Franchisee, Company will notify Lender of such default or event by sending a copy of the default notice to Lender as and when sent to Franchisee, or by separate written notice. **Company's failure to give notice to Lender shall not affect Company's rights under the Primary Agreements with regard to Franchisee, nor shall Company be liable to Lender for any damages resulting directly or indirectly from such failure.**

3.2. Lender may undertake to cure such default on behalf of Franchisee, but is not obligated to do so. Unless Company otherwise consents in writing, Lender's time to cure the default will be the same as Franchisee's time to cure, if any, under the terms of the Primary Agreements and the default notice.

4. **Lender Possession of Facility.** The following provisions apply when and if Lender forecloses on the Facility or otherwise acquires, directly or through an affiliate, title to or possession of the Facility.

4.1. Lender automatically, and without further action, shall succeed to and assume all of the rights and obligations of Franchisee under the Primary Agreements as of the date Lender or an affiliate takes actual or constructive possession of the Facility (the "Possession Date"). Lender agrees to and shall sign and deliver to Company an assignment and assumption agreement to confirm its assumption of the Primary Agreements, or to execute and deliver such other similar agreement as may be acceptable to Company, and to pay Company an administrative fee of \$7,500 promptly after the Possession Date. Failure to execute such document or documents and pay the required administrative fee within thirty (30) days following Possession Date will constitute a material breach of this Agreement and of the Franchise Agreement (entitling Franchisor to terminate the Franchise Agreement) and shall not relieve Lender of its obligations as "Franchisee" or "Member" under the Franchise Agreement, as applicable.

4.1.1. Regardless of the execution and delivery of the documents and payment referenced in Section 4.1 by Lender, as of the Possession Date the Primary Agreements (i) shall be deemed ratified and affirmed in their entirety by Lender; and (ii) shall become binding and enforceable upon Lender. As of the Possession Date, Lender will be the successor to Franchisee and will be responsible to remedy all defaults of the Franchisee under the Primary Agreements capable of being cured by Lender and to perform in the capacity of "Franchisee" or the "Member," as applicable, under the Primary Agreements in all respects.

4.2. Lender or its affiliate shall provide the Company with proof of insurance meeting the requirements under the Franchise Agreement and System Standards within five (5) business days after the Possession Date.

4.3. Company will furnish Lender with Franchisee's franchise accounts receivable aging statements on request. Lender will pay any undisputed amounts shown on such statements within fifteen (15)



days after receipt. The Parties will cooperate and work diligently to resolve any franchise account disputes.

4.4. Lender must cure any quality assurance default of Franchisee pending as of the Possession Date within sixty (60) days after the Possession Date or enter into a quality improvement agreement with the Company within thirty (30) days after the Possession Date to cure the defaults. In either case, Lender must restore, to Company's satisfaction, the quality assurance scores of the Facility to the entry level required for conversion Chain Facilities within one hundred twenty (120) days after the Possession Date. Company will furnish Lender with a copy of the latest quality assurance inspection report generated before the Possession Date at Lender's request.

4.5. Any subsequent Transfer of the Facility after the Possession Date by Lender or its affiliate shall be governed by the Transfer provisions of the Franchise Agreement.

5. **Receiver.** The following provisions apply if Lender requests, causes, or participates in the appointment of a receiver for the Facility or Franchisee (a "Receiver"). In such event, Company may exercise its right to terminate the franchise or the Primary Agreements, unless (i) Lender or Receiver remedies all defaults of Franchisee then pending under the Primary Agreements within thirty (30) days after the appointment of Receiver; (ii) Receiver operates the Facility in compliance with the Primary Agreements and pays all fees accruing under the Primary Agreements during the period of the receivership; (iii) Receiver signs and delivers to Company a temporary operator's agreement or such other similar agreement as may be acceptable to Company (the "TOA") within five (5) days after appointment of Receiver; and (iv) Receiver pays Franchisor a \$7,500 administrative fee upon execution of the TOA.

6. **Lender Action, Generally.** If Lender (i) commences any judicial or non-judicial action seeking the appointment of a Receiver, or (ii) commences any judicial or non-judicial foreclosure or similar action because of any default by Franchisee under the terms of its agreements with Lender (in any case, a "Lender Action"), then Lender shall notify the Company in writing of such Lender Action. Lender will send the Company copies of any related pleadings, notices, agreements, or other documents published, sent, or filed by the Lender in a Lender Action.

7. **Insolvency of Franchisee.** In the event any bankruptcy, insolvency, receivership, or similar case is filed by or against Franchisee, then, subject to any automatic stay that may be imposed, Franchisor may exercise its rights and remedies under the Primary Agreements whether or not Lender obtains relief to foreclose upon or take possession of all or any part of the Facility.

8. **Franchisee Consent.** Franchisee consents to the provisions of this Agreement. Franchisee also consents to the transmittal of any and all information between Lender and Company from time to time about Franchisee's account with Company, the status of the Primary Agreement, the franchise relationship, and the loan or loans from Lender.

9. **No Assignment by Lender; Replacement Comfort Lender.**

9.1. Lender shall assign this Agreement to any (i) affiliate of Lender that acquires the Lender's interest in the mortgage or other loan to which this Agreement relates; and (ii) entity that acquires the Lender (or is the survivor of any merger or similar reorganization of the Lender), provided, in each case, that Lender need not assign this Agreement if it retains the right and obligation to service the loan on behalf of its successor-in-interest. Lender shall notify Company of such an assignment within fifteen (15) days following the assignment.

9.2. Company will issue a replacement three-party agreement, substantially similar in form to the three-party agreement then-disclosed in Company's franchise disclosure document, if (a) Lender (i)

appoints a third-party servicing agent to service the loan; (ii) transfers the loan to a successor mortgagee that is a financial institution in the business of routinely financing real estate transactions, or (iii) designates a trustee of a trust established in connection with the securitization of the loan; provided, in each case, that such transferee is reasonably acceptable to Company; and (b) Company receives a written request to issue a replacement three-party agreement within 30 days of the date of such appointment or transfer. Company reserves the right to charge an administrative fee for such replacement three-party agreement. Any such replacement three-party agreement shall supersede and replace this Agreement.

10. **Termination of Agreement.** This Agreement terminates automatically when (i) Company or Franchisee terminates the license or the Primary Agreements in accordance with their terms after giving Lender any notice required under this Agreement; (ii) Lender no longer has a security interest in the Facility or Lender's loan is paid in full; (iii) the term of the license under the Franchise Agreements expires; (iv) Lender assumes the Primary Agreements under the terms of this Agreement; or (v) Lender assigns its interest in the loan to a third party other than as expressly permitted by Section 9.1 of this Agreement. There is no equitable right of redemption applicable to this Agreement.

11. **Miscellaneous.**

11.1. **Recitals.** The statements and representations set forth in the Recitals above are fully affirmed by each Party and incorporated herein by reference with the same force and effect as if restated at length at this point.

11.2. **Construction of the Agreement.**

11.2.1. The Parties agree that the terms and language of this Agreement were the result of negotiations among the Parties and, as a result, there shall be no presumption that any ambiguities in this Agreement shall be resolved against any Party. Any controversy over the construction of this Agreement shall be decided without regard to events of authorship or negotiation.

11.2.2. Except as expressly stated otherwise in this Agreement, the provisions of the Franchise Agreement governing the following terms shall apply equally to this Agreement: waiver of jury trial; partial invalidity; waivers, modifications, and approvals; choice of law; venue; dispute resolution; and force majeure. For purposes of this Agreement, references to "you" in such provisions shall include Lender.

11.3. **Entire Agreement.** This Agreement represents all of the terms and conditions of the agreement between the Parties with respect to the subject matter described. There have been no representations, warranties, promises, inducements, or considerations of any kind given with respect to the transactions described except as expressly memorialized in this Agreement.

11.4. **Headings.** Headings, titles and captions preceding the sections of this Agreement are provided for convenience of reference and shall not be used to explain or to restrict the meaning, purpose or effect of any provision to which they refer

11.5. **Binding Nature; Third Parties.** This Agreement is binding on the Parties and the respective permitted successors, heirs, executors, and assigns of each of them. This Agreement is solely for the benefit of the Parties and is not intended to, nor does it, create any third-party beneficiary.

11.6. **Counterparts.** This Agreement may be executed by one or more of the Parties to this Agreement on any number of separate counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement may be executed via facsimile or electronic signature.

11.7. Legal Fees. Except set forth herein, all Parties to this Agreement shall bear their own costs and attorneys' fees related to the negotiation and execution of this Agreement. Should a Party to this Agreement initiate an action arising out of this Agreement, including but not limited to enforcing its terms, it is agreed that the prevailing party in such actions shall be entitled to reimbursement of reasonable attorneys' fees and costs from the non-prevailing party.

11.8. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered (i) by facsimile transmission with confirmation original sent by first class mail, postage prepaid; (ii) by delivery service, with proof of delivery; or (iii) by first class, prepaid certified, or registered mail return receipt requested. Email addresses listed below are included for the convenience of the Parties only and not for the provision of notice under this Agreement.

To Company:

\_\_\_\_\_  
22 Sylvan Way  
Parsippany, New Jersey 07054  
Attention: Vice President, Contract Compliance  
Email Address: Suzanne.Fenimore@Wyndham.com

To Lender:

\_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

To Franchisee:

\_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Each of the undersigned, intending to be legally bound hereby, has executed this Agreement as of the date first written above.

COMPANY:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LENDER:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FRANCHISEE:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## REQUEST FOR THREE-PARTY AGREEMENT

TO: Vice President, Contracts Compliance

\_\_\_\_\_ (“Franchisor”)

RE: Current or Proposed Brand \_\_\_\_\_

Unit No.: \_\_\_\_\_ (“Facility”)

Located or to Be Located at \_\_\_\_\_

Current or Proposed Franchisee/Member Name: \_\_\_\_\_ (“Franchisee”)

DATE: \_\_\_\_\_, 20\_\_

The undersigned duly-authorized representative of Franchisee requests that Franchisor offer and issue a Three-Party Agreement (“TPA”) in favor of the “Lender” named below for the purpose of inducing Lender to loan funds (the “Loan”) to Franchisee secured by Franchisee’s interest in the Facility. Franchisee understands and agrees to the following conditions that apply to the offer and issuance of the TPA. If Franchisee is not currently a party to a franchise agreement with Franchisor pertaining to the Facility, **the offer and issuance of the TPA by Franchisor will be subject to the execution of such a franchise agreement** (the franchise agreement, including all amendments and ancillary agreements, the “Franchise Agreement”); the payment of an initial fee or affiliation fee, as applicable; and Franchisor’s receipt of such other documents Franchisor deems necessary to consummate the closing of the Franchise Agreement.

1. Franchisee agrees to and submits herewith a non-refundable fee in the amount of \$1,000 (“TPA Fee”), which must be paid to Franchisor prior to, and in partial consideration for, Franchisor’s review of the request for a TPA. The TPA Fee is non-refundable even if Franchisor and Lender do not enter into a TPA.

2. Franchisee authorizes Franchisor to release (and consents to the transmittal of) any and all information about Franchisee’s account with Company, the status of the Franchise Agreement and the franchise relationship, the results of any quality assurance inspections, and guest complaints to Lender and its counsel (but Franchisor is under no obligation to do so). Franchisor may provide a copy of the Franchise Agreement to Lender, but is not required to do so, and Franchisee solely is responsible for ensuring that Lender has a full and complete copy of the Franchise Agreement if Lender requests the same. Franchisee represents and warrants to Franchisor that Franchisee has disclosed to Lender the current status of the Franchise Agreement and Franchisee’s performance under the same and that Franchisee will advise Lender of any changes in that status through the time of closing of the Loan.

3. Franchisee requests that upon receipt of this request form executed by Franchisee and its guarantor or guarantors, Franchisor prepare and offer to Lender its standard form of TPA, which

will require Lender or an affiliate to assume the Franchise Agreement for the Facility and cure Franchisee's defaults if Lender or an affiliate takes possession of the Facility.

4. Franchisee acknowledges and confirms that Franchisor shall be indemnified and held harmless by Franchisee and each guarantor of Franchisee's obligations under the Franchise Agreement against any claim, liability, judgment, settlement, cause of action, and damage award in favor of Lender against Franchisor arising from or relating to Franchisee's breach of this request or the TPA; that such indemnification shall be subject to the indemnification provision of the Franchise Agreement; and that Franchisee's indemnification obligation represents partial consideration from Franchisee for Franchisor to review this request and to offer and issue the TPA. Franchisee acknowledges Franchisor is under no obligation to offer or issue the TPA, which inures to the primary benefit of Franchisee and its guarantor or guarantors.

5. Franchisee acknowledges that Franchisor has no obligation to modify its standard form of TPA and shall have no liability to Franchisee or any guarantor as result of the inability of Lender and Franchisor to reach agreement on the language of the TPA or the failure of Lender and Franchisor to execute the TPA for any other reason. Franchisee and each guarantor jointly and severally release any and all causes of action and claims against Franchisor arising from the furnishing to Lender information about the Facility, the Franchise Agreement, or Franchisee under this request or the TPA, or the denial of the Loan or refusal to close the Loan arising from the inability of the parties to agree upon and execute a mutually-acceptable TPA, or for any other reason.

6. Franchisee covenants to forward to Lender copies of all default notices from Franchisor sent to Franchisee that the Loan documents require that Lender receive.

7. If Franchisee requests certain changes to the Franchise Agreement in order for the loan to qualify for financing assistance from the U.S. Small Business Administration, Franchisor will effect such changes so long as the Agreement maintains the mutuality of obligations, rights, and powers between Franchisee and Franchisor as to any affected provision.

8. Franchisee acknowledges that the TPA shall not be effective and binding on Franchisor unless and until Franchisor receives at its home office in Parsippany, New Jersey an original TPA signed by authorized representatives of each of Franchisee and Lender. Franchisor will offer the TPA to Lender subject to such condition as to its effectiveness. Franchisee undertakes to confirm with Lender at the closing of the Loan, or at such other time as may be requested by Lender (if the Loan has closed prior to the execution of the TPA) that the TPA has been fully executed and sent to Franchisor. Franchisor may, in its sole discretion, withhold its signature and delivery of the TPA until it has received evidence satisfactory to Franchisor that the Loan has closed.

9. Upon its execution and return to Franchisor, this request shall be effective as an Addendum to the Franchise Agreement and subject to its terms and conditions, except that any limitation therein or in the Guaranty as to the extent of the liability of Franchisee or any guarantor shall not apply to the obligations set forth in Section 4 above.

Submitted by and behalf of Franchisee named below by the undersigned, who personally represents and warrants to Franchisor that Franchisee has duly authorized the signer to execute, deliver, and cause Franchisee to perform this request. This request may be signed and submitted in multiple counterparts and shall be binding on Franchisee and any guarantor if sent by fax to Franchisor.

**Franchisee:** \_\_\_\_\_  
(Name of Franchisee)

By: \_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Guarantors:** *(please add additional signature page if needed)*

\_\_\_\_\_  
(Signature)  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Printed Name: \_\_\_\_\_

**Lender:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

Telephone: \_\_\_\_\_

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**LENDER NOTIFICATION AGREEMENT**  
(SBA LOANS)

This Lender Notification Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_ (“Lender”); \_\_\_\_\_ (“Franchisee”); and \_\_\_\_\_ (“Franchisor” or “Company”). Lender, Franchisee, and Franchisor each are referred to as a “Party” and are collectively referred to as the “Parties.”

**RECITALS**

**A. The Franchise Agreement.** Franchisee and Franchisor entered into that certain franchise, license, or membership agreement dated \_\_\_\_\_, 20\_\_ (as amended prior hereto, the “Franchise Agreement”) related to a guest lodging facility located at \_\_\_\_\_ and designated as Unit # \_\_\_\_\_ (the “Facility”). Pursuant to the Franchise Agreement, Franchisee operates the Facility as a [Brand]® franchised location. Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Franchise Agreement.

**B. The Loan Agreements.** Lender has advanced or is about to advance funds to Franchisee with the assistance of the United States Small Business Administration (the “SBA”) [and a local Certified Development Company (“CDC”)]. The address and contact party for Lender [, CDC,] and SBA are listed on Exhibit A.

**NOW, THEREFORE,** in consideration of the foregoing and the terms, conditions, representations, promises, covenants and consideration set forth below, the sufficiency of which are hereby acknowledged as good, valuable, and adequate consideration, and intending to be legally bound, the Parties agree as follows:

1. **Status of Franchise Agreement.** Company and Franchisee represent that the Franchise Agreement is in full force and effect and there are no uncured notices of default issued by the Company under the Franchise Agreement as of the date of this Agreement.

2. **Notice of Franchisee Defaults.**

2.1 If Franchisee defaults or an event occurs that gives Company the right to terminate the Franchise Agreement, Company will give Lender [, CDC,] and SBA notice of such default or event by sending via first class mail a copy of the notice sent to Franchisee, as and when sent, or by separate written notice. **Company’s failure to give notice to Lender [, CDC,] or SBA shall not affect Company’s rights under the Franchise Agreement with regard to Franchisee, nor shall Company be liable to Lender [, CDC,] or SBA for any damages resulting directly or indirectly from such failure.** Lender [, CDC,] and SBA may, but are not obligated to, undertake to cure such default on behalf of Franchisee within the time permitted, if any, under the default notice and the Franchise Agreement.

2.2 Unless otherwise specifically provided herein, all notices, demands, or other communications given under this Agreement shall be in writing and shall be deemed to have been duly given as of the second business day after mailing by overnight mail or by United States

certified mail, return receipt requested, addressed as follows:

COMPANY:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LENDER:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FRANCHISEE:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

To SBA [and CDC]: As set forth on Exhibit A hereto.

3. **Franchisee Consent; Sharing of Information.** Franchisee consents to the provisions of this Agreement. Franchisee also consents to the transmittal of any and all information about Franchisee between or among Lender [, CDC] SBA, and Company from time to time. Company will provide to Lender [, CDC,] and/or SBA copies of its records relating to Franchisee's outstanding accounts receivable to Company and quality assurance inspections no more frequently than once every 90 days, upon receipt of a written request from Franchisee, Lender [, CDC,] or SBA.

4. **Transfer of Franchise Agreement.** While this Agreement is in effect, Company will not unreasonably withhold, delay, or condition its consent to any proposed Transfer (as defined in the Franchise Agreement) requiring Company's consent under Section 9 of the Franchise Agreement.

5. **Termination of Franchise Agreement Without Cause.** While this Agreement is in effect, neither Company nor Franchisee will exercise any right to terminate the Franchise Agreement without cause, including any rights added by special stipulation, without first obtaining the consent of SBA [and CDC].

6. **Termination of Agreement.** This Agreement automatically terminates on the earliest to occur of the following: a Termination occurs under the Franchise Agreement; (ii) the Loan is paid in full; and (iii) SBA [and CDC] no longer has [have] any interest in the Loan.

Lender Notification Agreement - SBA- 2

Each of the undersigned, intending to be legally bound hereby, has executed this Agreement as of the date first written above.

**COMPANY:**

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

**LENDER:**

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

**FRANCHISEE:**

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

**EXHIBIT A**

Address and contact for SBA:

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Address and contact for CDC:

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**REQUEST FOR LENDER NOTIFICATION AGREEMENT**  
**(SBA FINANCING)**

TO: Vice President, Contracts Compliance

\_\_\_\_\_ (“Franchisor”)

RE: Current or Proposed Brand \_\_\_\_\_

Unit No. \_\_\_\_\_ (the “Facility”)

Located or to Be Located at \_\_\_\_\_

Current or Proposed Franchisee Name: \_\_\_\_\_ (“Franchisee”)

DATE: \_\_\_\_\_, 20 \_\_

The undersigned duly-authorized representative of the Franchisee requests that Franchisor offer and issue a Lender Notification Agreement (“LNA”) in favor of the “Lender” named below, the Certified Development Company (“CDC”) (if any) identified below, and the United States Small Business Administration (“SBA”) for the purpose of inducing Lender to loan funds (the “Loan”) to Franchisee secured by Franchisee’s interest in the Facility, under SBA’s 7(a) or 504 loan programs. Lender, SBA, and, if applicable, CDC are referred to as the “Lender Group.” Franchisee understands and agrees to the following conditions that apply to the offer and issuance of the LNA:

1. Franchisee authorizes Franchisor to release (and consents to the transmittal of) any and all information about Franchisee’s account with Company, the status of the Franchise Agreement and the franchise relationship, the results of any quality assurance inspections, and guest complaints to Lender Group and its members’ counsel (but Franchisor is under no obligation to do so). Franchisor may provide a copy of the Franchise Agreement to Lender Group, but is not required to do so, and Franchisee solely is responsible for ensuring that Lender has a full and complete copy of the Franchise Agreement if Lender Group requests the same. Franchisee represents and warrants to Franchisor that Franchisee has disclosed to Lender Group the current status of the Franchise Agreement and Franchisee’s performance under the same, and that Franchisee will advise Lender Group of any changes in that status through the time of closing of the Loan.

2. Franchisee requests that upon receipt of this request form executed by Franchisee and its guarantor or guarantors, Franchisor prepare and offer to Lender Group its standard form of LNA, which will offer Lender the opportunity to cure Franchisee’s defaults under the Franchise Agreement.

3. Franchisee acknowledges and confirms that Franchisor shall be indemnified and held harmless by Franchisee and each guarantor of Franchisee’s obligations under the Franchise

Agreement against any claim, liability, judgment, settlement, cause of action, and damage award in favor of any member of Lender Group against Franchisor arising from or relating to Franchisee's breach of this request or the LNA; that such indemnification shall be subject to the indemnification provision of the Franchise Agreement; and that Franchisee's indemnification obligation represents partial consideration from Franchisee to Franchisor to review this request and to offer and issue the LNA. Franchisee acknowledges Franchisor is under no obligation to offer or issue the LNA, which inures to the primary benefit of Franchisee and its guarantor or guarantors.

4. Franchisee acknowledges that Franchisor has no obligation to modify its standard form of LNA and shall have no liability to Franchisee or any guarantor as result of the inability of Lender Group and Franchisor to reach agreement on the language of the LNA or the failure of Lender Group and Franchisor to execute the LNA for any other reason. Franchisee and each guarantor jointly and severally release any and all causes of action and claims against Franchisor arising from the furnishing to Lender Group information about the Facility, the Franchise Agreement or Franchisee under this request or the LNA, or the denial of the Loan or refusal to close the Loan arising from the inability of the parties to agree upon and execute a mutually-acceptable LNA, or for any other reason.

5. Franchisee covenants to forward to any member or members of Lender Group copies of all default notices from Franchisor sent to Franchisee that the Loan documents require that such member of Lender Group receive.

6. Franchisee acknowledges that the LNA shall not be effective and binding on Franchisor unless and until Franchisor receives at its home office in Parsippany, New Jersey an original LNA signed by authorized representatives of the Franchisee and of each member of Lender Group. Franchisor will offer the LNA to Lender Group subject to such condition as to effectiveness. Franchisee undertakes to confirm with Lender at the closing of the Loan, or at such other time as may be requested by Lender (if the Loan has closed prior to the execution of the LNA) that the LNA has been fully executed and sent to Franchisor. Franchisor may, in its sole discretion, withhold its signature and delivery of the LNA until it has received evidence satisfactory to Franchisor that the Loan has closed.

7. Upon its execution and return to Franchisor, this request shall be effective as an Addendum to the Franchise Agreement and subject to its terms and conditions, except that any limitation therein or in the Guaranty as to the extent of the liability of Franchisee or any guarantor shall not apply to the obligations set forth in Section 3 above.

[Remainder of Page Intentionally Left Blank]

Submitted by and behalf of Franchisee named below by the undersigned, who personally represents and warrants to Franchisor that Franchisee has duly authorized the signer to execute, deliver, and cause Franchisee to perform this request. This request may be signed and submitted in multiple counterparts and shall be binding on Franchisee and any guarantor if sent by fax to Franchisor.

**Franchisee:** \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Guarantors:** *(please add additional signature page if needed)*

\_\_\_\_\_  
(Signature)  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Printed Name: \_\_\_\_\_

**Lender:**  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**CDC:**  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**[Continues on Following Page]**



**SBA Regional Office:** \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

Telephone: \_\_\_\_\_

**EXHIBIT C-5**

Location: \_\_\_\_\_

Unit No: \_\_\_\_\_

## **TERMINATION AND RELEASE AGREEMENT**

This TERMINATION AND RELEASE AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, (“Effective Date”) between or among \_\_\_\_\_, a \_\_\_\_\_ (“we” or “us” ), \_\_\_\_\_, a \_\_\_\_\_ (“you” and “your”), and \_\_\_\_\_, and \_\_\_\_\_ (jointly, the “Guarantors”).

### **RECITALS**

WHEREAS, this Agreement relates to that certain franchise agreement, dated \_\_\_\_\_, between us and you, and all ancillary documents and addenda thereto (collectively, the “Franchise Agreement”) granting you a \_\_\_\_\_® System License (the “License”) to operate a \_\_\_-room \_\_\_\_\_ guest lodging facility located at \_\_\_\_\_ and designated as Unit No. \_\_\_\_\_ (the “Facility”). The Franchise Agreement is incorporated by reference into this Agreement; and

WHEREAS, you have requested the early termination of the Franchise Agreement for the Facility and we acknowledge your request. The parties desire to terminate the License and the Franchise Agreement according to this Agreement.

### **AGREEMENT**

NOW, THEREFORE, it is hereby stipulated and agreed by and between the undersigned parties upon the foregoing premises and in consideration of the promises, mutual covenants, and agreements set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, as follows:

1. **Termination Date.** The Franchise Agreement shall terminate on \_\_\_\_\_, 20\_\_ (the “Termination Date”). You acknowledge that on the Termination Date your License to operate the Facility under the \_\_\_\_\_ System and Marks will terminate, and you no longer will be authorized to display, use, or exploit the \_\_\_\_\_ Marks. Until the Termination Date, you must continue to perform all your obligations under the Franchise Agreement, including payment of all Recurring Fees, commissions, charges and other fees, and maintenance of quality and operational standards as required by the System. Notwithstanding this Agreement, you may still be subject to default and/or termination for any breaches of the Franchise Agreement occurring prior to the Termination Date. On and after the Termination Date, we will have no further obligation to provide any services to you under the Franchise Agreement or any other agreement. We have no obligation to provide reservation services for any guest stay that includes any night on or after the Termination Date. Access to our brand portal on the Internet will be terminated as of the Termination Date.

2. Reports; Payment of Fees and Liquidated Damages.

(a) You will submit to us all monthly franchise reports required under the Franchise Agreement for Gross Room Revenues accruing through the Termination Date no later than ten days after the Termination Date.

(b) (i) You and the Guarantors will pay to us all outstanding Recurring Fees, commissions, charges, and other fees accruing under the Franchise Agreement through the Effective Date. We estimate that the accrued unpaid Recurring Fees and other amounts due under the Franchise Agreement are \$ \_\_\_\_\_ as of \_\_\_\_\_, 20\_\_\_. You and the Guarantors will pay us this amount via wire transfer or electronic funds transfer when you sign and return this Agreement to us. (ii) You and the Guarantors will pay us any additional Recurring Fees, commissions, charges, and other fees accruing under the Franchise Agreement through the Termination Date no later than ten days after the Termination Date. (iii) You and the Guarantors will pay any invoices we send to you after the Termination Date for additional amounts due under the Franchise Agreement and any other agreement with us within ten days after receipt.

(c) You and the Guarantors acknowledge the obligation to pay Liquidated Damages to us in the amount of \$ \_\_\_\_\_, as a result of the early termination of the Franchise Agreement. You and the Guarantors will execute and deliver to us the promissory note (the "Note") in the amount of \$ \_\_\_\_\_, attached to this Agreement, contemporaneously with the execution and delivery of this Agreement. The Note will be due and payable pursuant to its terms. **OR**

(c) You and the Guarantors acknowledge the obligation to pay Liquidated Damages to us in the amount of \$ \_\_\_\_\_, as a result of the early termination of the Franchise Agreement. You and the Guarantors will pay this amount to us via wire or electronic funds transfer when you sign and return this Agreement to us, but no later than the Termination Date.

3. De-identification.

(a) You acknowledge that the Franchise Agreement requires you to perform certain post-termination obligations. In addition to any such obligations specified in the Franchise Agreement, no later than ten days after the Termination Date, you will (i) remove all signage and other items bearing the \_\_\_\_\_ trade name, trademarks and service marks ("Marks"); (ii) perform all post-termination obligations specified in the System Standards Manual; (iii) change all signs, billboards, and listings in telephone directories, travel guides, hotel indices and similar materials in which the Facility is identified as a \_\_\_\_\_ brand facility; (iv) remove the Marks from and otherwise change all e-mail addresses and social media identities that include the Marks and words that are deceptively similar to the Marks; and (v) remove the Marks from any advertising or promotional activities on, around or directed towards the Facility, including any web sites, web pages, metatags or search engines. You will cooperate fully with us regarding any post-termination inspections by us to verify that the Facility has been properly de-identified.

(b) You acknowledge that any unauthorized use of the Marks, or any marks confusingly similar to the Marks, shall cause irreparable harm for which there is no adequate

remedy at law, entitling us to injunctive and other relief. Such relief shall include, but is not limited to, entering the Facility without prior notice to remove software for accessing the Reservation System, all copies of the System Standards manuals, and all of our other personal property, and painting over or removing and purchasing for \$10.00, all or part of any interior or exterior Mark-bearing signage (or signage face plates), including billboards, whether or not located at the Facility that you have not removed or obliterated. You shall promptly pay or reimburse us for the cost of removing such items, net of the \$10.00 purchase price.

(c) Effective on the Termination Date, all software licenses granted to you by us will terminate. You will then cease to use any property management system software we provided to you, and we and our affiliates will have no further obligation to provide any hardware or software maintenance services to you. You have no further right to obtain any information about guests of the Facility that we maintain in our enterprise data warehouse.

4. Guaranty. Each undersigned Guarantor affirms that his, her, or its obligations under the Guaranty to guarantee your payment and performance under the Franchise Agreement shall extend to your obligations to pay and perform under this Agreement.

5. Audit Rights. Notwithstanding the Termination Date, we retain the right to perform audits of the Facility's books and records for a period of two years after the Termination Date. You acknowledge that your audit and record keeping obligations under the Franchise Agreement survive until the expiration of the two-year period. You agree promptly to pay or contest in good faith any audit assessment we issue if we determine that any additional Recurring Fees or other amounts may be due to us as a result of the audit. Your obligations under this Section terminate at the end of the two-year audit period.

6. Representations and Warranties. You and each Guarantor represent and warrant to us that: (a) you have reported the Gross Room Revenues of the Facility accurately and correctly calculated the fees due during the Term of the Franchise Agreement; (b) after the Termination Date, neither you nor any Guarantor will retain possession of any Confidential Materials we provided to you; (c) you, each Guarantor, and your respective agents have not disclosed or made unauthorized copies of any Confidential Materials in violation of the Franchise Agreement; (d) no consent of any third party is required to enter into or perform this Agreement; (e) neither you nor any Guarantor has filed a lawsuit or arbitration demand against us, our direct and indirect parent companies or affiliates; (f) neither you nor any Guarantor is the subject of any pending bankruptcy, receivership, composition, assignment, or similar proceeding; (g) you have obtained the necessary authorization to execute and perform this Agreement; and (h) the persons negotiating and executing this Agreement on your behalf have been duly authorized by your owners and your governance board to do so.

7. General Release.

(a) By entering into this Agreement, you and each Guarantor, for each of yourselves and your respective members, partners, officers, directors, employees, agents, shareholders, representatives, parent companies, subsidiaries, and affiliates, and their successors, heirs, and assigns, hereby release and waive any claims and causes of action against us, our officers, directors,

employees, agents, shareholders, representatives, parent companies, subsidiaries, and affiliates, and the successors and assigns of each of them, arising out of the offer, sale, execution, delivery, performance, administration, and termination of the License, the Franchise Agreement and the related agreements regarding the Facility. This release applies only to those claims that were or could have been asserted relating to the Facility and the relationship between you and us and does not apply to any claims that may exist or which may arise in the future regarding any other guest lodging facility.

(b) Subject to Section 8 below, and your and each Guarantor's complete performance of the obligations under this Agreement, the Franchise Agreement and any other Facility-related agreements with us or our affiliates, we, for ourself and our successors and assigns, hereby release and waive any claims and causes of action against you and each Guarantor arising out of the offer, sale, execution, delivery, performance, and termination of the License, the Franchise Agreement and the related agreements regarding the Facility. This release applies only to those claims that were or could have been asserted relating to the Facility and the relationship between you and us and does not apply to any claims that may exist or which may arise in the future regarding any other guest lodging facility. If, at any time, the monies paid to us in consideration for our release are set aside as a preference under 11 U.S.C. §§ 547 and/or 544, or are otherwise ordered to be disgorged from us in connection with legal proceedings that involve you and/or any Guarantor, our release provided herein shall be deemed null and void.

(c) [For Releases subject to the Washington Franchise Investment Protection Act, add: This Release does not apply to claims arising under the Washington Franchise Investment Protection Act, RCW 19.100, and any rule or order adopted thereunder, except if this Release is entered into in connection with a negotiated settlement of a bona fide dispute in which the person giving the release or waiver is represented by independent legal counsel.]

8. Survival. Despite the mutual releases provided in Section 7, the parties agree that the following survive after the Termination Date: (a) the indemnification obligations specified in the Franchise Agreement continue in full force for any transactions, occurrences, and events occurring during the Term specified in the Franchise Agreement and for any transactions, occurrences, and events occurring during the period the Facility was operated by you or on your behalf using the Marks; (b) the benefits of all insurance policies you obtained for the Facility accrue to us for transactions, occurrences and events occurring during the period in which the Franchise Agreement was in effect or for any transactions, occurrences and events occurring during the period the Facility was operated using the Marks; (c) the confidentiality obligations specified in this Agreement and the Franchise Agreement; and (d) the audit and record keeping provisions in the Franchise Agreement and Section 5 of this Agreement, for the time periods such provisions specify. The Franchise Agreement shall remain in effect solely as to such provisions until the expiration of the applicable statutes of limitation as to claims and actions that could be asserted by third parties.

9. Confidentiality. Each party hereto and its respective counsel agree that they will not disclose any of the terms of this Agreement or any amounts to be paid to us pursuant to this Agreement. The parties and their respective counsel, however, are not precluded from disclosing the terms of the Agreement to their attorneys, accountants, tax preparers, paid financial advisors

and/or any governmental, regulatory or judicial authority that might compel the disclosure of this Agreement, or otherwise to the extent required by law or demanded by any governmental or regulatory entity. Notwithstanding the foregoing, if any of the parties is served with a subpoena or other governmental or judicial process seeking to compel the disclosure of this Agreement, it shall be the responsibility of the party that receives the subpoena or other governmental or judicial process to notify all other parties to this Agreement within 72 hours of receipt, thus affording the other parties to this Agreement an opportunity to move to quash the subpoena and/or oppose the entry of any order seeking to compel the disclosure of this Agreement. Additionally, in the event it becomes necessary to file this Agreement with a Court in any future enforcement action between or among the parties, the parties hereby agree to apply jointly for leave to file this Agreement under seal.

10. Consultation with Counsel. You and each Guarantor acknowledge that each of you have consulted with, or had the opportunity to consult with, legal counsel of your and their own selection about this Agreement. You and each Guarantor each understand how this Agreement will affect your legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

11. Attorneys' Fees. The parties agree that the non-prevailing party will pay all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party to enforce this Agreement or collect amounts owed under this Agreement.

12. Consent to Jurisdiction. This Agreement will be governed by and interpreted under New Jersey law. The parties hereby consent and waive all objections to the non-exclusive personal jurisdiction of, and venue in, the United States District Court of New Jersey and the state courts situated in Morris County, New Jersey for the purposes of all cases and controversies involving this Agreement and its enforcement.

13. Capitalized Terms. Capitalized terms not otherwise defined in this Agreement shall have the meaning assigned to that term in the Franchise Agreement, including its addenda and amendments.

14. Execution in Counterparts. To facilitate execution of this Agreement by geographically separated parties, this Agreement and all other agreements and documents to be executed in connection herewith may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures on behalf of each party appear on each counterpart; but it shall be sufficient that the signature on behalf of each party appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures on behalf of all the parties hereto. All facsimile executions shall be treated as originals for all purposes.

15. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties respecting the settlement relating to the Facility. Notwithstanding the foregoing, any of your or the Guarantor's post-termination obligations set forth in the Franchise Agreement and not modified by this Agreement shall remain as stated in the Franchise

Agreement. This Agreement may not be changed or modified, except by a writing signed by the parties hereto.

(Signatures follow on next page)



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated above.

**FRANCHISOR:**

\_\_\_\_\_

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

**FRANCHISEE:**

\_\_\_\_\_

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

**GUARANTOR OR GUARANTORS:**

\_\_\_\_\_  
**Name:** \_\_\_\_\_

\_\_\_\_\_  
**Name:** \_\_\_\_\_

*OR (if Guarantor is an entity)*

\_\_\_\_\_

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

**EXHIBIT C-6**

**Location:** \_\_\_\_\_  
**Unit No.:** \_\_\_\_\_

## Signature Reservation Services Agreement

This SIGNATURE RESERVATION SERVICES AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 20\_\_ (“Effective Date”) by and between Wyndham Hotel Group, LLC, with offices located at 22 Sylvan Way, Parsippany, New Jersey 07054 (“we”, “us” or “our”) and \_\_\_\_\_ with principal offices located at \_\_\_\_\_ (“you” or “your”) regarding the \_\_\_\_\_<sup>®</sup> guest lodging facility located at \_\_\_\_\_ (“Facility”).

**Recitals.** We, through a third-party vendor and as part of our Signature Reservation Service, have developed a call transfer and omni-channel service (the “Service”) under which prospective guests inquiring about reservations at the Facility or other hotels operated under a Wyndham Hotels & Resorts brand enrolled in the Service (“SRS Facilities”) may have their calls or digital chat inquiries handled by our reservation agents or digital agents (“Agents”) who will book reservations and respond to reservation-related inquiries on your behalf. The Service is described in more detail in Schedule A to this Agreement.

You agree to participate, in the Service at all times during the term of this Agreement in accordance with the following:

**1. Fees.** Beginning on the “Billing Commencement Date”, we will charge you a “SRS Fee” as reflected on Schedule A. The Billing Commencement Date is the date that our Agents book the first room reservation at your Facility. We will invoice you monthly for the SRS Fees which shall be payable on the same terms as Recurring Fees under your franchise or membership agreement with us or our affiliate. We may, in our discretion, increase the SRS Fee to cover our costs provided such fees are increased for all similarly situated SRS Facilities. We shall notify you no less than thirty (30) days prior to any such increase taking effect.

**2. Term.** This Agreement will begin when we countersign this Agreement after you sign it and will continue until the expiration or termination of your franchise or membership agreement with us or our affiliate. In addition, we shall have the right to terminate this Agreement at any time without cause upon thirty (30) days’ written notice.

**3. Change to Services.** We reserve the right to amend, cancel, or replace the Service as business circumstances warrant, in our sole discretion, upon 30 (thirty) days’ written notice. In the event that we cancel the Service in which you are then currently participating, then we may, at our option, replace the Service with an alternative Service or require you to participate in another Service then currently offered under this Agreement.

**4. Dispute Resolution.** Any disputes arising under this Agreement will be resolved in accordance with the dispute resolution procedures under your franchise or membership

agreement with us or our affiliate, including but not limited to, the provisions concerning waiver of jury trial, consent to venue and personal jurisdiction, and choice of law.

**5. No Warranty.** WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE VOLUME OF RESERVATIONS OR AMOUNT OF REVENUES THAT THE FACILITY WILL ATTAIN AS A RESULT OF THE SERVICE OR THAT YOUR RESERVATIONS OR REVENUE WILL INCREASE. WE MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE SERVICE. YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION THAT YOU MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE SERVICES, UNLESS DUE TO OUR WILFULL MISCONDUCT.

**6. Limitation on Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST REVENUE (COLLECTIVELY REFERRED TO AS “INDIRECT DAMAGES”) ARISING FROM, RELATING TO, OR IN CONNECTION WITH THE SERVICE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES. IN ADDITION, EACH PARTY’S DIRECT DAMAGES (AND ANY INDIRECT DAMAGES TO THE EXTENT THAT A COURT OF COMPETENT JURISDICTION OR OTHER AUTHORITY DOES NOT RECOGNIZE OR ENFORCE THE ABOVE WAIVER) SHALL BE LIMITED TO THE TOTAL FEES PAID BY YOU TO US DURING THE THEN CURRENT TERM.

**7. Force Majeure.** In no event shall either party be liable for any failure or delay in performance (except for the obligation to remit fees) due to causes or circumstances beyond its reasonable control and without its fault or negligence (including, but not limited to, Acts of God, acts of the public enemy, war or terrorism, acts of the United States of America, or any state, territory or political division of the United States of America, or of the District of Columbia, fires, floods, or other natural disaster, strikes or any other labor disputes, communication line failures, and/or freight embargoes).

**8. Miscellaneous.** The parties agree that this Agreement contains the entire agreement between the parties relating to the Service, superseding and terminating any prior representation, warranty or agreement, whether oral or in writing. Nothing in this or any other related agreement, however, is intended to disclaim any representations we made in the Franchise Disclosure Document that we or our affiliate furnished to you. No modification, amendment or waiver of this Agreement will be binding upon either party unless the same has been made in writing and executed by both parties. You agree that we may assign this Agreement or any of our rights and obligations hereunder without your consent. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. Notwithstanding the above, you may not assign this Agreement or any of your rights or

obligations hereunder without our express written consent. All facsimile executions shall be treated as originals for all purposes.

**ONLY AN AUTHORIZED REPRESENTATIVE OF THE FACILITY SHOULD SIGN THIS AGREEMENT. BY SIGNING THIS FORM,** you represent that you agree to the above terms and that you are authorized to bind the Facility.

WE:  
Wyndham Hotel Group, LLC

YOU:  
\_\_\_\_\_

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

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

Execution Date: \_\_\_\_\_

**Schedule A**  
**Signature Reservation Service**

**1. Our Responsibilities.** We will:

(a) Hire and train Agents at our Central Reservation Center or utilize omni-channel digital agents to handle reservation-related calls or digital chat inquiries on behalf of your Facility, including responding to questions about your Facility and attempting to book reservations at your Facility. The goal is for the transfer to our Central Reservation Center or to digital agents to appear seamless to the customer and that our Agents appear as an extension of your hotel staff. Our Agents may attempt to make reservations for your Facility regardless of whether a customer's initial inquiry relates to your Facility or another SRS Facility.

(b) Through our third-party vendor, provide a new, dedicated, SMS-enabled telephone number and/or digital chat links for your Facility to appear on search engines and other digital platforms which will connect to an Interactive Voice Response or digital agent. Callers to this telephone number will be able to select a number for reservation inquiries. All reservation inquiry calls and messages will be directed to our Central Reservation Center. We will own the telephone number and chat links and you must cease all use of them when your participation in the Service ends. You may not use the telephone number or chat links in any advertising or marketing materials or on any websites without our prior written approval.

**2. Your Responsibilities.** You will be responsible for working with our team to verify that your Facility information, including Facility description, address, amenities, inventory, and all other content is updated and accurate in our Central Reservation System at all times.

**3. Fees.** The Call Transfer Fee is 3.5% of the Gross Room Revenue ("GRR") for each reservation booked by us.

**EXHIBIT C-7**



Location: \_\_\_\_\_  
Unit No: \_\_\_\_\_

## **HOTEL REVENUE MANAGEMENT AGREEMENT**

This HOTEL REVENUE MANAGEMENT AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 20\_\_ (“Commencement Date”) by and between Wyndham Hotel Group, LLC, with offices located at 22 Sylvan Way, Parsippany, New Jersey 07054 (“we”, “our”, or “us”) and \_\_\_\_\_ with principal offices located at \_\_\_\_\_ (“you”) regarding the \_\_\_\_\_<sup>®</sup> guest lodging facility located at \_\_\_\_\_ (“Facility”).

**Recitals.** We have developed a supplementary revenue management consulting service as described in Exhibit A, (the “Service”) in addition to the primary services we provide to franchisees or members under their franchise or membership agreements. By signing below, you acknowledge your participation in Revenue Management Services at the rates set forth and in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, you and we agree as follows:

- 1. Provision of Services.** We will provide the Service in accordance with the Revenue Management Policies and Best Practices (“RM Policies”) set forth in System Standards. You will establish the reference room rate for the Facility upon which all other rates are based (“Rate of the Day”) and retain ultimate control over all revenue management decisions. Subject to the foregoing, by entering into this Agreement, you explicitly (i) agree to abide by the RM Policies, (ii) authorize us to access your room rates, inventory and other Facility information in our Reservation System, your Facility’s property management system, your Facility’s food and beverage system (if applicable), and any extranet you have with an on-line travel agency or similar distribution company, and (iii) authorize us to make adjustments to the Facility’s rates, inventory and restrictions in order to comply with the RM Policies without advance notice to you. We will not, however, change the Rate of the Day without authorization from you. In addition, you may modify or reverse any change we make by notifying us, providing it is consistent with the RM Policies.
- 2. Facility Representative.** You shall designate at the end of this Agreement a primary Facility representative who shall have the authority to make revenue management decisions for the Facility and a secondary representative who shall exercise such authority in the absence of the primary representative. We may communicate with these representatives by telephone, e-mail or in another manner, and may rely on any communication which we believe, in good faith, is from them. You may change your designation at any time by notifying us in accordance with Section 11(E) below. Upon our request, the Facility representative shall provide, feedback concerning the performance, operation and general acceptability of the Service, as well as recommendations for improvement.
- 3. Fee.** You shall pay to us the Fees set forth in Exhibit A, which shall be paid within fifteen (15) days of the receipt of each invoice. We may increase the Fees at any time by providing you at least thirty (30) days prior written notice, provided that in no event shall the increase in Fees over a one-year period exceed five percent (5%) of the Fees in effect at the beginning of the period.

4. **Term.** The “Term” of this Agreement shall begin on the Commencement Date and shall continue until (i) the expiration or termination of the Franchise or Membership Agreement when this Agreement will automatically terminate, (ii) you have met the criteria we establish in System Standards to satisfy the requirement to participate in Service through alternative means, or (iii) if we terminate this Agreement in accordance with Section 5 below.
5. **Suspension or Termination.** If you breach this Agreement (including but not limited to failing to abide by the RM Policies) and fail to correct such breach within thirty (30) days (or ten (10) days in the event of any failure to pay amounts owed under this Agreement when due) of being notified thereof in writing, we may terminate or suspend performance under this Agreement, effective upon written notice to you. In addition, we may terminate this Agreement without cause by providing at least sixty (60) days prior written notice of termination to you. Conclusion of service will be at the end of the second full calendar month following the month of receipt of any termination notice.
6. **Dispute Resolution.** Any disputes occurring under this Agreement shall be resolved in accordance with the dispute resolution procedures under the Franchise or Membership Agreement, including but not limited to, the provisions concerning waiver of jury trial, consent to venue and personal jurisdiction, and choice of law.
7. **Confidentiality.** Any know-how, algorithms, formulae, data, recommendations, documentation, software, or other materials or information that we furnish to you in connection with the Services shall be deemed “Confidential Information” as defined in the Franchise or Membership Agreement and shall be subject to all prohibitions on disclosure, copying or use of the Confidential Information under the Franchise or Membership Agreement. We shall have all rights under the Franchise or Membership Agreement if you breach these confidentiality obligations.
8. **No Warranty.** **WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE VOLUME OF RESERVATIONS OR AMOUNT OF REVENUES THAT THE FACILITY WILL ATTAIN AS A RESULT OF THE SERVICE OR THAT YOUR RESERVATIONS OR REVENUE WILL INCREASE. WE MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE SERVICE. YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION THAT YOU MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE SERVICES, UNLESS DUE TO OUR WILFULL MISCONDUCT.**
9. **Limitation on Liability.** **NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST REVENUE (COLLECTIVELY REFERRED TO AS “INDIRECT DAMAGES”) ARISING FROM, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL EXHIBITS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES. IN ADDITION, EACH PARTY’S DIRECT DAMAGES (AND ANY INDIRECT DAMAGES TO THE EXTENT THAT A COURT OF COMPETENT JURISDICTION OR OTHER AUTHORITY DOES NOT RECOGNIZE OR ENFORCE THE WAIVER FROM LIABILITY SET FORTH IN THE FIRST SENTENCE OF THIS SECTION) SHALL BE LIMITED TO THE TOTAL FEES PAID BY YOU TO US**

**DURING THE THEN CURRENT TERM OF THE AGREEMENT. THE ABOVE LIMITATIONS ON LIABILITY APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE. NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY FOR THE CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES THAT MAY BE THE RESULT OF ADMINISTRATIVE ERRORS PROVIDED THAT NO MALICE OR NEGLIGENCE WAS INTENDED.**

**10. Force Majeure.** In no event shall either party be liable for any failure or delay in performance (except for the obligation to remit fees) due to causes or circumstances beyond its reasonable control and without its fault or negligence (including, but not limited to, Acts of God, acts of the public enemy, war or terrorism, acts of the United States of America, or any state, territory or political division of the United States of America, or of the District of Columbia, fires, floods, or other natural disaster, strikes or any other labor disputes, communication line failures, and/or freight embargoes). The party claiming such a failure or delay must promptly notify the other party of such failure or delay. In the event that any such failure or delay continues for more than thirty (30) days, then either party upon notice to the other may terminate this Agreement without any further liability to the other party.

## **11. Miscellaneous**

- A. Entire Agreement.** The parties agree that this Agreement contains the entire agreement between the parties relating to the Services, superseding and terminating any prior representation, warranty or agreement, whether oral or in writing. No modification or amendment of this Agreement shall be binding upon either party unless the same has been made in writing and executed by both parties. Notwithstanding the foregoing, no provision in this or any related agreement is intended to disclaim the express representations made in the Franchise Disclosure Document.
- B. No Third-Party Beneficiary.** Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies under this Agreement upon any person or legal entity other than you.
- C. Successors and Assigns.** You agree that we may assign this Agreement or any of our rights and obligations hereunder without your consent. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. Notwithstanding the above, you may not assign this Agreement or any of your rights or obligations hereunder without our express written consent.
- D. Counterpart Execution.** This Agreement may be executed in counterparts and each copy so executed shall be deemed an original. Any copy delivered by facsimile transmission or bearing an electronic signature shall be granted the same legal effect as a copy having an original signature.
- E. Notices.** All notices shall be delivered in the manner set forth in the Franchise or Membership Agreement. Such notices shall be deemed given on the date delivered or date of attempted delivery if refused.

- F. **Waivers.** If we allow you to deviate from any term of this Agreement, we may insist on strict compliance of any other term or of the same term at a later time. All waivers under this Agreement must be in writing and signed by our authorized representative to be effective.
- G. **Gross Revenue/Gross Room Revenue.** “GR” or “Gross Revenue”/“GRR” or “Gross Room Revenue” as may be applicable to your Facility, has the meaning specified in System Standards.

**IN WITNESSS WHEREOF**, the parties hereto have duly executed, sealed and delivered this Agreement in duplicate on the day and year first above written.

WE:  
Wyndham Hotel Group, LLC

YOU:  
\_\_\_\_\_

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

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

**Your Primary and Secondary Facility Representatives for Making Revenue Management decisions and communicating with us:**

[Please provide name and title of each]

Primary: Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Secondary: Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email address/Phone no. of Primary Representative: \_\_\_\_\_

## EXHIBIT A

### Revenue Management Service (Premium and Standard)

#### I. Description of Services

<u>Type</u>	<u>Detail</u>	<u>Service Model and Frequency</u>	
		<u>Premium</u>	<u>Standard</u>
Revenue Management Call/Meeting	Scheduled call with Facility to discuss availability and rate strategy for the next 90 days	<input checked="" type="checkbox"/> (1x weekly)	<input checked="" type="checkbox"/> (2x monthly)
Mix of Business Analysis	Includes performance for market segments, rate plans, corporate accounts, channel contribution	<input checked="" type="checkbox"/> (1x weekly)	<input checked="" type="checkbox"/> (2x monthly)
Touchpoints	Additional email touchpoints throughout the week	<input checked="" type="checkbox"/> (8x monthly)	<input checked="" type="checkbox"/> (2x monthly)
Rate Parity Review	Review all channels for rate parity & availability	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rate & Inventory Changes	Recommend & Maintain price point & availability restrictions for >90 days	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rate Maintenance	Manage rates 15 months into future	<input checked="" type="checkbox"/> (1x weekly)	<input checked="" type="checkbox"/> (1x monthly)
Rate Loading	Lead the process on rate code loading & date extension (whether working with distribution or MyRequest)	<input checked="" type="checkbox"/> (1x weekly)	<input checked="" type="checkbox"/> (1x monthly)
RFP Process	Support negotiated pricing/RFP process	<input checked="" type="checkbox"/>	<input type="checkbox"/>
End of Month Review	Review end of the month statistics, provide critical analysis of performance & future strategies	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rate Plan Content	Manage rate plan descriptions	<input checked="" type="checkbox"/> (1x weekly)	<input checked="" type="checkbox"/> (1x monthly)
OTA Rates & Inventory	Manage price points and parity on brand supported OTAs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
OTA Market Managers	Manage Market Manager relationships	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Website Content Review	Full content review of Brand.com & OTAs done periodically	<input checked="" type="checkbox"/> (1x quarterly)	<input checked="" type="checkbox"/> (1x annually)
Competitive Rate Shops	Rate shops required at additional cost	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Agency 360	Quarterly report review with property team to identify opportunity accounts. More frequent review (1x month) is optional with property subscription at additional cost.*	<input checked="" type="checkbox"/> (1x quarterly)	<input checked="" type="checkbox"/> (2x annually)
STR Reports	Review STR reports & provide recommendations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
City Demand	Review city event/convention calendars to maintain awareness of demand generators	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Groups	Create group displacement analysis as needed, analyze group prospects, provide pricing strategy & guidance, review & update group sales page(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Group Blocks	Work with Facility to ensure group inventory & cut-off dates are managed according to demand	<input checked="" type="checkbox"/>	<input type="checkbox"/>
System Audit & Gap Analysis	Audit PM and CR for parity & rate/room type/channel distribution	<input checked="" type="checkbox"/> (1x quarter)	<input checked="" type="checkbox"/> (2x annually)
System Education	Educate property team on WHR Systems	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Discount & Package Strategy	Update/create packages & strategy for promotions & discounts	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

## **II. Rate Strategy and Inventory Management**

- Develop a *rate strategy* for the Facility, subject to approval by the Facility executive staff and ownership. A rate strategy is a monthly or quarterly set of pricing-related practices that will help the Facility to meet its stated operational and financial goals (such as RevPar, Occupancy, ADR, or minimization of overbooking-related service/delivery issues).
- Effect execution of the rate strategy on an ongoing basis, specifically advising the Facility staff on Franchisor's actions to:
  - Maintain the pricing structure for the Facility
  - Evaluate demand based on historical and currently booked data
  - Analyze potential commitments to groups and make recommendations on pricing and allocations
  - Analyze and identify the relevant market segments which apply to the Facility and make pricing and rate policy recommendations for those segments
  - Review competitive pricing and availability
  - Recommend price points and availability restrictions for future dates across all distribution channels
- Produce reports for the Facility Executive Staff on past results and future conditions
- Facilitate weekly or bi-weekly meetings with the Facility staff to review past results and future market conditions
- Test whether the Facility is in compliance with any Franchisor policies related to pricing, including but not limited to rate parity across distribution channels, "disaster pricing", corporate and affiliation discounts, last room availability.
- Communicate recommendations and status of changes to the Facility staff designees

Responsibility for prices and availability

- **In the event of a lack of consensus between the Revenue Management Service Specialist and the Facility staff or designees, the Facility staff always has the right to make the final determination on actions to be taken.**

## **III. Rate Shop Report.**

As part of subscribing to the Service, you must sign up to a rate shop program that we designate, which may be at an additional cost to you (currently \$60 per month). We will determine in our sole discretion the number of hotels, booking sources and arrival dates to include in the shop reports, and the frequency of delivery of reports to you. Reports exceeding the parameters we establish may be available for an additional charge.

## **IV. Facility Site Visits.**

A property visit may be something to consider based on the market and competition. Facilities subscribing to Premium or Standard Revenue Management Service may request a property visit from the Revenue Management Service Specialist once per year, with the travel and board expenses for the trip being covered by you.

## **V. Modification of Services.**

We reserve the right to modify, replace or add new Services to those described in this Exhibit. If we replace or eliminate any Services, we will provide you with reasonable notice of such modification, which will not materially degrade the level of Services you receive from us.

## VI. Pricing.

- **Premium Service** – 1.00% of GR/GRR (as applicable) per month, with a minimum of \$1,450 per month, maximum of \$2,450 per month (maximum of \$3,500 per month for Facilities that earn \$3,000,000 or more in GR/GRR (as applicable) annually).
  
- **Standard Service** – 0.75% of GR/GRR (as applicable) per month, with a minimum of \$645 per month, maximum of \$1,395 per month. Facilities achieving greater than 70% occupancy for 12 consecutive months must participate in Premium Service.

**EXHIBIT C-8**



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Location: \_\_\_\_\_  
Unit No.: \_\_\_\_\_

## **HOTEL CONNECTIVITY SOLUTIONS SUPPORT AGREEMENT**

This Hotel Connectivity Solutions Support Agreement (“**Agreement**”), effective as of \_\_\_\_\_, (the “**Effective Date**”), by and between \_\_\_\_\_ (“**Franchisor**” “**we,**” “**our,**” or “**us**”) located at 22 Sylvan Way, Parsippany NJ 07054 and \_\_\_\_\_ (“**Franchisee**” “**you,**” or “**your**”), for a \_\_\_\_\_® Facility located at \_\_\_\_\_ governs your access to and use of the products and services described herein (“**Products and Services**”). Franchisor and Franchisee shall each be referred to as a “**Party**” and, together, as the “**Parties**”.

### **RECITALS**

You have entered, or are about to enter, into an agreement with a third-party service provider (“**Service Provider**”) to provide you with certain products and electronic communications services relating to providing high speed guest internet access at your hotel (the “**Connectivity Agreement**”). Your execution of a Connectivity Agreement, and its ongoing validity, is a condition precedent to the effectiveness hereof.

In consideration of the mutual covenants, representations and promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

#### **1. DEFINITIONS**

Capitalized terms used herein shall have the meanings ascribed to them herein. All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the License, Franchise or Membership Agreement between us and you (the “**Franchise Agreement**”) and are incorporated herein by reference.

#### **2. TERM AND TERMINATION**

**2.1 Term.** This Agreement’s term shall be effective and commence as of the Effective Date and shall continue in full force and effect until its expiration sixty (60) months thereafter, unless earlier terminated in accordance with the terms and conditions hereof (“**Term**”).

**2.2 Termination and Other Remedies.** At our option, we may terminate this Agreement immediately: (a) if you fail to make any payment required per this Agreement, the Connectivity Agreement, the Franchise Agreement or any other agreement between you and us, and such failure continues uncured for 10 days after we give you written notice; (b) if you breach any other covenant or warranty under this Agreement, the Franchise Agreement or any other agreement between you and us and the breach continues uncured for 30 days after we or the Service Provider give you written notice; and/or (c) if the license granted under the Franchise Agreement terminates for any reason and is not immediately replaced by an express written agreement between you and us for a license to continue operation of the Facility. In addition to the above, this Agreement shall terminate automatically in the event that either (i) the Connectivity Agreement terminates or expires, or (ii) the license granted to you under the Franchise Agreement expires or terminates for any reason and is not immediately replaced by an express written agreement between you and us for a license to continue the operation of the Facility.

**3. SOFTWARE.** We may grant you access or use of any software (including any Splash Page)

(“**Software**”), and in the event we do so, the following shall apply:

**3.1 License; Title.** Subject to payment of all Fees hereunder, we hereby grant you a limited, non-transferable, non-exclusive license, to access, use and display the Software during the Term solely for the benefit of your Permitted Users in accordance with this Agreement. Except as otherwise provided herein, all rights, title and interests in and to the Software are reserved to us or to any third party who licenses it to us or our affiliates. Title to and ownership of the Software, including all Intellectual Property rights therein, is and shall remain with us, our affiliates or any third party who licenses it to us. You shall at all times protect and defend, at your own cost and expense, our rights, title and interests in and to the Software against all claims, liens and legal processes of your creditors. “Permitted User” shall mean any person who is authorized by you, or who is otherwise permitted to access and use the products and/or services described in this Agreement, including without limitation, your employees, guests and You.

**3.2 Restrictions.** You shall not: (a) permit any unauthorized third party to access or use the Software; (b) create or attempt to create any derivative works based on it; (c) copy, frame or mirror any part or content of the Software; (d) disassemble, decompile, reverse engineer or otherwise attempt to recreate it; or (e) access, use or otherwise manipulate it in order to create a competitive product or service or to copy any features, functions or graphics thereof. We may, at our sole discretion and without prior notice to you, conduct audits of your hardware, computer systems and applications, including by electronic and remote means, to verify conformance with this Agreement.

**3.3 Suggestions.** Any suggestions and feedback relating to the Software, or relating to any desired or recommended additional features, enhancements or modifications thereto that are provided by or through you or your affiliates to us shall be our exclusive property as of the date offered to us and you and your affiliates hereby assign all rights and interests in and to such suggestions and feedback to us as of that date.

**3.4 Permitted Uses.** You shall use the Software only for the permitted uses with respect to your business and operations as contemplated herein or in the Franchise Agreement. You shall not load, store or otherwise use any software on or with the Software, without our prior written consent, as the use of such software may adversely affect the operation and functionality of the Software and the Products and Services. If you violate this Section, the warranties set forth herein shall be void, and you shall be solely responsible for the cost of repair or replacement of the Software, if any.

**3.5 Our Responsibilities.** We shall: (a) use commercially reasonable efforts to make the Software available twenty-four (24) hours a day, seven (7) days a week, except for: (i) planned downtime, or (ii) any unavailability caused by circumstances beyond our reasonable control, such as a force majeure event described in section 12.2 below; and (b) provide the Software only in accordance with applicable laws and government regulations that govern its implementation.

**3.6 Your Responsibilities.** In addition to those set forth above, You shall: (a) be fully responsible for your Permitted Users’ compliance with this Agreement; (b) be fully responsible for the accuracy, quality and legality of any information, content or data, to the extent collected or utilized by you or your employees, agents or representatives, and for the means by which you or your employees, agents or representatives acquires information, content or data; (c) prevent unauthorized access to or use of Software, and notify us promptly of any such unauthorized access or use; and (d) use the Software only in accordance with this Agreement and applicable laws and regulations. You shall not: (i) make the Software available to anyone other than your authorized end users; (ii) sell, resell, rent or lease the Software; (iii) use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious content or material, or to store or transmit material in violation of the privacy rights of any third party; (iv)

use the Software to store or transmit software viruses, malicious code or other harmful files; (v) interfere with or disrupt the integrity or performance of the Software or the data of any third party contained therein; or (vi) attempt to gain unauthorized access to the Software or any related networks.

#### **4. PRODUCTS AND SERVICES**

**4.1 Products or Services Provided by Other Third Parties.** During the Term of this Agreement, a Service Provider may offer to provide you with equipment for use as part of your facility's Network architecture ("**Equipment**") to facilitate your electronic communications services ("**Other Third Party**"). Any such Equipment you desire to purchase, lease or otherwise procure from such Other Third Parties shall be detailed in the Connectivity Agreement. We are not and shall not be a party to that Connectivity Agreement and shall not be liable in any manner to either you or such Other Third Party for your or the Other Third Party's compliance with, or breaches of, such Connectivity Agreement. You shall pay all fees for any products or services to be provided by such Other Third Party as specified in your associated Connectivity Agreement, or other agreement between you and such Other Third Party.

4.1.1 Any additional products or services provided to you by a Service Provider in furtherance of or in relation to your Equipment or network services shall be set forth in a separate agreement. We shall not be a party to such agreements and shall not be liable in any manner to either you or any Service Provider for the nature of the products or services agreed to in, or your or the Service Provider's compliance with, or breaches of, such agreements. You shall pay all fees for such additional products or services as specified in your respective agreements between you and such Service Provider.

4.1.2 **Discounted Products or Services.** Franchisor may from time to time advise you that due to our strategic sourcing efforts for our franchisees, certain third parties may be able to make their products or services available to you at a discounted rate ("**Discounted Products or Services**"). Any acquisition by you of such Discounted Products or Services, and any exchange of data between you and any third-party providers, is solely between you and the third-party provider. Franchisor does not warrant or support any Discounted Products or Services. Any Discounted Products or Services shall be governed exclusively by any agreement entered into between you and the third-party provider.

**4.2 Support Services Provided by Us.** We will provide you with certain support services, as described below.

4.2.1 **Level 1 Telephone Support.** We will make all reasonable efforts to provide 24-hour x 7-day Level 1 telephone support services to you and persons accessing the guest Internet service at your facility. These support services will be provided for your Permitted Users, including your employees and guests. These support services are intended to be used specifically to ensure access to the Public Access Network. Our support desk will address issues pertaining to network activation, hardware and software configuration, and "general" questions pertaining to logging into the Network. These questions typically pertain to basic functionality and connectivity for various PC/Laptop/PDA wireless devices and their respective operating systems, NIC/Drivers, IP/Network, and standard firewall or other configuration settings. Support will not include security-related configuration or setting queries, which would be referred to your Internet Service Provider via a warm "hand off" under Level 2 support as described in §4.2.2.

4.2.2 **Level 2 Telephone Support.** We will make all reasonable efforts to provide Level 2 telephone support services to you (you must provide us with a service provider with sufficient resources with whom to work). The Level 2 support desk will address issues pertaining to broadband access (e.g, third party T1, Cable and DSL providers), network integrity and device responsiveness via remote management tools. This support will rely on detailed documentation you provide to us for accessing network devices. Level 2 support will coordinate with your appointed contact for physical inspections and power cycles of suspected

faulty on-premise equipment. Level 2 support will initiate a warm “hand off” to your third-party Internet Service Provider (as identified in your Connectivity Agreement) for suspected broadband or other potentially significant performance or other issues. Level 2 support will initiate contact with Level 3 hardware support (quoted separately or a third-party, including a service provider) concerning any suspected network equipment malfunction.

4.2.3 **WEB PORTAL SERVICE.** We will provide and host a brand-specific landing page with an End User License Agreement (“EULA”).

4.2.4 **Splash Page.** We will provide a “splash page” with various promotions and offers from the Wyndham Rewards program, its third-party providers, and/or such other content we may designate from time to time, in our sole discretion, and you hereby accept inclusion of the “splash page” as part of the support services. For purposes hereof, the “splash page” shall also be considered Software as that term is used herein.

4.2.5 **Excluded Services.** The support services hereunder are intended to provide you with front-line support concerning basic connectivity and functionality of your Equipment, to facilitate continued availability of network services you acquire from a third party for your facility. No component of the support services hereunder constitutes or is intended to serve as an Electronic Communications Service (as defined in 18 U.S.C. §2510) or a Remote Computing Service (as defined in 18 U.S.C. §2711) or to provide information security support concerning your network services. Further, any SNMP or other network monitoring activities performed hereunder will be solely related to maintaining equipment and service functionality (for example, bandwidth and network speed) and shall not include content access, monitoring, filtering or other ancillary content-related services. Should you desire any additional network or content-related services, these should be acquired from a third-party service.

## 5. **FEES AND PAYMENT TERMS**

5.1 **Fees; Payments.** You shall pay all fees for the support services to be provided to you by us. We will invoice you monthly at eighty-five cents (\$0.85) per room, as reflected in the Franchise Agreement for the support services (the “Fees”). All Fees and amounts due hereunder are due upon invoice receipt. We may apply any amounts received to any outstanding invoices in any order. If you do not make all payments of Fees to us when due, then, upon written notice to you, we may withhold implementation, suspend the support services (subject to Section 5.3 below) or terminate this Agreement. We may increase the ongoing Fees on an annual basis by no more than five percent (5%) above the fees paid by you during the immediately preceding twelve- (12-) month period; provided, however, that we shall notify you no less than thirty (30) days prior to any such increase taking effect.

5.2 **Overdue Charges.** If any Fees or charges are not received from you by the due date, then, at our sole discretion, (a) such Fees or charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) we may condition future subscription renewals on payment terms shorter than those specified in Section 4.1 above.

5.3 **Suspension of Service and Acceleration.** If any Fees owing by you hereunder are thirty (30) or more days overdue, we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations hereunder so that all such obligations become immediately due and payable, and suspend our support services to you until such amounts are paid in full. We shall give you at least seven (7) days’ prior notice that your account is overdue, before suspending the support services.

**5.4 Taxes.** Unless otherwise stated, our Fees do not include any taxes, levies, duties or similar governmental assessments, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “**Taxes**”). You are responsible for paying all Taxes associated with purchases hereunder. If we have a legal obligation to pay or collect Taxes for which you are responsible, the appropriate amount shall be invoiced to and paid by you, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable based on our income, property and employees.

## **6. TECHNICAL REQUIREMENTS**

In order to facilitate connectivity and functionality of electronic communications services at your facility, you may be required to maintain a third-party Service Provider’s minimum technical requirements, as set forth in the agreement between you and such Service Provider. If any third-party Service Provider you engage, at your request, attempts to integrate hardware with the Equipment, we shall not be liable for any injury or damage to either the hardware or the functionality of your other contracted communications services or related services unless such injury or damage is due to our gross negligence or willful misconduct. The warranties described herein do not apply to any hardware or Products and Services not provided to you by us.

## **7. CONFIDENTIALITY**

**7.1** Each party may from time to time disclose to the other (both orally and in writing), in connection this Agreement, certain financial, technical, legal, marketing, network, and/or other business reports, records, or data (including, but not limited to, Personal Information, computer programs, code, systems, applications, analyses, passwords, procedures, output, information regarding software, Service Provider lists, customer lists, and other customer-related information, advertising and promotional plans, creative concepts, specifications, designs, and/or other material) which the disclosing Party (“**Discloser**”) deems, and the receiving Party (“**Receiver**”) should consider, proprietary and/or confidential (and of independent economic value) to the disclosing Party (collectively, “**Confidential Information**”). Our Confidential Information also shall include any proprietary and/or confidential information related to our affiliates, employees, franchisees, sales representatives, brokers, and/or customers, as well as any and all content provided by us to you with respect to any Services hereunder. Your Confidential Information also shall include your (and your subcontractors’) Software and/or pre-existing proprietary materials licensed or provided to, or accessed by, us hereunder. “**Personal Information**” means any information relating to an identified or identifiable person and that, either by itself or in combination with other information, identifies, or can be used to identify, an individual. Examples include, without limitation, names, phone numbers, addresses, credit card information, social security numbers, and/or account or financial information of Franchisor, Franchisee, or, as applicable, their respective affiliates’ employees, franchisees, sales associates, brokers, or customers.

**7.2** The Receiver agrees to treat all Confidential Information provided by the Discloser pursuant to this Agreement as proprietary and confidential to the Discloser, and the Receiver shall not (without the Discloser’s prior written consent) disclose or permit disclosure of such Confidential Information to any third party, provided that the Receiver may disclose, on a need-to-know basis, such Confidential Information to its third party subcontractors who have signed non-disclosure agreements with the Receiver, and/or to its (and, in the case of Franchisor, to Franchisor’s affiliates’) current employees, officers, or directors, or legal or financial representatives. The Receiver agrees to safeguard all Confidential Information of the Discloser with at least the same degree of care (which in no event shall be less than reasonable care) as the Receiver uses to protect its own Confidential Information. The Receiver shall use the Discloser’s Confidential Information solely for the purpose of fulfilling its obligations hereunder. The Receiver further agrees not to use or disclose the Discloser’s Confidential Information for its own benefit or for the benefit of others, except as otherwise authorized by this Agreement or by the Discloser in writing.

7.3 Notwithstanding the foregoing, the Parties agree the following shall not be deemed Confidential Information hereunder: (i) Information the Receiver independently develops without any breach hereof, and can be shown by documentary evidence; (ii) Information which is or becomes in the public domain by no fault or wrongful act of the Receiver; (iii) Information known by the Receiver prior to disclosure by the Discloser; (iv) Information disclosed to the Receiver by a third Party not under a similar confidentiality obligation to the Discloser, and without breach hereof; (v) Information approved for release by written authorization of the Discloser and/or a third Party owner of the information; or (vi) Information disclosed pursuant to the lawful requirement or order of a court or governmental agency, provided that, upon the Receiver's receipt of a request for such disclosure, the Receiver gives prompt notice thereof to the Discloser (unless such notice is not legally permissible or required under the circumstances) so the Discloser may have the opportunity to intervene, contest such disclosure and/or seek a protective order or other appropriate remedy.

7.4 All Confidential Information transmitted or disclosed hereunder will be and remain the Discloser's property, and the Receiver shall (at the Discloser's election) promptly destroy or return to the Discloser any and all copies thereof upon termination or expiration hereof, or upon the Discloser's written request. Upon the Discloser's request, any such destruction shall be certified in writing by the Receiver.

7.5 Nothing herein shall be construed to limit or prohibit the Receiver from independently creating or developing, or from acquiring from third Parties, any information, products, concepts, systems, or techniques that are similar to or compete with those contemplated by or embodied in the Discloser's Confidential Information, provided that (in connection with such creation, development, or acquisition) the Receiver does not violate any of its obligations hereunder.

7.6 The Parties acknowledge and agree that monetary damages may not be calculable or a sufficient remedy for any breach of this Section 7 by the Receiver, and that the Discloser may suffer great and irreparable injury as a consequence of such breach. Accordingly, each Party agrees that, in the event of such a breach or threatened breach, the Discloser shall be entitled to seek equitable relief (including, without limit, injunction and specific performance) to remedy such breach or threatened breach. Such remedies shall not be deemed exclusive remedies for a breach by the Receiver but shall be in addition to any and all other remedies provided hereunder or available at law or equity to the Discloser.

7.7 Notwithstanding the foregoing, to the extent an individual would be considered an employee pursuant to 18 U.S.C. §1833(b)(4), such individuals shall not be held criminally or civilly liable under any U.S. Federal or State trade secret law for the disclosure of Confidential Information if such disclosure is made in confidence to a government official, either directly or indirectly, or to that individual's attorney, if such disclosure is made solely for the purpose of reporting or investigating a suspected violation of law or if the disclosure is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Moreover, an individual who files a lawsuit for retaliation claiming that retaliation against said individual for reporting a suspected violation of law may disclose Confidential Information to his or her attorney and may use it in the court proceeding, provided any document containing it is filed under seal and the individual does not disclose it except pursuant to court order.

## **8 NO WARRANTIES**

EXCEPT WHERE SUCH WARRANTIES OR REPRESENTATIONS ARE REQUIRED TO BE GIVEN OR MADE BY APPLICABLE LAW, (A) WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ABOUT THE PRODUCTS OR SERVICES, THEIR MERCHANTABILITY, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, OR THEIR CONFORMANCE TO THE PROVISIONS AND SPECIFICATIONS OF ANY ORDER OR DOCUMENTATION; (B) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE VOLUME OF RESERVATIONS OR AMOUNT OF REVENUES THAT YOU

MAY ATTAIN THROUGH THE USE OF THE PRODUCTS OR SERVICES OR THAT YOUR RESERVATIONS OR REVENUE WILL INCREASE; (C) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY OF THE DATA THAT YOU MAINTAIN OR THE PREVENTION OF ANY VIRUSES OR MALWARE, AND WE ARE NOT RESPONSIBLE FOR THE LOSS OF ANY DATA OR THE INTRODUCTION OF ANY VIRUSES OR MALWARE, EVEN IF SUCH LOSS OR INTRODUCTION RESULTS FROM AND PRODUCTS OR SERVICES HEREUNDER; AND (D) WE MAKE NO REPRESENTATION OR WARRANTY, AND DISCLAIM ANY AND ALL LIABILITY, REGARDING ANY CONTENT OR OTHER INFORMATION THAT MAY BE TRANSMITTED THROUGH THE PRODUCTS OR SERVICES. YOU ARE RESPONSIBLE FOR ENSURING THAT YOUR DATA IS ADEQUATELY BACKED UP AND THAT YOU MAINTAIN CURRENT UPDATED ANTI-VIRUS/ANTI-MALWARE SOFTWARE. YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION YOU MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE PRODUCTS OR SERVICES UNLESS DUE TO OUR WILLFUL MISCONDUCT.

## **9 INDEMNIFICATION**

You shall indemnify, defend and hold harmless us, our affiliates, our licensors, successors and assigns and each of the respective directors, officers and employees associated with them against all claims, actions or proceedings, arising out of or related to this Agreement (including any use by any Permitted Users or any other person of the products or services described in this Agreement) as well as any agreement you enter into related to this Agreement, including, but not limited to, your failure to comply with this Agreement. We shall not be liable to you or any other person or entity for injury, damages or property loss, including but not limited to, damages to your facility, as a result of your or the facility's operation, use or non-use of the Products and Services. You are not obligated to indemnify us for our own willful misconduct arising out of the operation, use or non-use of the products and services.

## **10 DAMAGE LIMITATION.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL WE OR AN AFFILIATE BE LIABLE TO YOU FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE (COLLECTIVELY, "INDIRECT DAMAGES") IN CONNECTION WITH THE PRODUCTS AND SERVICES OR THIS AGREEMENT, EVEN IF WE HAD BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE REASONABLY FORESEEN SUCH DAMAGES. IN ADDITION, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, FOR DIRECT DAMAGES CAUSED BY US (AND ANY INDIRECT DAMAGES TO THE EXTENT THE ABOVE LIMITATION IS NOT RECOGNIZED BY A COURT OR OTHER AUTHORITY) ANY CLAIM SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY YOU TO US FOR THE SERVICES FOR THE PREVIOUS TWELVE (12) MONTH PERIOD. THE ABOVE LIMITATIONS ON LIABILITY APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE.

## **11 OWNERSHIP OF GUEST INFORMATION.**

We shall own all Guest Information in our possession or that of any service provider holding it on our behalf, and you shall own all Guest Information in your possession or that of any service provider holding it on your behalf. To the extent both Parties possess identical Guest Information, our and your respective ownership rights with regard to it shall be separate and independent from one another. For purposes hereof, "Guest Information" shall mean names, contact and other information about guests and customers of your facility, including without limitation stay information, that either we or you or a person acting on behalf of one or both of us receives from or on behalf of the other or any guest or customer of your facility or any other third party; provided, however, that Guest Information shall not include any information, content or other



materials accessed, provided, or otherwise used by any person through or in connection with the Products and Services.

12 **ADDITIONAL PROVISIONS.**

**12.1 Costs and Expenses.** The non-prevailing Party will pay the costs and expenses incurred, including reasonable attorneys' fees and expenses, by the prevailing Party to enforce this Agreement.

**12.2 Force Majeure.** If performance by you or us is delayed or prevented because of strikes, inability to procure labor or materials, supplier or subcontractor defaults, delays or shortages of transportation, failure of power or telephone transmissions, restrictive governmental laws or regulations, weather conditions, epidemic, pandemic, quarantine or other public health crisis, or other reasons beyond the reasonable control of the Party, then such performance will be excused and the period for performance will be extended for a period equivalent to the period of such delay. Delays or failures to pay resulting from lack of funds will not be deemed delays beyond your reasonable control.

**12.3 Notices.** Notices will be effective if made in writing and delivered, by next day delivery service with proof of delivery, by facsimile transmission immediately followed by first class mailing of the original notice, or mailed by certified or registered mail, return receipt requested, to the appropriate Party at its address herein or at such address as may be designated by notice in accordance with this Section. Notices will be deemed given on the date delivered or date of attempted delivery, if service is refused. As of the Effective Date hereof, the notice address of the Parties is as follows:

**If to Franchisor:**

\_\_\_\_\_  
22 Sylvan Way  
Parsippany, NJ 07054  
Attn: Scott Strickland, EVP & CIO

**With a copy to:**

WHR Operations, LLC  
22 Sylvan Way  
Parsippany, NJ 07054  
Attn: Paul Cash, EVP &  
General Counsel

**If to Franchisee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**12.4 Your Forms.** We are not bound by any terms of your purchase order forms or notices of acceptance which attempt to impose any conditions at variance with our terms and conditions included herein or in our invoices, standards manuals, technical specifications or elsewhere. Our failure to object to any provision contained in your printed form is not a waiver of any term hereof.

**12.5 Governing Law/Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey, without regard to its conflicts of law provisions. You consent to the non-exclusive personal jurisdiction of the New Jersey state courts situated in Morris County, New Jersey, and the United States District Court for the District of New Jersey. You waive objection to venue in any such courts. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, CLAIM OR PROCEEDING BROUGHT TO ENFORCE, DEFEND OR INTERPRET ANY RIGHTS OR REMEDIES ARISING HEREUNDER, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT.

**12.6 Waiver.** If either Party fails to exercise any right or option at any time hereunder, such failure will not be deemed a waiver of the exercise of such right or option at any other time or the waiver of a different right or option. Termination hereof by either you or we will not waive your obligation to make any payments then due to us hereunder.

**12.7 Agreement.** This Agreement supersedes all prior oral and written agreements and understandings and, together with any order forms that may accompany this Agreement, constitutes the entire Agreement between the Parties with respect to this subject matter. Nothing in this or any other related agreement, however, is intended to disclaim any express representations made in the Franchise Disclosure Document provided to you by us or our affiliates. This Agreement may not be amended, modified or rescinded except in writing, signed by both Parties. If any provision hereof is determined to be void or unenforceable, it shall be deemed severed from the Agreement and the remainder hereof shall continue in full force and effect. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and permitted assigns. Notwithstanding the above, you may not assign this Agreement without our express written consent, except as permitted under the Franchise Agreement. The provisions hereof that due to their content should have continuing life shall survive the termination of this Agreement. This Agreement is intended for the sole benefit and protection of the named Parties, and no other persons or entities shall have any cause of action or right to payments made or received hereunder.

**12.8 Mediation.** The Parties shall attempt in good faith to resolve any dispute concerning this Agreement promptly through negotiation between authorized representatives. If these efforts are not successful, either Party may attempt to resolve the dispute through non-binding mediation. Either Party may request mediation which shall be conducted by a mutually acceptable and neutral third-party organization. If the Parties cannot resolve the dispute through negotiation or mediation, or choose not to negotiate or mediate, either Party may pursue litigation.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the Effective Date.

**WE:** \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**YOU, as Franchisee:** \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

By signing this Agreement, you represent that you are authorized to enter into this Agreement on behalf of the Franchisee.

**Your address:**

**Address for Deliveries (if different):**

**Our address: 22 Sylvan Way, Parsippany, New Jersey 07054, USA**

**EXHIBIT C-9**

## REMOTE SALES SERVICES AGREEMENT

This REMOTE SALES SERVICES AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”) by and between Wyndham Hotel Group, LLC, with offices located at 22 Sylvan Way, Parsippany, New Jersey 07054 (“we”, “our”, or “us”) and \_\_\_\_\_ with principal offices located at \_\_\_\_\_ (“you”) regarding the \_\_\_\_\_® guest lodging facility located at \_\_\_\_\_ (“Facility”).

**Recitals.** We have developed a supplementary remote local sales consulting service as described in Exhibits A and B, (the “Service”) in addition to the primary services we provide to franchisees or members under their franchise or membership agreements. By signing below, you acknowledge your participation in the Services at the rates set forth and in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, you and we agree as follows:

- 1. Provision of Services.** We currently offer the Service as described in Exhibits A and B. You may elect whether or not to participate in the Speed to Book program described in Exhibit B. In addition to the descriptions in Exhibits A and B, we will provide the Service in accordance with any Remote Sales Service Policies (“RSS Policies”), as they may be set forth in System Standards and updated from time to time. Within ten (10) days after the Effective Date, your primary representative (described below) and our representative shall meet and confer to determine the terms under which we shall provide the Service (the “Initial Meeting”). You will establish the reference room rate for the Facility upon which all other rates are based (“Rate of the Day”). In addition, you will establish the parameters under which we are authorized to offer rooms or services at the Facility to third parties in connection with potential stays (including, but not limited to the discount off Rate of the Day, group size limits, amenities, packages or other incentives). You retain ultimate and sole control over all decisions to accept, or not to accept, all sales at the Facility. The Service shall begin the day on which you provide us, in writing, with all information that we reasonably request during the Initial Meeting and the authorizations for Service described in Exhibit A (the “Commencement Date”).

Subject to the foregoing, by entering into this Agreement, you explicitly (i) agree to abide by the RSS Policies, (ii) authorize us to access, as necessary, your room rates, inventory and other Facility information in our Reservation System, your Facility’s property management system, your Facility’s food and beverage system (if applicable), any extranets that the Facility maintains with OTAs, and all third party sales response and tracking systems (e.g. Lanyon, HotelPlanner), (iii) authorize us to offer for sale to third parties room and other services at the Facility within certain parameters pre-authorized by you, and (iv) authorize us to accept non-contract reservations from third parties for rooms and other services at the Facility within certain parameters pre-authorized by you without advance notice to you. **We will not, however, enter into any contract on your behalf and you will be solely responsible for (i) contracting with any third parties that wish to stay at the Facility, and (ii) any sales at the Facility that fall outside of the parameters pre-authorized by you.** In addition, during the term of this Agreement, you agree to insert the following acknowledgment into all contracts you enter into with third parties with respect to sales at the Facility:

*“The parties to this Agreement agree and acknowledge that neither Wyndham Hotels & Resorts, Inc., Wyndham Hotel Group, LLC nor any of their affiliates or subsidiaries is a party to this Agreement and shall have no liability for any events or occurrences arising, or failing to arise, out of this Agreement.”*

You acknowledge that we are not responsible for any third-party guests at the Facility (regardless of whether they were referred to the Facility by us or their reservations were accepted by us in connection with the Service) and that the indemnification obligations described in your Franchise or Membership Agreement apply at all times during the course of this Agreement.

- 2. Facility Representative.** You shall designate, at the end of this Agreement, a primary Facility representative who shall have the authority to make binding decisions to accept reservations for the Facility and a secondary representative who shall exercise such authority in the absence of the primary representative. We may communicate with these representatives by telephone, e-mail or in another manner, and may rely on any communication which we believe, in good faith, is from them. You may change your designation at any time by notifying us in accordance with Section 11(E) below. Upon our request, the Facility representative shall provide feedback concerning the performance, operation and general acceptability of the Service, as well as recommendations for improvement.
- 3. Fee.** You shall pay to us the Fees set forth in the applicable Exhibit to this Agreement, which shall be paid within fifteen (15) days of the receipt of each invoice. We may increase the Fees by providing you at least thirty (30) days prior written notice, provided that you may terminate this Agreement upon fifteen (15) days prior written notice if the increase in Fees over a one-year period is a total of more than ten percent (10%) of the Fees in effect at the beginning of the period.
- 4. Term.** The “Term” of this Agreement shall begin on the Commencement Date and shall continue until (i) expiration or termination of the Franchise or Membership Agreement when this Agreement will automatically terminate, (ii) you have met the criteria we establish in System Standards to satisfy the requirement to participate in the Service through alternative means, or (iii) we terminate this Agreement in accordance with Section 5 below.
- 5. Suspension or Termination.** If you breach this Agreement (including but not limited to failing to abide by the RSS Policies) and fail to correct such breach within thirty (30) days (or ten (10) days in the event of any failure to pay amounts owed under this Agreement when due) of being notified thereof in writing, we may terminate this Agreement, effective upon written notice to you. In addition, we may terminate this Agreement without cause by providing at least sixty (60) days’ prior written notice of termination to you.
- 6. Dispute Resolution.** Any disputes occurring under this Agreement shall be resolved in accordance with the dispute resolution procedures under the Franchise or Membership Agreement, including but not limited to, the provisions concerning waiver of jury trial, consent to venue and personal jurisdiction, and choice of law.
- 7. Confidentiality.** Any know-how, algorithms, formulae, data, recommendations, documentation, software, or other materials or information that we furnish to you in connection with the Services shall be deemed “Confidential Information” as defined in the Franchise or Membership Agreement and shall be subject to all prohibitions on disclosure, copying or use of the Confidential Information under the Franchise or Membership Agreement. We shall have all rights under the Franchise or Membership Agreement if you breach these confidentiality obligations.

- 8. No Warranty.** WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE VOLUME OF RESERVATIONS OR AMOUNT OF REVENUES THAT THE FACILITY WILL ATTAIN AS A RESULT OF THE SERVICE OR THAT YOUR RESERVATIONS OR REVENUE WILL INCREASE. WE MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE SERVICE. YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION THAT YOU MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE SERVICES, UNLESS DUE TO OUR WILFULL MISCONDUCT.
- 9. Limitation on Liability.** NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST REVENUE (COLLECTIVELY REFERRED TO AS “INDIRECT DAMAGES”) ARISING FROM, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL EXHIBITS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES. IN ADDITION, EACH PARTY’S DIRECT DAMAGES (AND ANY INDIRECT DAMAGES TO THE EXTENT THAT A COURT OF COMPETENT JURISDICTION OR OTHER AUTHORITY DOES NOT RECOGNIZE OR ENFORCE THE WAIVER FROM LIABILITY SET FORTH IN THE FIRST SENTENCE OF THIS SECTION) SHALL BE LIMITED TO THE TOTAL FEES PAID BY YOU TO US DURING THE THEN CURRENT TERM OF THE AGREEMENT. THE ABOVE LIMITATIONS ON LIABILITY APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE. NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY FOR THE CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES THAT MAY BE THE RESULT OF ADMINISTRATIVE ERRORS PROVIDED THAT NO MALICE OR NEGLIGENCE WAS INTENDED.
- 10. Force Majeure.** In no event shall either party be liable for any failure or delay in performance (except for the obligation to remit fees) due to causes or circumstances beyond its reasonable control and without its fault or negligence (including, but not limited to, Acts of God, acts of the public enemy, war or terrorism, acts of the United States of America, or any state, territory or political division of the United States of America, or of the District of Columbia, fires, floods, or other natural disaster, strikes or any other labor disputes, communication line failures, and/or freight embargoes). The party claiming such a failure or delay must promptly notify the other party of such failure or delay. In the event that any such failure or delay continues for more than thirty (30) days, then either party upon notice to the other may terminate this Agreement without any further liability to the other party.

## **11. Miscellaneous**

- A. Entire Agreement.** The parties agree that this Agreement contains the entire agreement between the parties relating to the Services, superseding and terminating any prior representation, warranty or agreement, whether oral or in writing. No modification or amendment of this Agreement shall be binding upon either party unless the same has been made in writing and executed by both parties. Notwithstanding the foregoing, no provision in this or any related agreement is intended to disclaim the express representations made in the Franchise Disclosure Document.

- B. No Third-Party Beneficiary.** Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies under this Agreement upon any person or legal entity other than you.
- C. Successors and Assigns.** You agree that we may assign this Agreement or any of our rights and obligations hereunder without your consent. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned by you without our prior written approval.
- D. Counterpart Execution.** This Agreement may be executed in counterparts and each copy so executed shall be deemed an original. Any copy delivered by facsimile transmission or bearing an electronic signature shall be granted the same legal effect as a copy having an original signature.
- E. Notices.** All notices shall be delivered in the manner set forth in the Franchise or Membership Agreement. Such notices shall be deemed given on the date delivered or date of attempted delivery if refused.
- F. Waivers.** If we allow you to deviate from any term of this Agreement, we may insist on strict compliance of any other term or of the same term at a later time. All waivers under this Agreement must be in writing and signed by our authorized representative to be effective.

**IN WITNESS WHEREOF**, the parties hereto have duly executed, sealed and delivered this Agreement in duplicate on the day and year first above written.

WE: \_\_\_\_\_

YOU: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Your primary and secondary Facility representatives for making group sales decisions and communicating with us:**

[Please provide name and title of each]

Owner	Name:	Email:	Phone:
General Manager	Name:	Email:	Phone:

**EXHIBIT A**



**I. Description of Services**

<u>TYPE</u>	<u>DESCRIPTION</u>	<u>FREQUENCY</u>
Dedicated local sales service representative	Each Facility shall be provided with a dedicated Remote Sales Service representative who will provide on-going local sales support and training to Facility staff	On-going
Remote Sales Call/Meeting	Scheduled call with Facility to discuss local sales strategy for the next 30/60/90 days	<input checked="" type="checkbox"/> (1x month)
Sales Reporting	Review Facility performance on a bi-weekly basis, provide critical analysis of performance & future strategies	<input checked="" type="checkbox"/> (1x two weeks)
Lead Response	Collaborate with Facility to establish and follow protocol by which our representative will respond to all sales leads at the Facility	On-going
Corporate Rate Strategy	Qualify and, as authorized, negotiate corporate rates	On-going
In-Market Prospecting	Solicit new, current and active local accounts identified by Facility	On-going
Market Research	Conduct independent research into Facility's market and into prospective accounts	On-going
RFP Process	Review and establish negotiated pricing/RFP process for Facility; lead RFP response process	On-going
City Demand	Review city event/convention calendars to maintain awareness of demand generators	<input checked="" type="checkbox"/> (weekly)
Groups	Collaborate with Facility representative (and/or revenue manager) to create group displacement analysis as needed, analyze group prospects, provide pricing strategy & guidance, review & update group sales page(s)	<input checked="" type="checkbox"/> (review & update sales page(s) 2x year)
Group Blocks	Work with Facility to ensure group inventory & cut-off dates are managed according to demand	<input checked="" type="checkbox"/>
GSO Education	Educate WHR's Global Sales Organization about the Facility and available resources therein	<input checked="" type="checkbox"/>

**II. Facility Requirements**

As a condition of the Facility's participation in the Service, you are required, among other things, to:

- Update your primary and secondary representative, as needed
- Actively participate with our representative in all respects to enable their ability to perform the Service
- Be available to conduct in person or virtual Facility tours
- Promptly forward all inquiry leads, RFPs, and other sales-related calls or communications to us
- Define, and update as needed, the parameters under which we are authorized to offer and accept reservations for rooms or services at the Facility to third parties (including, but not limited to the discount off Rate of the Day, group size limits, amenities, packages or other incentives)

**III. Facility Site Visits.**

A property visit may be appropriate based on the Facility's market, amenities and competition. Facilities may request a property visit from our Remote Sales Service representatives once per year, with the travel and board expenses for the trip being covered by you.

**IV. Modification of Services.**

We reserve the right to modify, replace or add new Services to those described in this Exhibit. If we replace or eliminate any Services, we will provide you with reasonable notice of such modification, which will not materially degrade the level of Services you receive from us.

**V. Pricing: \$1,400 per month.**

**EXHIBIT B**  
**SPEED TO BOOK PARTICIPATION FORM**

We have developed a group sales service, Speed to Book, as part of which hotels can respond to group

sales leads and, where applicable, a group block agreement between the hotel and the group is generated based on the rate information provided by the hotel. This Speed to Book Participation Form (“Participation Form”) amends, as of the date indicated below, the Remote Sales Services Agreement (“RSS Agreement”) between you and us. By entering into this Participation Form, subject to any eligibility requirements we may establish from time to time, you agree to participate in the Speed to Book program and authorize us to respond to any group sales leads for the Facility on your behalf.

You agree that, with respect to group sales leads under the Speed to Book program: (i.) except for those groups or accounts specifically identified by you below, we may negotiate and book any and all group business for the Facility that is consistent with the parameters described below without further authorization, (ii) we may generate a group block agreement between you and any group that accepts the terms offered, and (iii) you will honor the terms of all such agreements in full. The current form of group block agreement is attached as Schedule A although the form of agreement we use is subject to change. In the event you wish (i) to update any of the parameters described below, or (ii) to terminate this Speed to Book Participation Form, then you will notify us in accordance with the notice provisions described in the RSS Agreement. Unless otherwise terminated, this Participation Form shall remain in effect for so long as the RSS Agreement is in effect. Except as expressly stated in this Participation Form, no further additions, modification or deletions to the RSS Agreement are intended by the parties or made. Capitalized terms not defined in this Authorization Form have the meanings described in the RSS Agreement.

**Group Room Rate Parameters**

Season	Start	End	Max # of rooms per night	Max. Length of Stay	Weekday non-commissionable	Weekday commissionable	Weekend non-commissionable	Weekend commissionable
<i>Season Name</i>	<i>Date</i>	<i>Date</i>	<i>Maximum number of rooms per night (e.g., 20 rms &amp; under)</i>	<i>Maximum number of nights per stay (e.g., 10 nights)</i>	<i>Non-commissionable weekday rate (e.g., 15% off BAR OR \$79 Flat Rate)</i>	<i>Commissionable weekday rate (e.g., 10% off BAR OR \$79 Flat Rate)</i>	<i>Non-commissionable weekday rate (e.g., 10% off BAR OR \$79 Flat Rate)</i>	<i>Commissionable weekday rate (e.g., 5% off BAR OR \$79 Flat Rate)</i>
Low	[MM] [DD]	[MM] [DD]	[ ] rooms	[ ] nights	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate
Shoulder	[MM] [DD]	[MM] [DD]	[ ] rooms	[ ] nights	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate
High	[MM] [DD]	[MM] [DD]	[ ] rooms	[ ] nights	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate	[ ]% off BAR or [ ] flat rate

**Black-Out Dates (dates during which no group business accepted)**

Start	End
[MM] [DD]	[MM] [DD]
[MM] [DD]	[MM] [DD]
[MM] [DD]	[MM] [DD]

**Group Block Reservation Parameters**

Category	Category Description	Facility Authorization
<b>Occupancy Cutoff Percentage</b>	Facility occupancy percentage above which groups are no longer accepted	
<b>Reservation Method</b>	Method by which account must identify individual members of the group	<input type="checkbox"/> Rooming List <input type="checkbox"/> Individual Call-in
<b>Cutoff Date</b>	Number of days before stay where reserved rooms will be released if reservation not completed	<input type="checkbox"/> 14 Days Prior to Arrival <input type="checkbox"/> Other: _____
<b>Cancellation Policy</b>	Number of days before stay that group can cancel without incurring a fee	<input type="checkbox"/> 14 Days Prior to Arrival <input type="checkbox"/> 21 Days Prior to Arrival <input type="checkbox"/> 30 Days Prior to Arrival <input type="checkbox"/> Other: _____
<b>Prohibited Groups / Accounts</b>	Groups or accounts from which the Facility does not wish to accept business	
<b>Group Block Agreement Signatory</b>	Facility representative whose name will be populated and pre-signed on your behalf in all group block agreements*	

\* You represent that this individual is authorized to execute and enter into agreements on behalf of you and the Facility.

**Facility Name, Address:**

**Facility Site Number:**

WE:  
 By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

YOU:  
 By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Schedule A**



**On behalf of:**

<<Franchisee Entity from SFL>>  
<<Hotel Name>>  
<<Hotel SITE ID>>  
<<Hotel Address>>  
<<Hotel City, State, Zip Code>>  
<<Hotel Phone Number>>  
<<GM email address>>

<<Date>>

<<Group Contact>>  
<<COMPANY NAME>>  
<<GROUP NAME Property Invite Name from SFL>>  
<<Company Address>>  
<<City, State, Zip Code>>  
<<Group Contact Phone Number>>  
<<Group Contact Email Address>>

Dear <<Group Contact>>

Thank you for choosing the <<INSERT HOTEL NAME>> for your upcoming group. As described in this Group Block Agreement, we are committed to providing your group with a great experience while staying with us.

**To help us prepare for your group's arrival, we are reserving the following rooms for your group subject to the terms of this Group Block Agreement:**

<<INSERT GRID APPROVED BY PROPERTY FROM SFL>>

Room Type	Arrival Date	Departure Date	# Rooms Per Night	Room Rate
Standard Double	10/10/2024	10/15/2024	15	\$105.00
Standard King	10/10/2024	10/15/2024	5	\$120.00

- Rates are quoted in US Currency unless otherwise indicated.



**Reservation Method:** << Drop Down in Salesforce – One option will be chosen by Client>>

- **Rooming List:** You must provide a rooming list indicating the names of each guest booking as part of this group to <<GM email address>> no later than the Cutoff Date of <<Cutoff Date from SFL>> . Please refer to <<GROUP NAME Property Invite Name from SFL>> when submitting your rooming list. After the cutoff date of <<Cutoff Date from SFL>>, the hotel will release any remaining rooms in your group block and make those rooms available for sale to the public. If you wish to reserve additional rooms after Cutoff Date the hotel will make reasonable efforts to accommodate these requests.
- **Individual Call-In:** Group Contact is responsible for sharing details of the <<GROUP NAME Property Invite Name from SFL>> and Cutoff Date with guests informing them to make reservations within the group block by the cutoff date <<Cutoff Date from SFL>>. Reservations must be made no later than <<Cutoff Date from SFL>> by calling the hotel directly at <<hotel phone number>>. After the cutoff date <<Cutoff Date from SFL>>, hotel will release any remaining rooms in your group block and make those rooms available for sale to the public. If you wish to reserve additional rooms after the Cutoff Date, the hotel will make reasonable efforts to accommodate these requests.

**Guarantee Method:** << Drop Down in Salesforce – One option will be chosen by client>>

- **Credit Card Authorization Form:** After you have agreed to this Group Block Agreement, the hotel will reach out to your Group Contact to obtain a credit card guarantee for the group block. In the event that you cancel this group reservation the below Group Cancellation Policy will apply, and any charges will be applied to the credit card provided.
- **Wyndham Direct:** Group Contact has agreed to guarantee the group block with a Wyndham Direct Account. Group Contact will contact the property to provide Wyndham Direct ID# by calling the hotel directly at <<hotel phone number>>. The Wyndham Direct ID# should be provided to the hotel along with the Group Block Agreement. In the event that you cancel this group reservation the below Group Cancellation will apply, and any charges will be applied to the Wyndham Direct ID provided.

**Billing Method:** << Drop Down in Salesforce – One option will be chosen by client>>

- **Each Pay Own:** Each guest will be responsible for providing a form of payment for their charges upon check-in at the hotel.
- **Master Bill:** After you have signed this Group Block Agreement, the Group Contact must provide the hotel with a completed Credit Card Authorization form. The hotel will use the credit card provided as the payment method for all Room & Tax amounts of the Group on the



We are delighted that you have chosen <<Enter Hotel Name>> for your upcoming group. We look forward to working with you!

<<Hotel name from SF>>  
<<Franchisee Entity from SFL>>  
Hotel: <<Approver name entered by RSS Seller>>  
<< Electronic Generated Signature>>  
Date: <<Approved date from SFL>>

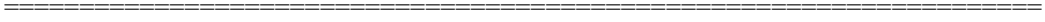
<< Group/Account Name from SF>>  
<<Group Contact from SFL>>  
By: <<DocuSign Signature>>  
Title: <<Group Contact Title from SF>>  
Date: <<Date signed in DocuSign>>

By signing above, both of the signors represent that they are authorized to act on behalf of the parties of their respective party to this this Group Block Agreement. The parties acknowledge that this Agreement is between the described parties only and neither Wyndham Hotels & Resorts, Inc. nor any of its subsidiaries are a party to this Agreement.





**EXHIBIT C-10**



**CONSTRUCTION LOAN AGREEMENT**

dated as of [\_\_\_\_], 20[\_\_]

between

[\_\_\_\_\_],

as Borrower

and

[\_\_\_\_\_],

as Lender



## CONSTRUCTION LOAN AGREEMENT

**THIS CONSTRUCTION LOAN AGREEMENT**, dated as of [\_\_\_\_], 20[\_\_\_] (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between [\_\_\_\_], a [\_\_\_\_] limited liability company, having an address at [\_\_\_\_] (together with its successors and/or assigns, “**Lender**”) and [\_\_\_\_], a [\_\_\_\_] having its principal place of business at [\_\_\_\_] [ADD ADDITIONAL BORROWERS AS NECESSARY] ([hereinafter individually and collectively,] “**Borrower**”).

### RECITALS:

**WHEREAS**, Borrower desires to obtain the Loan (defined below) from Lender; and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of the Loan Documents (defined below).

**NOW, THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

### ARTICLE 1

#### 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:

“**Accommodation Pledge**” shall mean that certain Pledge and Security Agreement dated as of the date hereof, from the sole member of Borrower (“**Pledgor**”), as pledgor, to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Account Collateral**” shall mean (i) the Accounts, and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Accounts from time to time; (ii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing; and (iii) to the extent not covered by clauses (i) - (ii) above, all “proceeds” (as defined under the UCC as in effect in the State in which the Accounts are located) of any or all of the foregoing.

“**Accounts**” shall mean the [Cash Management Account], the Debt Service Account, [the Clearing Account], the Reserve Accounts and any other account established by this Agreement or the other Loan Documents.

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

“**Affiliated Manager**” shall mean any managing agent of the Property in which Borrower, Guarantor, Sponsor, any SPE Component Entity (if any) or any Affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration Threshold**” shall mean an amount equal to 2% of the outstanding principal amount of the Loan.

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

“**Anti-Corruption Laws**” means any applicable law, regulation, or rule related to combating corruption or bribery, including, but not limited to, the United States Foreign Corrupt Practices Act of 1977 as amended (the “FCPA”) and any other applicable law, e.g., UK Bribery Act of 2010.

“**Anti-Money Laundering Laws**” means any applicable law, regulation, or rule related to combating money laundering, suspicious transactions, trade embargos, economic sanctions, or terrorist financing, including, but not limited to, the US Bank Secrecy Act of 1986, the USA Patriot Act of 2001 (in each case to the extent applicable to the Parties and to this Agreement), the Specially Designated Nationals List (“SDN List”) or any similar list maintained by the Office of Foreign Assets Control (“OFAC”) at the United States Department of the Treasury and the laws of any other applicable country, e.g., UK Money Laundering Regulations 2017 (as amended) and/or the various European Union Decisions and Regulations relating to financial sanctions in force from time to time.

“**Applicable Laws**” means any law, regulation, or rule applicable to this Agreement or to Lender, including, without limitation, the Anti-Corruption Laws and the Anti-Money Laundering Laws.

“**Appraisal**” shall mean an appraisal of the Property prepared not more than ninety (90) days prior to the relevant date with respect to which an appraisal shall be required hereunder by a member of the American Institute of Real Estate Appraisers selected by Lender, which appraisal shall (i) meet the minimum appraisal standards for national banks promulgated by the Comptroller of the

Currency pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (FIRREA), (ii) be prepared on as “as is” basis, and (iii) otherwise be in form and substance satisfactory to Lender.

“**Approved Accounting Method**” shall mean GAAP, the Uniform System of Accounts, federal tax basis accounting or such other method of accounting, in each case consistently applied, as may be reasonably acceptable to Lender. **[Lender to confirm upon completion of underwriting]**

“**Approved Annual Budget**” shall have the meaning set forth in Section 4.11 hereof.

“**Approved Extraordinary Expense**” shall mean an operating expense of the Property not set forth on the Approved Annual Budget but approved by Lender in writing (which such approval shall not be unreasonably withheld or delayed).

“**Approved Operating Expense**” shall mean an operating expense of the Property set forth on the Approved Annual Budget.

“**Architect**” means [\_\_\_\_\_] a [\_\_\_\_\_] and/or such other architect or architects selected by Borrower which are acceptable to Lender and certified, registered and/or licensed in the State.

“**Architect Certificate**” means a certification to Lender by the Architect in form and substance reasonably acceptable to Lender certifying that the Plans and Specifications conform to all applicable laws and such other matters as Lender shall require.

“**Architect Consent**” means that certain Architect’s Consent, Agreement and Certificate dated [as of the date hereof] executed by Architect in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.

“**Architect’s Agreement**” means that certain [AIA Document B101 2017 Standard Form of Agreement] between Borrower and Architect dated as of [\_\_\_\_\_] together with all extensions, substitutions, restatements, modifications and amendments thereto.

“**Assignment of Leases**” shall mean that certain first priority Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to Lender, as assignee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Assignment of Management Agreement**” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees dated as of the date hereof among Lender, Borrower and Manager, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time. **[[TBD IF APPLICABLE]]**

“**Assignment of Permits**” means that certain Assignment of Permits, Licenses, Approvals, Agreements and Documents dated as of the date hereof and executed by Borrower in favor of Lender, together with all extensions, renewals, substitutions, restatements, modifications and amendments thereto.

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

“**Balancing Event**” shall have the meaning set forth in Section 4.39 hereof.

“**Bank**” shall be deemed to refer to the bank or other institution maintaining the Clearing Account pursuant to the Clearing Account Agreement.]

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

“**Bankruptcy Event**” shall mean the occurrence of any one or more of the following: (i) Borrower or any SPE Component Entity shall commence any case, proceeding or other action (A) under the Bankruptcy Code and/or any Creditors Rights Laws seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, liquidation or dissolution or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets; (ii) Borrower or any SPE Component Entity shall make a general assignment for the benefit of its creditors; (iii) any Restricted Party (or Affiliate thereof) files, or joins or colludes in the filing of, (A) an involuntary petition against Borrower or any SPE Component Entity under the Bankruptcy Code or any other Creditors Rights Laws, or solicits or causes to be solicited or colludes with petitioning creditors for any involuntary petition under the Bankruptcy Code or any other Creditors Rights Laws against Borrower or any SPE Component Entity or (B) 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 Borrower’s or any SPE Component Entity’s assets; (iv) Borrower or any SPE Component Entity files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Creditors Rights Laws, or solicits or causes to be solicited or colludes with petitioning creditors for any involuntary petition from any Person; (v) any Restricted Party (or Affiliate thereof) consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, any SPE Component Entity or any portion of the Property; (vi) Borrower or any SPE Component Entity makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (vii) any Restricted Party (or Affiliate thereof) contesting or opposing any motion made by Lender to obtain relief from the automatic stay or seeking to reinstate the automatic stay in the event of any proceeding under the Bankruptcy Code or any other Creditors Rights Laws involving Sponsor or its subsidiaries; (viii) any Restricted Party (or Affiliate thereof) taking any action in

furtherance of, in collusion with respect to or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in items (i) through (vii) above; and (ix) in the event Lender receives less than the full value of its claim in any proceeding under the Bankruptcy Code or any other Creditors Rights Laws, Sponsor or any of its Affiliates receiving an equity interest or other financial benefit of any kind as a result of a “new value” plan or equity contribution.

“**Benchmark**” shall mean (i) initially, Term SOFR and (ii) on and after the occurrence of a Benchmark Transition Event and the related Benchmark Transition Date, the Benchmark Replacement determined in accordance with the terms and conditions hereof.

“**Benchmark Floor**” shall mean [three and one-half percent (3.50%)].

“**Benchmark Rate**” shall mean the sum of (i) the greater of (A) the Benchmark and (B) the Benchmark Floor, and (ii) the Benchmark Spread.

“**Benchmark Rate Loan**” shall mean the Loan at all such times as interest thereon accrues at a rate of interest based upon the Benchmark pursuant to Section 2.5 hereof.

“**Benchmark Replacement**” shall mean, with respect to any Benchmark Transition Event, a variable rate or index selected by Lender (which may be, at Lender’s option, without limitation, “Daily Simple SOFR,” “Daily Compounded SOFR,” or “30-Day SOFR Average”).

“**Benchmark Replacement Adjustment**” shall mean, with respect to any Benchmark Replacement and its related Determination Date(s), a spread adjustment (which may be a positive or negative value, or zero) that has been selected by Lender, giving due consideration to (i) any selection or recommendation of a spread adjustment (including, without limitation, a “benchmark replacement spread adjustment”) or method for calculating or determining the same, by the Relevant Governmental Body for the applicable Benchmark Replacement and its related Determination Date(s), (ii) any evolving or then-prevailing market convention for determining a spread adjustment (including, without limitation, a “benchmark replacement spread adjustment”) or method for calculating or determining the same, for the applicable Benchmark Replacement and its related Determination Date(s) in U.S. dollar-denominated syndicated or bilateral commercial real estate credit facilities, and/or (iii) the spread adjustment (including, without limitation, a “benchmark replacement spread adjustment”) or method for calculating or determining the same, then being utilized by Lender or its Affiliates with respect to variable rate commercial real estate loans for the applicable Benchmark Replacement and its related Determination Date(s).

“**Benchmark Replacement Conforming Changes**” shall mean, with respect to any Benchmark Transition Event, any technical, administrative or operational changes (including changes to the definitions of “Business Day,” “Interest Period,” “Monthly Payment Date” and “Determination Date,” the timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, the applicability of adjustments to the interest rate due to the effect of reserve requirements, preceding and succeeding business day conventions and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of the applicable Benchmark Replacement and to permit the administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of the applicable Benchmark Replacement exists, in such other manner as Lender determines is necessary in connection with the administration of the Loan).

“**Benchmark Spread**” shall mean [five and nine tenths percent (5.90%)], subject to the provisions of Section 2.5(b)(vi) hereof (including, without limitation, the adjustment of the Benchmark Spread by the addition thereto of the Benchmark Replacement Adjustment, when applicable hereunder). Lender’s computation of the Benchmark Spread shall be conclusive and binding on Borrower for all purposes, absent manifest error.

“**Benchmark Transition Date**” shall mean any date designated by Lender for conversion of the then-current Benchmark to a Benchmark Replacement.

“**Benchmark Unavailability Event**” shall mean that one or more of the following has occurred, at any time or from time to time during the term of the Loan, as determined by Lender (which determination shall be conclusive and binding upon Borrower absent manifest error): (i) at any time while the Loan is a Benchmark Rate Loan and the applicable Benchmark is Term SOFR, the Term SOFR Administrator either temporarily or permanently fails to report Term SOFR on a daily basis; (ii) at any time while the Loan is a Benchmark Rate Loan and the applicable Benchmark is not Term SOFR, the applicable administrator of the then-applicable Benchmark either temporarily or permanently fails to report such Benchmark on a daily basis; (iii) due to any Change in Law, it is unlawful (or asserted by any Governmental Authority to be unlawful) for Lender to maintain the Loan as a Benchmark Rate Loan using the then-current Benchmark; or (iv) adequate and reasonable means do not exist for ascertaining the then-current Benchmark.

“**Borrower Compliance Party**” means Borrower and its shareholders, subsidiaries, officers, directors, employees, agents, and Third Parties acting on its behalf.

“**Borrower Party**” and “**Borrower Parties**” shall mean each of Borrower, Pledgor, any SPE Component Entity, [MEZZ LOAN AT CLOSING – Mezzanine Borrower] Sponsor, any Affiliated Manager and Guarantor.

“**Breakage Costs**” shall have the meaning set forth in Section 2.5(b) hereof.

“**Broker**” shall have the meaning set forth in Section 15.3 hereof.

“**Business Day**” shall mean a day on which commercial banks are not authorized or required by applicable law to close in New York, New York.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under the Approved Accounting Method (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

“**Carry Guaranty**” shall mean that certain Carry Guaranty dated as of the date hereof and executed by Guarantor in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.

“**Carry Holdback**” shall have the meaning set forth in Section 2.12(b). [As of the Closing Date, the amount of the Loan allocated to the Carry Holdback shall be [\_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00)] [**Lender to confirm upon approval of final construction budget**]

“**Carry Holdback Balancing Event**” shall have the meaning set forth in Section 4.39(b).

[“**Cash Management Account**” shall have the meaning set forth in Section 8.1 hereof.]

[“**Cash Management Agreement**” shall mean that certain Cash Management Agreement, dated as of the date hereof, executed by Borrower, Lender and Cash Management Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.]

[“**Cash Management Bank**” shall mean [\_\_\_\_\_].]

“**Cash Sweep Period**” shall mean the following: (i) the period commencing upon the occurrence of a Clearing Account Trigger Event and ending at such time that the [Debt Yield is greater than or equal to [\_\_%][*Check term sheet for conditions for termination of sweep period*] for two consecutive calendar quarters (or [\_\_\_] calendar quarter(s) in the event that the 10-year U.S. Treasury Rate is less than or equal to [\_\_%] at the time of such calculation) and (ii) the period (a) commencing upon any of (A) the occurrence of an Event of Default[,][and] (B) the Debt Yield [**MEZZ LOAN AT CLOSING – (Combined)**] being less than [\_\_\_]% ]**MEZZ LOAN AT CLOSING AND SPRINGING CASH MANAGEMENT** – and (C) the occurrence and continuance of a Mezzanine Loan Event of Default]; and (ii) expiring upon (x) with regard to any Cash Sweep Period commenced in connection with clause (A) above, the acceptance by Lender in writing in its sole and absolute discretion of the cure of such Event of Default [,][and] (y) with regard to any Cash Sweep Period commenced in connection with clause (B) above, the date that the Debt Yield [**MEZZ LOAN AT CLOSING – (Combined)**] is equal to or greater than [\_\_\_]% for two (2) consecutive calendar quarters (or [\_\_\_] calendar quarter(s) in the event that the 10-year U.S. Treasury Rate is less than or equal to [\_\_%] at the time of such calculation) [**MEZZ LOAN AT CLOSING AND SPRINGING CASH MANAGEMENT** – and (z) with regard to any Cash Sweep Period commenced in connection with clause (C) above, Lender’s receipt of written notice from Mezzanine Lender that all Mezzanine Loan Events of Default have been cured]. Notwithstanding the foregoing, a Cash Sweep Period shall not be deemed to expire in the event that a Cash Sweep Period then exists for any other reason.

“**Casualty**” shall have the meaning set forth in Section 5.2.

“**Certificate of Occupancy**” shall mean a final certificate of occupancy for the Project, subject to conditions satisfactory to Lender in its sole and absolute discretion.

“**Change in Law**” shall mean the occurrence, after the Closing Date, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority.

[“**Clearing Account**” shall have the meaning set forth in Section 8.1 hereof.]

[“**Clearing Account Agreement**” shall mean that certain [Deposit Account Control Agreement] by and among Borrower, Lender and [\_\_\_\_\_] dated as of the date hereof, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.]

[“**Clearing Account Trigger Event**” shall mean the earliest to occur of (i) Borrower entering into the first Lease with respect to any space at the Property or (ii) [\_\_\_ months prior to] the issuance of a temporary certificate of occupancy for the Project.]

“**Closing Date**” shall mean the date of this Agreement.

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower 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.

“**Completion**” shall mean the Substantial Completion of the Construction on or prior to the Substantial Completion Date in accordance with all Plans and Specifications, the Construction Contracts, all Legal Requirements, the Franchise Agreement (including, without limitation, receipt of all approvals and completion of all inspections required thereunder to authorize the opening of the Property to the public) and this Agreement, such compliance to be evidenced to the satisfaction of Lender; together with the delivery to Lender

of a temporary certificate of occupancy (if subject to any conditions, such conditions being acceptable to Lender) for the Improvements and evidence that all other approvals from Governmental Authorities have been issued and all other Legal Requirements have been satisfied so as to allow the Improvements to be used and operated in accordance with the Loan Documents.

“**Completion Guaranty**” shall mean that certain Completion Guaranty dated as of the date hereof and executed by Guarantor in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.

“**Condemnation**” shall mean any permanent or temporary taking by any Governmental Authority as the result, 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.

“**Construction**” shall mean the performance of the Work and the supplying of any materials to be supplied in connection with the Work.

“**Construction Balancing Event**” shall have the meaning set forth in Section 4.39(a).

“**Construction Budget**” shall mean the budget for the Hard Costs and Soft Costs, which is attached to this Agreement as Exhibit [ ].

“**Construction Contract**” shall mean each of the General Contract, the Architect's Agreement, and each Trade Contract, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

“**Construction Documents**” shall mean, collectively, all Construction Contracts, the Plans and Specifications, the Construction Budget, the Permits and the Construction Schedule, as any of the foregoing may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

“**Construction Reserve**” has the meaning set forth in Section 7.1(a) hereof.

“**Construction Schedule**” has the meaning set forth in Section 4.30(a) hereof.

“**Contract**” shall mean any contract or agreement with any architect, engineer, contractor, subcontractor, management agent, leasing agent, sales agent, service and maintenance agent, or any other third party, whether existing as of the Closing Date or thereafter arising, relating to the design, construction, ownership, condition, use, occupancy, possession, management, operation, space leasing, service, maintenance or repair of, or otherwise in respect of, the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time (but the same shall not be deemed to include any Lease or the Management Agreement).

“**Control**” as to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of such Person, whether through ownership of voting securities or other beneficial interests, by contract or otherwise, and the terms “Controlled”, “controlled”, “Controlling” or “controlling” shall have a correlative meaning.

“**Counterparty**” shall mean the counterparty under any Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement, which counterparty shall satisfy the Minimum Counterparty Rating and otherwise be acceptable to Lender.

“**Cost Savings**” has the meaning set forth in Section 4.31(d) hereof.

“**Costs**” means, collectively, the Hard Costs and Soft Costs of the Construction and such other costs as set forth in the Construction Budget.

[“**Credit Card Direction Notice**” shall have the meaning set forth in Section 8.2 hereof.]

“**Creditors Rights Laws**” shall mean any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

“**Crowdfunded Person**” shall mean a Person capitalized primarily by monetary contributions (i) of less than \$35,000 each from more than 35 investors who are individuals or (ii) which are funded primarily (A) in reliance upon Regulation Crowdfunding promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended and/or (B) through internet-mediated registries, platforms or similar portals, subscriptions, benefit events and/or other similar methods.

“**Debt**” shall mean the outstanding principal amount 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 Minimum Interest Payment, Exit Fee and Breakage Costs, if applicable) due to Lender in respect of the Loan under the Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal (if applicable) and interest payments hereunder.

“**Debt Service Account**” shall have the meaning set forth in Section 8.1 hereof.

“**Debt Service Coverage Ratio**” shall mean, as of any date of calculation, the ratio calculated by Lender of (i) the Underwritable Cash Flow to (ii) the aggregate amount of Debt Service [and Mezzanine Debt Service] which will be due for the twelve

(12) month period immediately succeeding the date of calculation; provided, that, the foregoing shall be calculated by Lender assuming that the Loan will be in place for the entirety of said period.

“**Debt Yield**” shall mean, as of any date of calculation, a ratio calculated by Lender and conveyed as a percentage in which (i) the numerator is the Underwritable Cash Flow and (ii) the denominator is the then aggregate outstanding principal balance of the Loan [and the Mezzanine Loan].

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

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

[“**Depository Bank**” shall mean [\_\_\_\_\_].]

“**Determination Date**” shall mean, with respect to any Interest Period, either (i) if the then-applicable Benchmark is Term SOFR, the date that is two (2) Term SOFR Business Days prior to the first day of such Interest Period; provided, however, that if Term SOFR does not so appear on the date specified above, then the applicable Determination Date for such Interest Period shall instead be the Term SOFR Business Day first preceding such date specified above, or (ii) if the then-applicable Benchmark is not Term SOFR, the date and time determined by Lender in accordance with the provisions of Section 2.5 hereof relating to Benchmark Replacement Conforming Changes.

[“**Developer**” means \_\_\_\_\_, a \_\_\_\_\_.]

[“**Developer Fees**” means all fees payable to the Developer under the Development Agreement.]

[“**Development Agreement**” means that certain [Development Agreement] dated [\_\_\_\_\_], between Borrower and Developer, together with all extensions, substitutions, restatements, modifications and amendments thereto.]

“**Development Consultant**” shall mean [\_\_\_\_\_] or such replacement Person as Lender may designate and engage to assist Lender in reviewing all or any portions of the Construction, the required permits and approvals for the Construction, to inspect the Improvements and the Property as the Work progresses and to consult with and to provide advice to and to render reports to Lender which, at Lender’s option, may be either an officer or employee of Lender or a consulting architect, engineer or inspector appointed or engaged by Lender at the sole cost and expense of Borrower.

“**Distribution**” means the declaration or payment of any dividend or distribution on or in respect of any shares of any class of capital stock of any Person or any distribution of cash or cash flow in respect of any partnership, membership or other ownership interest in any Person, or the purchase, redemption, or other retirement of any shares of any class of capital stock or ownership interest of any Person or ownership interests in such Person, directly or indirectly through a subsidiary (of any tier) or otherwise; the making of any loans to any shareholder, member, constituent partner or Affiliate; the return of capital by any Person to its shareholders, members or partners as such; or any other distribution on or in respect of any shares of any class of capital stock or ownership interest of any Person or any partnership, membership or other ownership interest in any Person.

“**Draw Request**” has the meaning set forth in Section 2.14(a) hereof.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (i) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (ii) a segregated trust account or accounts 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 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**” shall mean (i) [\_\_\_\_\_] (for so long as [\_\_\_\_\_] Bank does not suffer a material adverse change in condition from that existing on the Closing Date as determined by Lender) or (ii) any other 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 “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 Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and “A2” by Moody’s.

“**Embargoed Person**” shall have the meaning set forth in Section 4.25 hereof.

“**Environmental Indemnity**” shall mean 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 Laws**” shall have the meaning set forth in the Environmental Indemnity.

“**Equipment Leases**” shall have the meaning set forth in Section 3.34 hereof.



“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may heretofore have been or shall be amended, restated, replaced or otherwise modified.

“Event of Default” shall have the meaning set forth in Section 10.1 hereof.

“Excess Cash Flow” shall have the meaning set forth in Section 8.3 hereof.

“Excess Cash Flow Account” shall have the meaning set forth in Section 7.4 hereof.

“Excess Cash Flow Funds” shall have the meaning set forth in Section 7.4 hereof.

[“Excess Operating Expense Disbursement” shall mean, with respect to any applicable Monthly Payment Date, the amount received by Borrower pursuant to Section 8.3(h) less the amount thereof actually spent on Approved Operating Expenses and Approved Extraordinary Expenses, which such determination shall be made by Lender in good faith and shall be final absent manifest error.]

“Exchange Act” shall mean the Securities and Exchange Act of 1934, as amended.

“Exit Fee” shall mean an amount equal to [\_\_\_ percent (\_\_\_%)] of the maximum principal amount of the Loan.

“Extended Maturity Date” shall have the meaning set forth in Section 2.11 hereof.

“Extension Fee” shall mean [one quarter of one percent (0.25%)] of the maximum principal amount of the Loan.

“Extension Option” shall have the meaning set forth in Section 2.11 hereof.

“Extension Period” shall have the meaning set forth in Section 2.11 hereof.

“FATCA” shall mean Sections 1471 through 1474 of the IRS Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRS Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the IRS Code.

[“FF&E” shall mean furniture, fixtures and equipment at or in or used in connection with the use, occupancy, operation and maintenance of all or any part of the hotel located on the Property and of the type customarily utilized in hotel properties such as the Property.

“FF&E Reserve Account” shall have the meaning set forth in Section [\_\_\_] hereof.

“FF&E Reserve Funds” shall have the meaning set forth in Section [\_\_\_] hereof.

“FF&E Reserve Monthly Deposit” shall have the meaning set forth in Section [\_\_\_] hereof.]

“Final Completion” means that Borrower shall have caused each of the matters described in Section 4.29(d) to have been completed.

“Final Completion Date” means [\_\_\_\_\_].[TBD]

“Final Funding Date” shall mean the earliest to occur of (i) the date Lender has advanced the full amount of the Loan, (ii) the Substantial Completion Date, or (iii) an Event of Default.

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

“Fitch” shall mean Fitch, Inc.

“Foreign Taxes” shall have the meaning set forth in Section 2.5(b) hereof.

“Franchise Agreement” shall mean (a) that certain [\_\_\_\_\_], as amended in accordance with the terms and provisions hereof, dated [\_\_\_\_\_] between Borrower and Franchisor or (b) if the context requires, any Replacement Franchise Agreement executed in accordance with the terms and provisions hereof.

“Franchisor” shall mean [Wyndham].

“Future Advance” shall have the meaning set forth in Section 2.12 hereof.

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

“General Contract” means that certain [Guaranteed Maximum Price Contract][AIA Document A133 – 2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor] between Borrower and the General Contractor dated as of

[\_\_\_\_\_], together with all extensions, renewals, substitutions, restatements, modifications and amendments thereto, including, without limitation, amendments by approved change orders.

“**General Contractor**” shall mean [\_\_\_\_\_, a \_\_\_\_\_] and/or such other general contractor selected by Borrower and approved by Lender

“**Government Entity**” means any national, federal, state or local, whether domestic or foreign, government, quasi-governmental entity, court, tribunal or any governmental bureau, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any country. A State-Owned Business is a Government Entity under the Administrative Agent’s policies and procedures.

“**Government Lists**” shall have the meaning set forth in Section 3.27 hereof.

“**Government Official**” means any (a) elected or appointed government official (e.g., ministers or politicians); (b) person who works for, or on behalf of, a Government Official, agency, or enterprise performing a governmental function, including members of a royal family or military (e.g., customs officers or tax authorities); (c) person who works for, or on behalf of, a State-Owned Business; (d) political party officer or candidate for public office (e.g., a candidate running for governor or a mayor); (e) person acting for, or on behalf of, a public international organization (e.g., United Nations, Red Cross, or IMF); and (f) person otherwise categorized as a Government Official under local law.

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

“**Gross Rents**” shall mean an amount equal (without duplication) to the sum of all income, computed in accordance with the Approved Accounting Method, derived from the ownership and operation of the Property from whatever source for the trailing twelve (12) month period, including, without limitation: (a) all income and proceeds received from rental of rooms, commercial space, meeting, conference and/or banquet space within the Property including net parking revenue; (b) all income and proceeds received from food and beverage operations and from catering services conducted from the Property; (c) all income and proceeds from business interruption, rental interruption and use and occupancy insurance with respect to the operation of the Property (after deducting therefrom all necessary costs and expenses incurred in the adjustment or collection thereof); (d) all Awards for temporary use (after deducting therefrom all costs incurred in the adjustment or collection thereof and in Restoration of the Property); and (e) all income and proceeds from judgments, settlements and other resolutions of disputes with respect to matters which would be includable in the proceeding clauses (a) through (d) if received in the ordinary course of the Property operation (after deducting therefrom all necessary costs and expenses incurred in the adjustment or collection thereof); but excluding, (1) Gross Rents and gross receipts received by lessees, licensees or concessionaires of the Property; (2) consideration received at the Property for hotel accommodations, goods and services to be provided at other hotels, although arranged by, for or on behalf of Borrower or Manager; (3) non-recurring or extraordinary 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; (4) federal, state and municipal excise, sales and use 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; (5) Awards (except to the extent provided in clause (d) above) or insurance proceeds (except to the extent provided in clause (c) above); (6) refunds of amounts not included in Operating Expenses at any time and uncollectible accounts; (7) gratuities collected by the Property employees; (8) the proceeds of any financing; (9) 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; (10) any credits or refunds made to customers, guests or patrons in the form of allowances or adjustments to previously recorded revenues; (11) rents from month-to-month tenants or tenants that are included in any bankruptcy proceedings; and (12) any disbursements to Borrower from the Reserve Funds or any other escrow fund established by the Loan Documents or under the Management Agreement. Gross Rents shall not be diminished as a result of the Security Instrument or the creation of any intervening estate or interest in the Property or any part thereof.

“**Guarantor**” shall mean [, individually and collectively,] [\_\_\_\_\_] and any successor to and/or replacement of any of the foregoing [MEZZ LOAN AT CLOSING – (including, without limitation, following the occurrence of a Mezzanine Foreclosure, the applicable substitute for Guarantor provided by Mezzanine Lender in connection with such Mezzanine Foreclosure (subject to the applicable terms and conditions of the Mezzanine Intercreditor)], in each case, pursuant to and in accordance with the applicable terms and conditions of the Loan Documents.

“**Guaranty**” shall mean, individually and/or collectively, each of the Guaranty of Recourse Obligations, the Carry Guaranty, [Guaranty of Interest Reserve], and the Completion Guaranty.

[“**Guaranty of Interest Reserve**” means that certain Interest Reserve Replenishment Guaranty dated as of the date hereof and executed by Guarantor in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.]

“**Guaranty of Recourse Obligations**” shall mean that certain Guaranty of Recourse Obligations dated as of the date hereof and executed by Guarantor in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.

“**Hard Costs**” means, collectively, all costs and expenses set forth in the Construction Budget which are denominated as “Hard Costs”.

“**Improvements**” shall mean that certain hotel consisting of approximately \_\_\_\_\_ gross square feet across \_\_\_ buildings with a total of \_\_\_\_\_ ( ) units and \_\_\_\_\_ above grade parking spaces, existing or to be developed and constructed by Borrower on the Land, and all other improvements and amenities related to or constructed upon, in or under the Land, as applicable, whether now existing or hereafter constructed.

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

“**Indemnified Parties**” shall mean (i) Lender, (ii) any successor owner or holder of the Loan or participations in the Loan, (iii) any servicer of the Loan, (iv) any Investor or any prior Investor, (v) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of Lender or any Investor or other third party, (vi) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (vii) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, Affiliates or subsidiaries of any and all of the foregoing, and (viii) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties’ assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan.

“**Indemnified Liabilities**” shall have the meaning set forth in Section 11.5 hereof.

“**Initial Advance**” shall have the meaning set forth in Section 2.12 hereof.

“**Insurance Account**” shall have the meaning set forth in Section 7.2 hereof.

“**Insurance Payment Date**” shall mean, with respect to any applicable Policies, the date occurring 30 days prior to the date the applicable Insurance Premiums associated therewith are due and payable.

“**Insurance Premiums**” shall have the meaning set forth in Section 5.1 hereof.

“**Interest Holdback**” shall have the meaning set forth in Section 2.12(b) hereof.

“**Interest Period**” shall have the meaning set forth in Section 2.6 hereof.

“**Interest Rate**” shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time as determined in accordance with the provisions of Section 2.5 hereof.

“**Interest Rate Cap Agreement**” shall mean, as applicable, any interest rate cap agreement (together with the confirmation and schedules relating thereto) in form and substance satisfactory to Lender between Borrower and Counterparty or any Replacement Interest Rate Cap Agreement, in each case which also satisfies the requirements set forth in Section 2.8.

“**Interest Rate Cap Reserve Account**” shall have the meaning set forth in Section 7.9 hereof.

“**Interest Rate Cap Reserve Funds**” shall have the meaning set forth in Section 7.9 hereof.

“**Interest Reserve**” shall have the meaning set forth in Section 7.6 hereof.

“**Interest Reserve Account**” shall have the meaning set forth in Section 7.6 hereof.

“**Interest Reserve Funds**” shall have the meaning set forth in Section 7.6 hereof.

“**Interest Shortfall**” shall have the meaning set forth in Section 2.7 hereof.

“**Investor**” shall mean any investor or potential investor in the Loan (or any portion thereof or interest therein).

“**IRS Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time or any successor statute.

“**Labor and Materials Charge**” shall have the meaning set forth in Section 4.8 hereof.

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

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

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

**“LTV”** shall mean a ratio, as determined by Lender, in which, as of any date of determination by Lender: (i) the numerator is equal to the outstanding principal balance of the Loan and (ii) the denominator is equal to the appraised value of the Property based on an Appraisal.

**“Loan”** shall mean the loan made by Lender to Borrower pursuant to this Agreement.

**“Loan Documents”** shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, the Accommodation Pledge, the Assignment of Permits, the Environmental Indemnity, the Assignment of Management Agreement, the Collateral Assignment of Interest Rate Cap Agreement, the Guaranty of Interest Reserve, the Guaranty, [the Cash Management Agreement] [Franchise Agreement comfort letter, if applicable], [the Subordination of Development Agreement, if applicable], and all other documents executed and/or delivered in connection with the Loan, as each of the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time. **[To be confirmed]**

**“Loan Proceeds”** shall mean amounts advanced by Lender under the Loan in accordance with this Agreement.

**“Losses”** shall mean any and all losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs and reasonable attorneys’ fees, in the case of each of the foregoing, of whatever kind or nature and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

**“Major Contract”** shall mean (i) any management (other than the Management Agreement), brokerage or leasing agreement or (ii) any cleaning, maintenance, service or other contract or agreement of any kind (other than Leases) of a material nature (materiality for these purposes to include contracts in excess of \$[\_\_\_\_\_] or which extend beyond one year (unless cancelable by Borrower on thirty (30) days or less notice without penalty)), in either case relating to the ownership, leasing, management, use, operation, maintenance, repair or restoration of the Property, whether written or oral, but excluding Construction Contracts.

**“Major Trade Contract”** shall mean (a) each Trade Contract for a Material Trade and (b) each other Trade Contract having a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any change order or change orders, equal to or in excess of [\_\_ percent (\_\_ %)] of the total Hard Costs set forth in the Construction Budget; provided, however, that for purposes of this definition multiple Trade Contracts with a single Trade Contractor, or an Affiliate thereof, as the case may be, shall be deemed to be one Trade Contract.

**“Major Trade Contractor”** shall mean each contractor or subcontractor under a Major Trade Contract.

**“Major Trade Contractor Consent”** shall mean a consent agreement in form and content reasonably acceptable to Lender executed by each Major Trade Contractor with respect to its related Major Trade Contract.

**“Management Agreement”** shall mean the management agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

**“Manager”** shall mean [\_\_\_\_\_] or such other entity selected as the manager of the Property in accordance with the terms of this Agreement and the other Loan Documents.

**“Material Action”** shall mean, with respect to any Person, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against such Person or file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal, state, local or foreign law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or a substantial part of its property, or take any action to consolidate or merge such Person with or into any other Person, or take any action to divide, dissolve or liquidate such Person, or make any assignment for the benefit of creditors of such Person, or sell all or substantially all of such Person’s assets, or admit in writing such Person’s inability to pay its debts generally as they become due, or declare or effectuate a moratorium on the payment of any obligation, or take action in furtherance of any such action.

**“Material Adverse Effect”** shall mean any material adverse effect upon (i) the business operations, economic performance, assets, condition (financial or otherwise), equity, contingent liabilities, prospects, material agreements or results of operations of

Borrower, any SPE Component Entity, any Guarantor or the Property, (ii) the ability of Borrower or any Guarantor to perform their respective obligations under any of the Loan Documents, (iii) the enforceability or validity of any of the Loan Documents, the perfection or priority of any lien created under any of the Loan Documents or the rights, interests or remedies of Lender under any of the Loan Documents, or (iv) the value, use, operation of, or cash flows from, the Property.

“**Material Trades**” shall mean Trade Contracts for foundation, superstructure, curtain wall, HVAC, electrical, plumbing and sprinkler. **[Lender to confirm upon completion of underwriting]**

“**Maturity Date**” shall mean [\_\_\_\_\_], 20[\_\_\_], as such date may be extended pursuant to and in accordance with Section 2.11 hereof, or such other date on which the final payment of the principal amount of the Loan becomes due and payable as herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum non-usurious 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.

**[MEZZ LOAN AT CLOSING – “Mezzanine Borrower”** shall mean the “Borrower” as defined in the Mezzanine Loan Agreement.

“**Mezzanine Equity Collateral**” shall mean the 100% direct and/or indirect equity ownership interest held by Mezzanine Borrower in Pledgor.

“**Mezzanine Foreclosure**” shall mean the transfer of the Mezzanine Equity Collateral to Mezzanine Lender in connection with the exercise of Mezzanine Lender’s rights and remedies under the Mezzanine Loan Documents, provided that such transfer is made in accordance with the applicable terms and conditions of the Mezzanine Intercreditor.

“**Mezzanine Intercreditor**” shall mean that certain intercreditor or other similar agreement by and among Lender and Mezzanine Lender relating to the Loan and the Mezzanine Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with its terms.

“**Mezzanine Lender**” shall mean [\_\_\_\_\_], in its capacity as mezzanine lender under the Mezzanine Loan, and its successors and/or assigns (to the extent permitted under the Mezzanine Intercreditor).

“**Mezzanine Loan**” shall mean that certain loan in the original principal amount of \$[\_\_\_\_\_] made by Mezzanine Lender to Mezzanine Borrower.

“**Mezzanine Loan Agreement**” shall mean that certain Mezzanine Loan Agreement dated as of even date herewith between Mezzanine Lender and Mezzanine Borrower in respect of the Mezzanine Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with its terms.

“**Mezzanine Loan Documents**” shall mean the documents, certificates and instruments evidencing, securing or otherwise executed in connection with the Mezzanine Loan (as the same exist as of the date hereof and as the same may be amended, restated, replaced, supplemented or otherwise modified, in each case, in accordance with the express terms thereof and of the Mezzanine Intercreditor).

“**Mezzanine Loan Event of Default**” shall mean the occurrence of an “Event of Default” as such term is defined in the Mezzanine Loan Agreement.

“**Mezzanine Loan Monthly Debt Service**” shall mean, with respect to any particular period of time, regularly scheduled monthly principal (if applicable) and interest payments due under the Mezzanine Loan Documents.

“**Mezzanine Transfer**” shall mean each of (i) the pledge of the Mezzanine Equity Collateral by Mezzanine Borrower to Mezzanine Lender in connection with the Mezzanine Loan and (ii) any Mezzanine Foreclosure.

“**Milestones**” means those certain events and actions set forth on Schedule 4.29(b) to be completed and performed by the applicable Milestone Dates.

“**Milestone Dates**” means the specific dates by which the Milestones must be completed and performed, as set forth on Schedule 4.29(b).

“**Minimum Counterparty Rating**” shall mean a long term credit rating from Moody’s of at least “A1”.

“**Minimum Disbursement Amount**” shall mean [\_\_\_\_\_] (\$\_\_\_\_\_).

“**Minimum Interest**” shall have the meaning set forth in Section 2.7(d) hereof.

“**Minimum Interest Payment**” shall have the meaning set forth in Section 2.7(d) hereof.

“**Monthly Debt Service Payment**” shall have the meaning set forth in Section 2.6 hereof.

“**Monthly Insurance Deposit**” shall have the meaning set forth in Section 7.2 hereof.

“**Monthly Payment Date**” shall mean [\_\_\_\_], 20[\_\_\_] and the first (1<sup>st</sup>) day of every calendar month occurring thereafter during the term of the Loan.

“**Monthly Tax Deposit**” shall have the meaning set forth in Section 7.2 hereof.

“**Moody’s**” shall mean Moody’s Investor Service, Inc.

“**Net Proceeds**” shall mean: (i) the net amount of all insurance proceeds payable as a result of a Casualty to the Property, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys’ fees and costs), if any, in collecting such insurance proceeds, or (ii) the net amount of the Award, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys’ fees and costs), if any, in collecting such Award.

“**New PIP**” shall mean any PIP other than the Scheduled PIP.

“**Note**” shall mean that certain Promissory Note of even date herewith in the principal amount of up to \$[\_\_\_\_], made by Borrower in favor of Lender, as the same may be amended, restated, replaced, extended, renewed, supplemented, severed, split, or otherwise modified from time to time.

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

“**OFAC**” shall have the meaning set forth in Section 3.27 hereof.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by Responsible Officer of Borrower.

“**Offsite Materials**” has the meaning set forth in Section 2.16 hereof.

“**Operating Expense Account**” shall have the meaning set forth in Section 7.3 hereof.

“**Operating Expense Funds**” shall have the meaning set forth in Section 7.3 hereof.

“**Operating Expense Monthly Deposit**” shall have the meaning set forth in Section 7.3 hereof.

“**Operating Expenses**” shall mean the total of all expenditures, computed in accordance with the Approved Accounting Method, of whatever kind relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, (and without duplication) (a) utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, payroll and related taxes, computer processing charges, management fees (equal to the greater of (x) [\_\_\_] percent ([\_]%) of Gross Rents for the trailing twelve (12) month period or (y) actual management fees payable under the Management Agreement), franchise fees (equal to the greater of (x) [\_\_\_] percent ([\_]%) of Gross Rents for the trailing twelve (12) month period or (y) actual franchise fees payable under the Franchise Agreement), operational equipment or other lease payments as approved by Lender, but specifically excluding (i) depreciation, (ii) Debt Service, (iii) non-recurring or extraordinary expenses, and (iv) deposits into the Reserve Funds; and (b) normalized FF&E expenditures equal to the greater of (x) [\_\_\_] percent ([\_]%) of Gross Rents for the trailing twelve (12) month period or (y) actual FF&E expenditures.

“**Organizational Chart**” shall have the meaning set forth in Section 3.28 hereof.

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

“**PACE Loan**” shall mean any Property-Assessed Clean Energy loan or any similar financing.

“**Patriot Act**” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

“**Patriot Act Offense**” shall have the meaning set forth in Section 3.27 hereof.

“**Permits**” shall mean (i) all necessary certificates, licenses, permits, franchises, trade names, certificates of occupancy, consents, variances, dedications, and other approvals (governmental and otherwise) required under applicable Legal Requirements for the construction, use, operation alteration, or development of the Property and the conduct of Borrower’s business (including, without limitation, all required zoning, building code, land use, environmental, public assembly and other similar permits or approvals and all state, county and local liquor, restaurant, swimming pool, spa, gift shop and other licenses applicable to the Property), (ii) all development rights and other intangible rights, titles, interests, privileges and appurtenances owned by Borrower and in any way related to or used in connection with the Property and its construction, use, ownership, alteration, development or operation obtained from private parties, including, without limitation, those obtained to make use of utilities and to insure vehicular and pedestrian ingress and egress to the Property, and (iii) all disposition, redevelopment and development agreements, site approvals, environmental impact

reports, traffic and other mitigation and impact studies and reports, maps and all other documents, agreements and/or instruments, private or public, affecting or benefiting the Property.

“**Permitted Encumbrances**” shall mean collectively (a) with respect to the Property, (i) the lien and security interests created by this Agreement and the other Loan Documents, (ii) all liens, encumbrances and other matters disclosed in the Title Insurance Policy, (iii) liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent (other than liens securing a PACE Loan), (iv) any workers’, mechanics’ or similar liens on the Property provided any such lien is discharged or bonded in accordance with the terms and conditions of the Loan Documents, and (v) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion and (b) with respect to the Borrower, the lien and security interests created by the Accommodation Pledge].

“**Permitted Equipment Leases**” shall mean equipment leases or other similar instruments entered into with respect to the Personal Property; provided, that, in each case, such equipment leases or similar instruments (i) are entered into on commercially reasonable terms and conditions in the ordinary course of Borrower’s business and (ii) relate to, and are secured only by, the subject Personal Property which is (A) used in connection with the operation and maintenance of the Property in the ordinary course of Borrower’s business and (B) readily replaceable without material interference or interruption to the operation of the Property.

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

“**Personal Property**” shall have the meaning set forth in the granting clause of the Security Instrument.

[“**PIP**” shall have the meaning set forth in Section 4.47 hereof.]

[“**PIP Completion Evidence**” shall mean evidence acceptable to Lender that all PIP (including all Scheduled PIP and, if applicable, New PIP) has been completed and paid for in full in a good, workmanlike and lien free manner, which such evidence shall include, without limitation, (a) written certification from the Franchisor confirming the foregoing, (b) a title search for the Property confirming that only Permitted Encumbrances exist and no liens, lis pendens or similar matters have been filed and (c) an inspection of the Property by Lender and/or its agents confirming the foregoing.]

[“**PIP Reserve Account**” shall have the meaning set forth in Section 7.7 hereof.]

[“**PIP Reserve Funds**” shall have the meaning set forth in Section 7.7 hereof.]

[“**PIP Work**” shall have the meaning set forth in Section 7.7 hereof.]

“**Plans and Specifications**” shall mean all plans and specifications, shop drawings, architectural and engineering reports and designs, together with all architectural and engineering agreements, construction contracts and other material agreements entered into by Borrower, in connection with the design of the Improvements, as may be modified pursuant to the terms of this Agreement.

“**Policies**” shall have the meaning specified in Section 5.1 hereof.

“**Prepayment Notice**” shall have the meaning specified in Section 2.7(a) hereof.

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

“**Prime Floor**” shall mean the Benchmark Floor.

“**Prime Rate**” shall mean the sum of (i) the greater of (A) Prime and (B) the Prime Floor, and (ii) the Prime Spread.

“**Prime Rate Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon Prime pursuant to Section 2.5 hereof.

“**Prime Spread**” shall mean the difference (expressed as the number of basis points) between (a) the Benchmark Rate on the Determination Date that the Benchmark was last applicable to the Loan and (b) Prime on the Determination Date that the Benchmark was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

“**Prohibited Entity**” shall mean any Person which (i) is a statutory trust organized under 12 *Del.C.* § 3801 *et seq.* (or any successor statute thereto), or under any similar state or federal law, (ii) is a Crowdfunded Person or (iii) owns a direct or indirect interest in Borrower, any SPE Component Entity or the Property through a tenancy-in-common or other similar form of ownership interest.

“**Prohibited Person**” means any of the following: (a) a person or entity currently listed on the Specially Designated Nationals List (“**SDN List**”) or any similar list maintained by the Office of Foreign Assets Control (“**OFAC**”) at the United States Department of the Treasury or a similar list of any other applicable country, e.g., the UK’s Consolidated List Of Financial Sanctions Targets in the UK

or the EU's Consolidated list of persons, groups and entities subject to EU financial sanctions; (b) a person or entity owned or controlled, directly or indirectly, by a person or entity listed on the SDN List or any similar list maintained by OFAC; (c) a person or entity with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of U.S. law, regulation, or executive order; (d) a person that is a citizen or entity incorporated in any country subject to U.S. country-based economic sanctions whereby conducting transactions with that person or entity would be in violation of any applicable law, rule, or regulation, or (e) any other person subject to a prohibition or where relevant persons are otherwise prohibited from engaging in transactions pursuant to the UK or EU sanctions regime.

**“Prohibited Transfer”** shall mean (i) a Sale or Pledge of the Property, the Mezzanine Equity Collateral, or any part in either or any legal or beneficial interest therein (including, without limitation, the Loan and/or Loan Documents), (ii) a Sale or Pledge of an interest in any Restricted Party and/or (iii) Borrower, Accommodation Pledgor, or Mezzanine Borrower’s acquisition of any real property, other than the real property owned by Borrower as of the Closing Date. A Prohibited Transfer shall include, but not be limited to, (A) an installment sales agreement wherein (1) Borrower, Accommodation Pledgor or Mezzanine Borrower agrees to sell the Property or any part thereof for a price to be paid in installments or (2) Mezzanine Borrower or Accommodation Pledgor agrees to sell the Mezzanine Equity Collateral or any part thereof for a price to be paid in installments; (B) an agreement by Borrower leasing all or a substantial part of the Property or any part thereof for other than actual occupancy by a Tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower, Accommodation Pledgor or Mezzanine Borrower’s right, title and interest in and to any (1) Leases or any Rents or (2) Property Documents; (C) 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 in one or a series of transactions; (D) 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 or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (E) if a Restricted Party is a limited liability company, any division, 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 any member or any profits or proceeds relating to such membership interest; (F) 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; (G) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) or the engagement of a new Manager, in each case, other than in accordance with the terms and conditions of this Agreement; (H) if Borrower enters into, or the Property is subjected to, any PACE Loan; (I) the incurrence of any mezzanine (or similar) financing secured by a pledge of, or other lien on, any direct or indirect interests in Borrower; or (J) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by Borrower, Accommodation Pledgor or Mezzanine Borrower or by any other Person, pursuant to any contractual agreement or other instrument or under applicable law (including, without limitation, common law) and/or any other action instituted by (or at the behest of) Borrower, Accommodation Pledgor or Mezzanine Borrower or their Affiliates or consented to or acquiesced to by Borrower, Accommodation Pledgor or Mezzanine Borrower or their Affiliates which results in a Property Document Event.

**“Project”** shall mean the Construction of the Improvements.

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

**“Punchlist Items”** means, collectively, items of construction, decoration, mechanical adjustment or installation that remain to be completed after Substantial Completion, the non-completion of which does not prevent the use and occupancy of the Improvements for their intended purposes, as set forth in the temporary certificate of occupancy for the Improvements or which otherwise remain incomplete under the Construction Documents.

**“Qualified Carrier”** shall have the meaning set forth in Section 5.1 hereof.

**“Qualified Management Agreement”** shall mean a management agreement with a Qualified Manager with respect to the Property which is approved by Lender in writing.

**“Qualified Manager”** shall mean a Person approved by Lender in writing.

**“REA”** shall mean, individually and collectively, each agreement described on Exhibit [ ] hereto (if any), any future reciprocal easement agreement, declaration of covenants, conditions and/or restrictions or other similar agreement affecting the Property, and any amendment, restatement, replacement or other modification of any of the foregoing, in each case, entered into in accordance with the applicable terms and conditions hereof.

**“Register”** shall have the meaning set forth in 15.20(b) hereof.

**“Registrar”** shall have the meaning set forth in 15.20(b) hereof.

**“Relevant Governmental Body”** shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York, or any successor thereto.

**“Rent Roll”** shall have the meaning set forth in Section 3.19 hereof.



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

“**Replacement Interest Rate Cap Agreement**” shall have the meaning set forth in Section 2.8(c) hereof.

“**Replacement Franchise Agreement**” shall mean either (a) a franchise, trademark and license agreement with Franchisor substantially in the same form and substance as the Franchise Agreement or (b) a franchise, trademark and license agreement, which franchise, trademark and license agreement shall be reasonably acceptable to Lender in form and substance.

“**Required Borrower Equity**” means [the amount of \$[\_\_\_\_\_]], which amount shall have been or will be contributed to Borrower as follows: [\_\_\_\_\_].

“**Reserve Accounts**” shall mean the Tax Account, the Insurance Account, the Construction Reserve, the Excess Cash Flow Account, the Operating Expense Account, the Interest Reserve Account [, the PIP Reserve Account] and any other escrow account established by this Agreement or the other Loan Documents (but specifically excluding [the Cash Management Account], the Clearing Account and the Debt Service Account).

“**Reserve Funds**” shall mean the Tax and Insurance Funds, the Construction Reserve Funds, the Excess Cash Flow Funds, the Operating Expense Funds, the Interest Reserve Funds, the PIP Reserve Funds and any other escrow funds established by this Agreement or the other Loan Documents.

“**Responsible Officer**” means with respect to a Person, the chairman of the board, president, chief operating officer, chief financial officer, treasurer or vice president of such Person or such other similar officer of such Person reasonably acceptable to Lender.

“**Restoration**” shall mean, following the occurrence of a Casualty or a Condemnation in connection with which the repair of the Property (or any portion thereof) is required or permitted hereunder, the completion of the repair and restoration of the Property (or applicable portion thereof) as nearly as possible to the condition the Property (or applicable portion thereof) was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“**Restricted Party**” shall mean Borrower, Pledgor, Sponsor, Guarantor, any SPE Component Entity, any Affiliated Manager, any Developer affiliated with Borrower, or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, Sponsor, Guarantor, any SPE Component Entity, any Affiliated Manager or any non-member manager.

“**Retainage**” shall mean (i) with respect to costs of obtaining Permits and general conditions, zero, and (ii) with respect to all other Hard Costs, an amount equal to the greater of (a) ten percent (10%) of the total amount payable under the General Contract and any applicable Trade Contract, as applicable, and (b) the actual retainage amount specified in the General Contract and any applicable Trade Contract, as applicable.

“**Sale or Pledge**” shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

“**Scheduled PIP**” shall mean the work described on the PIP attached hereto as Exhibit [\_\_\_\_\_].

“**Security Instrument**” shall mean that certain first priority [Mortgage / Deed of Trust] and Security Agreement dated as of the date hereof, executed and delivered by Borrower as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Soft Costs**” means all costs and expenses set forth in the Construction Budget which are denominated as “Soft Costs”.

“**SPE Component Entity**” shall have the meaning set forth on Exhibit [\_\_\_\_\_] attached hereto.

“**Sponsor**” shall mean [Guarantor – **CONFIRM WITH LENDER BASED ON ORG CHART**].

“**Springing Member LLC**” shall mean a Delaware limited liability company properly structured with at least one springing member that shall, upon the dissolution, withdrawal or disassociation of such limited liability company’s last remaining member, immediately become the sole member of such limited liability company.

“**State**” shall mean the state in which the Property or any part thereof is located.

“**State-Owned Business**” means any business, company, corporation, business, enterprise, firm, partnership, or venture of any kind in which a Government Entity owns 25% or more of the outstanding equity or that has a PEP serving as a senior executive or a board member.

“**Stored Materials**” means materials purchased by Borrower or General Contractor on behalf of Borrower or to be purchased with the proceeds of a Draw Request for use in the Construction and stored at the Property and not yet installed or incorporated into the Improvements.

“**Strike Rate**” shall mean [\_\_\_\_\_ percent (\_\_\_\_%)], subject to the provisions of Section [2.8](g) hereof.

“**Subordination of Development Agreement**” means that certain Subordination of Development Agreement dated as of the date hereof and executed by Borrower and Developer in favor of Lender, together with all extensions, renewals, substitutions, restatements, modifications and amendments thereto.

“**Substantial Completion**” or “**Substantially Complete**” means that point in time when Borrower shall have caused each of the matters described in Section 4.29 hereof to have been completed.

“**Substantial Completion Date**” means \_\_\_\_\_, 20\_\_\_. [TBD]

“**Survey**” shall mean that certain survey of the Property certified and delivered to Lender in connection with the closing of the Loan.

“**Tax Account**” shall have the meaning set forth in Section 7.2 hereof.

“**Tax and Insurance Funds**” shall have the meaning set forth in Section 7.2 hereof.

“**Tax Payment Date**” shall mean, with respect to any applicable Taxes, the date occurring 30 days prior to the date the same are due and payable.

“**Taxes**” shall mean all taxes, assessments, water rates, sewer rents, and other governmental impositions, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Tenant**” shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement.

“**Term SOFR**” shall mean, with respect to each Interest Period, the rate identified as “1 Month CME Term SOFR” by the Term SOFR Administrator on the CME Market Data Platform <https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html> (or any successor source for the rate currently identified as “1 Month CME Term SOFR” identified as such by the Term SOFR Administrator from time to time) as of 6:00 a.m. (New York City time) on the Determination Date (rounded upwards, if necessary, to the nearest 1/8<sup>th</sup> of 1%).

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited or a successor administrator of the rate currently identified as “1 Month CME Term SOFR” that has been broadly adopted by the commercial real estate finance industry as a successor administrator of such rate, as determined by Lender in good faith.

“**Term SOFR Business Day**” means any day except for a Saturday, Sunday, a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. governmental securities or a day for and on which the Term SOFR Administrator is not required to publish Term SOFR in accordance with the applicable guidelines, rules or requirements for, or announcements regarding, the publication of Term SOFR as issued and in force by, or with respect to, the Term SOFR Administrator from time to time.

“**Third Party**” means any company or individual retained by the Borrower, either directly or through a company or other legal entity, to (1) provide services on behalf of the Borrower; (2) find or introduce co-investors, clients, or investment targets; (3) arrange introductions to Government Officials; or (4) assist the Borrower to obtain licenses, permits, or other governmental approvals. Third Parties do not include travel and entertainment vendors paid by employees of Borrower who submit the expense for reimbursement.

“**Title Company**” shall mean the national title insurance company that issued the Title Insurance Policy on the Closing Date.

“**Title Insurance Policy**” shall mean, individually and collectively, each ALTA (or TLTA, as applicable) mortgagee title insurance policy issued with respect to the Property and insuring the lien of the Security Instrument.

“**Trade Contract**” shall mean any agreement, contract or purchase order between Borrower, an Affiliate of Borrower or General Contractor, on the one hand, and any Trade Contractor, on the other hand, pursuant to which such Trade Contractor agrees to provide labor, materials, equipment and/or services in connection with the completion of the Project, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“**Trade Contractor**” shall mean any Person that is a contractor, subcontractor, sub-subcontractor, supplier or provider of labor, materials, equipment and/or services in connection with the completion of the Project

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State.

“**Unaffiliated Third Party**” shall mean any Person (including, without limitation, the press or media, any bank, savings association, corporation, company, limited liability company, group, partnership, trust or other business entity or any individual), but specifically excluding any Restricted Party and Manager.

“**Underwritable Cash Flow**” shall mean an amount calculated by Lender on a monthly basis equal to Gross Rents, less the trailing twelve (12) months Operating Expenses, each of which shall be subject to Lender’s application of the Underwriting Adjustments. Lender’s calculation of Underwritable Cash Flow (including determination of items that do not qualify as Operating Expenses) shall be calculated by Lender in good faith and shall be final absent manifest error.

“**Underwriting Adjustments**” shall mean adjustments made by Lender in its calculation of Underwritable Cash Flow and the components thereof, in each case, based upon Lender underwriting criteria, which such adjustments shall include, without limitation, adjustments for (i) items of a non-recurring nature and (ii) imminent liabilities and/or other expense increases (including, without limitation, imminent increases to Taxes and Insurance Premiums).

“**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**” shall mean direct full faith and credit obligations of the United States of America that are not subject to prepayment, call or early redemption.

“**Work**” means the demolition, grading, site preparation, foundation work and construction, furnishing and equipping of the Project and related facilities pursuant to the Construction Documents, including all onsite and offsite improvements.

## **Section 1.2 Principles of Construction.**

(a) All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. 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. 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.

(b) [Notwithstanding anything to the contrary contained herein, including references to the Mezzanine Loan or to capitalized terms being defined in the Mezzanine Loan Documents, nothing herein creates any obligation of Borrower with respect to any of the Mezzanine Loan Documents and Borrower has no obligation to comply with and shall not be liable under any Mezzanine Loan Document, and nothing herein creates any obligation of Mezzanine Borrower with respect to any of the Loan Documents and Mezzanine Borrower does not have any obligation to comply with and shall not be liable under this Agreement or any of the other Loan Documents.<sup>1]</sup>

## **ARTICLE 2**

### **GENERAL TERMS**

**Section 2.1 No Loan Commitment.** Except as expressly and specifically set forth herein, Lender has no obligation or other commitment to loan any funds to Borrower or otherwise make disbursements to Borrower. Borrower hereby waives any right Borrower may have to make any claim to the contrary.

**Section 2.2 The Loan.** Subject to and upon the terms and conditions set forth in this Agreement and the other Loan Documents, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

### **Section 2.3 Disbursement to Borrower**

(a) Upon the satisfaction of the conditions precedent to the making of the Loan as set forth below in this Section 2.3, Lender shall make the Initial Advance. Borrower may request and receive Future Advances in accordance with, and subject to the conditions contained in, this Agreement, including, without limitation, Section 2.12 hereof. Any amount borrowed and repaid hereunder in respect of the Loan may not be re-borrowed.

(b) The obligation of Lender to make the Loan, including the Initial Advance and all Future Advances, is subject to the following conditions precedent, each of which shall be satisfied and remain satisfied prior to the Initial Advance and each Future Advance:

(c) Lender shall have received all of the Loan Documents, each properly executed and notarized, if applicable, by Borrower, Guarantor and/or others, as applicable, each dated as of the date hereof.

(i) Lender shall have received and approved all of the following:

(A) the pro forma Title Insurance Policy, evidencing Title Company’s irrevocable commitment to issue the Title Insurance Policy;

(B) the Survey;

(C) such opinions of counsel as Lender shall require; and

(D) the establishment of the Accounts required under this Agreement.

(ii) Lender shall have received all such other documents, instruments, certificates, opinions, assurances, consents or approvals as Lender or its counsel may reasonably request.

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<sup>1</sup> Include if there is a Mezzanine Loan

(iii) The representations and warranties of Borrower, Pledgor and Guarantor contained in the Loan Documents shall be true and correct on the Closing Date and as of the date of each Future Advance and each disbursement from any Reserve Account.

(iv) The Borrower Parties shall be in compliance with all the terms and provisions of this Agreement and the other Loan Documents and no Default or Event of Default shall exist and be continuing.

(v) Lender shall have received and approved the Architect's Agreement, the General Contract and Trade Contracts covering at least [\_\_\_\_] percent (\_\_\_\_%) of the Hard Costs of the Project contemplated in the Construction Budget, which shall include, at a minimum, all Material Trades.

(vi) Lender shall have received executed Major Trade Contractor Consents from each Major Trade Contractor who is party to a Trade Contract as of the date of the Future Advance being made, in form and substance satisfactory to Lender.

(vii) Lender shall have received and approved the Construction Budget, the Construction Schedule and the Plans and Specifications and construction drawings for one hundred percent (100%) of the Construction.

(viii) Lender shall have received evidence of the issuance of all Permits necessary to commence Construction and to achieve Final Completion, and all such Permits shall be in full force and effect.

(ix) Lender shall have verified to its satisfaction the contribution of the Required Borrower Equity in the Property.

(x) Lender shall have received one of the following in form and substance reasonably acceptable to Lender: (i) a sub guard policy; (ii) unconditional performance and payment bond from the General Contractor; (iii) unconditional performance and payment bonds from all major subcontractors as designated by Lender; or (iv) a letter of credit from an issuer and in an amount acceptable to Lender. Lender shall be named a dual obligee on all bonds.

(xi) Lender shall have verified that all insurance required by this Agreement is in place.

(xii) Lender shall have received and approved an Appraisal acceptable to Lender.

(xiii) Borrower shall pay (or shall have paid) to Lender the actual fees and costs of Lender's outside legal counsel and any and all other fees and expenses required to be paid by Borrower pursuant to this Agreement.

(xiv) The Security Instrument and the Assignment of Leases shall have been delivered to the applicable registrar or recorder's office for the County for recording.

(xv) No Material Adverse Effect shall then exist.

(xvi) [Lender shall have received and approved the Mezzanine Loan Documents and shall have entered into the Mezzanine Intercreditor with Mezzanine Lender.<sup>2</sup>]

(xvii) [Mezzanine Lender shall have made or shall contemporaneously make the requisite advance of the Mezzanine Loan under and pursuant to the Mezzanine Loan Documents.<sup>3</sup>]

(xviii) [Lender shall have verified to its satisfaction the funding in full of the Mezzanine Loan and its investment in the Property.<sup>4</sup>]

(xix) [*Add language for receipt/approval by Lender of documentation for Key Money and/or Wyndham Guaranties, if applicable*].

**Section 2.4 The Note and the other Loan Documents.** The Loan shall be evidenced by the Note and this Agreement and secured by this Agreement and the other Loan Documents.

**Section 2.5 Interest Rate.**

(a) Interest on the outstanding principal balance of the Loan shall accrue from the Closing Date at the Interest Rate until repaid in accordance with the applicable terms and conditions hereof.

(b) The following additional provisions shall apply and, subject to Section 2.5(c) hereof, the Interest Rate shall be determined in accordance with this Section 2.5(b):

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<sup>2</sup> Include if there is a Mezzanine Loan.

<sup>3</sup> Include if there is a Mezzanine Loan that is funding *Pari Passu*.

<sup>4</sup> Include if there is a Mezzanine Loan that funds before the Loan.

(i) Subject to the terms and conditions hereof, the Loan shall be a Benchmark Rate Loan, and the Interest Rate with respect to each Interest Period shall be the Benchmark Rate, unless the Loan is converted to (and for so long as the Loan remains) a Prime Rate Loan pursuant to the provisions hereof, in which case the Interest Rate with respect to the applicable Interest Period shall be the Prime Rate. Notwithstanding any provision of this Agreement to the contrary, in no event shall Borrower have the right to convert a Benchmark Rate Loan to a Prime Rate Loan, or vice versa.

(ii) Any change in the rate of interest hereunder due to (A) a change in the Benchmark or Prime, as applicable, or (B) a conversion of the Loan from a Benchmark Rate Loan to a Prime Rate Loan, or vice versa, shall, in each such case, become effective as of the opening of business on the first day on which such change or conversion shall become effective.

(iii) Subject to the final sentence of this clause (iii), upon the occurrence of a Benchmark Unavailability Event, Lender shall forthwith give notice thereof (which notice may be given by telephone, confirmed in writing) to Borrower at least one (1) day prior to the last day of the related Interest Period. If such notice is given, then the related outstanding Benchmark Rate Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan and Borrower shall cooperate with any and all reasonable requests of Lender to make any necessary changes to this Agreement or the other Loan Documents to conform the same to such change in the interest rate hereunder. Notwithstanding the foregoing, in the event that both a Benchmark Unavailability Event and a Benchmark Transition Event have occurred, the provisions of this Agreement relating to the Benchmark Transition Event shall govern and control unless a Benchmark Unavailability Event has also occurred with respect to the applicable Benchmark Replacement, in which case the provisions of this Agreement relating to the Benchmark Unavailability Event shall govern and control.

(iv) Subject to the final sentence of this clause (iv), if, pursuant to the terms hereof, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice of such determination (which notice may be given by telephone, confirmed in writing), to Borrower at least one (1) day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a Benchmark Rate Loan on the last day of the then current Interest Period. Notwithstanding the foregoing, in the event that a Benchmark Transition Event has occurred, the provisions of this Agreement relating to the Benchmark Transition Event shall govern and control.

(v) Upon the occurrence of a Benchmark Transition Event, the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder as of the applicable Benchmark Transition Date, without the need for any amendment to, or further action or consent of any other party to, this Agreement or any of the other Loan Documents, and from and after such Benchmark Transition Date the Loan shall continue to be deemed to be a Benchmark Rate Loan, bearing interest at the new Benchmark. In no event shall Borrower have the right to change the Benchmark, or to unilaterally implement any Benchmark Replacement Adjustment.

(vi) In connection with any Benchmark Transition Event, Lender shall have the right to make Benchmark Replacement Conforming Changes to this Agreement or any of the other Loan Documents from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any such Benchmark Replacement Conforming Changes will become effective without any further action or consent of Borrower, Guarantor, or any other Person. In addition, within ten (10) Business Days after request by Lender, Borrower shall execute, acknowledge, and deliver, at Borrower's cost and expense, all further acts, deeds, conveyances, assignments, financing statements, transfers, documents, agreements, assurances, and such other instruments as Lender may reasonably require from time to time in such manner as Lender determines is reasonably necessary to implement any applicable Benchmark Replacement Conforming Changes. In no event shall Borrower have the right to unilaterally implement any Benchmark Replacement Conforming Changes.

(vii) Lender shall promptly notify Borrower of (A) any occurrence of a Benchmark Transition Event and its related Benchmark Transition Date, (B) the implementation of any Benchmark Replacement and related Benchmark Replacement Adjustment and (C) the implementation of any Benchmark Replacement Conforming Changes; provided, however, that the failure of Lender to deliver any such notice to Borrower shall not in any way undermine the effectiveness of any of the foregoing. Any determination, decision or election made by Lender pursuant to, or in connection with, this Section 2.5 (including, without limitation, any determination with respect to a tenor, rate or adjustment, or of the occurrence or non-occurrence of an event, circumstance or date, or any decision to take or refrain from taking any action, or to make or refrain from making any election or selection) will be conclusive and binding on Borrower and all other parties to the Loan Documents, absent manifest error, and may be made in Lender's sole discretion and without consent from, or consultation with, Borrower, Guarantor, or any other Person.

(viii) All payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, any and all present or future taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority, including any interest, additions to tax, or penalties applicable thereto, excluding (a) net income, franchise and branch profits taxes (x) imposed as a result of Lender being organized under the laws of, or having its principal office or applicable lending office located in, the jurisdiction imposing such tax (or any political subdivision thereof) or (y) that are imposed as a result of a present or former connection between Lender and the jurisdiction imposing such tax (other than connections arising from Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in the Loan or Loan Document), (b) U.S. federal withholding taxes imposed on amounts

payable to or for the account of Lender with respect to an applicable interest in the Loan (other than pursuant to an assignment request by Borrower) or Lender changes its lending office, except in each case to the extent that, pursuant to this Section 2.5(b)(viii), amounts with respect to such taxes were payable either to Lender's assignor immediately before Lender became a party hereto or to Lender immediately before it changed its lending office, (c) taxes attributable to Lender's failure to comply with Section 2.5(b)(xii) below, and (d) any withholding taxes imposed under FATCA (such non-excluded taxes being referred to collectively as "Foreign Taxes"). If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence. Borrower shall indemnify Lender, within 10 days after demand therefor, for the full amount of any Foreign Taxes (including Foreign Taxes imposed or asserted on or attributable to amounts payable under this Section 2.5(b)(viii)) payable or paid by Lender or required to be withheld or deducted from a payment to Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Foreign Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Lender shall be conclusive absent manifest error. All amounts payable under this Section 2.5(b)(viii) shall constitute additional interest hereunder and shall be secured by the Security Instrument and the other Loan Documents. The provisions of this Section 2.5(b)(viii) shall survive any payment or prepayment of the Loan and any foreclosure or satisfaction of the Security Instrument. Any reference under this Section 2.5(b)(viii) to "Lender" shall be deemed to include any participant and any assignees.

(ix) If any Change in Law shall hereafter make it unlawful for Lender to make or maintain a Benchmark Rate Loan at the then-applicable Benchmark as contemplated hereunder, then (A) the obligation of Lender hereunder to make such a Benchmark Rate Loan, or to convert a Prime Rate Loan to a such a Benchmark Rate Loan, shall be canceled forthwith and (B) any outstanding Benchmark Rate Loan shall be converted automatically to a Prime Rate Loan on the last day of the then current Interest Period or within such earlier period as required by law. Borrower hereby agrees to promptly pay to Lender, upon demand, any additional amounts necessary to compensate Lender for any reasonable costs incurred by Lender in making any conversion in accordance with this Agreement, including, without limitation, any interest or fees payable by Lender to lenders of funds obtained by it in order to make or maintain such Benchmark Rate Loan hereunder. Lender's notice of such costs, as certified to Borrower, shall be conclusive absent manifest error; provided, however, that, for purpose of this clause (ix), Lender will treat Borrower in the same manner as similarly-situated borrowers with similar loans originated by Lender.

(x) If any Change in Law:

(A) shall hereafter impose, modify or hold applicable any reserve, capital adequacy, tax, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of Lender which is not otherwise included in the determination of the Benchmark hereunder;

(B) shall hereafter have the effect of reducing the rate of return on Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy) by any amount deemed by Lender to be material; or

(C) shall hereafter impose on Lender any other condition, and the result of any of the foregoing is to increase the cost to Lender of making, renewing or maintaining loans or extensions of credit or to reduce any amount receivable hereunder;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable as determined by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this subsection, Lender shall provide Borrower with not less than thirty (30) days' notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error; provided, however, that, for purpose of this clause (x), Lender will treat Borrower in the same manner as similarly-situated borrowers with similar loans originated by Lender. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the other Loan Documents.

(xi) Borrower agrees to indemnify Lender and to hold Lender harmless from any loss or expense which Lender sustains or incurs (A) to the extent resulting from any default by Borrower in payment of the principal of, or interest on, a Benchmark Rate Loan, including, without limitation, such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by Lender in order to maintain such Benchmark Rate Loan, (B) as a consequence of any prepayment (whether voluntary or mandatory) of the Benchmark Rate Loan on a day that is not the last day of an Interest Period, including, without limitation, such

loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain the Benchmark Rate Loan hereunder and (C) as a consequence of the conversion (for any reason whatsoever, whether voluntary or involuntary) of the Interest Rate from the Benchmark Rate to the Prime Rate with respect to any portion of the outstanding principal amount of the Loan then bearing interest at the Benchmark Rate on a date other than the last day of an Interest Period, including, without limitation, such loss or expenses arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain a Benchmark Rate Loan hereunder (the amounts referred to in clauses (A), (B) and (C) are herein referred to collectively as the “**Breakage Costs**”); provided, however, Borrower shall not indemnify Lender from any loss or expense arising from Lender’s willful misconduct or gross negligence. This provision shall survive payment of the Note in full and the satisfaction of all other obligations of Borrower under this Agreement and the other Loan Documents.

(xii) If Lender is a U.S. Person (other than the lender originally named herein), Lender shall deliver to Borrower, on or about the date on which it becomes Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), two executed copies of Form W-9 certifying that it is not subject to U.S. federal backup withholding tax (unless it establishes to the reasonable satisfaction of Borrower that it is otherwise eligible for an exemption from backup withholding tax or other withholding tax). If Lender is not a U.S. Person, Lender shall deliver to Borrower, to the extent legally entitled to do so, on or about the date on which it becomes Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), whichever of the following is applicable: (A) two executed copies Form W-8BEN or W-8BEN-E, establishing an exemption from U.S. federal withholding tax under an applicable tax treaty, (B) two executed copies of Form W-8ECI, (C) if Lender is claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRS Code, (x) a certificate to the effect that Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the IRS Code, a “10 percent shareholder” of Borrower within the meaning of Section 871(h)(3)(B) of the IRS Code, or a “controlled foreign corporation” related to Borrower as described in Section 881(c)(3)(C) of the IRS Code (a “**U.S. Tax Compliance Certificate**”) and (y) two executed copies of Form W-8BEN or IRS Form W-8BEN-E, or (D) two executed copies of Form W-8IMY, accompanied by Forms W-8BEN, W-8BEN-E, W-9, and U.S. Tax Compliance Certificates, for each beneficial owner, as applicable. If a payment made to Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if Lender were to fail to comply with the applicable reporting requirements of FATCA, Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by applicable law for Borrower to comply with its obligations under FATCA. Solely for purposes of the preceding sentence, “FATCA” shall include any amendments made to FATCA after the date of this Agreement. Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so. Any reference under this Section 2.5(b)(xii) to “Lender” shall be deemed to include any participant and any assignees.

(c) In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by applicable Legal Requirements, overdue interest in respect of the Loan, shall, at Lender’s election, accrue interest at the Default Rate, calculated from the date the Default occurred which led to such Event of Default, without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be paid immediately upon demand, which demand may be made as frequently as Lender shall elect.

(d) Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (i) the actual number of days elapsed in the period for which the calculation is being made by (ii) a daily rate based on a three hundred sixty (360) day year (that is, the Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (iii) the outstanding principal balance of the Loan. The accrual period for calculating interest due on each Monthly Payment Date shall be the Interest Period in which such Monthly Payment Date falls. Borrower understands and acknowledges that such interest accrual requirement results in more interest accruing on the Loan than if either a thirty (30) day month and a three hundred sixty (360) day year or the actual number of days and a three hundred sixty-five (365) day year were used to compute the accrual of interest on the Loan.

(e) This Agreement and the other Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the 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. 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 from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

(f) In the event of a conversion of the Loan from a Benchmark Rate Loan to a Prime Rate Loan, or vice versa, or the replacement of the then-applicable Benchmark with a Benchmark Replacement, Borrower shall pay to Lender, upon demand, any additional amounts necessary to compensate Lender for out-of-pocket costs and expenses in making such conversion or replacement in accordance with this Section 2.5.

## Section 2.6 Loan Payments.

(a) Borrower shall make a payment to Lender of interest only (calculated using the Closing Date as the Determination Date) on the Closing Date for the period from the Closing Date through and including the last day of the calendar month in which the Closing Date occurs. Each interest accrual period (the “**Interest Period**”) thereafter shall commence on the first (1<sup>st</sup>) day of each calendar month during the term of the Loan and shall end on and include the last day of such calendar month. No Interest Period shall be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period.

(b) On each Monthly Payment Date throughout the term of the Loan, Borrower shall make a payment to Lender of interest accruing on the outstanding principal balance of the Loan during the Interest Period in which such Monthly Payment Date occurs (each such payment, a “**Monthly Debt Service Payment**”), which payments shall be applied, so long as no Event of Default exists, to accrued and unpaid interest. Notwithstanding the foregoing, the Monthly Debt Service Payment due on the first Monthly Payment Date will be funded from the Interest Holdback so long as no Event of Default has occurred and then exists on such date.

(c) Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents (including, without limitation, the Exit Fee and the Minimum Interest Payment, if any).

(d) If any principal, interest or any other sum due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (i) five percent (5%) of such unpaid sum and (ii) the maximum amount permitted by applicable law in order to defray the expense 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 amount shall be secured by the Security Instrument and the other Loan Documents.

(e) Additionally:

(i) Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender’s office, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

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

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

(iv) Lender shall have the right from time to time, in its sole discretion, upon not less than thirty (30) days prior written notice to Borrower, to change the Monthly Payment Date to a different calendar day each month.

## Section 2.7 Prepayments.

(a) Except as otherwise provided in this Section 2.7 and Section 2.11, Borrower shall not have the right to prepay the Loan in whole or in part. From and after the Closing Date, Borrower may, provided no Event of Default has occurred and is continuing, at its option and upon not less than thirty (30) days (and not more than ninety (90) days) prior notice (a “**Prepayment Notice**”) to Lender, which notice must specify the date on which such prepayment is to be made, prepay the Debt in whole (but not in part other than as required in connection with a casualty, condemnation or in connection with any prepayment by Borrower to satisfy any extension conditions) on any date; provided that such prepayment is accompanied by payment of the Breakage Costs, the Exit Fee and the Minimum Interest Payment, in each case to the extent applicable. In addition to the foregoing, any prepayment received by Lender shall include interest which would have accrued thereon through the remainder of the Interest Period in which such prepayment occurs (such amounts, the “**Interest Shortfall**”). Lender shall not be obligated to accept any prepayment unless Borrower has delivered the Prepayment Notice required hereunder and such prepayment is accompanied by payment of the Breakage Costs, the Exit Fee, the Minimum Interest Payment, in each case to the extent applicable, and the applicable Interest Shortfall due in connection therewith. Borrower hereby further agrees that, in the event Borrower delivers a Prepayment Notice and fails to prepay the Loan in accordance with the terms of this Section 2.7 on the date specified in such Prepayment Notice, Borrower shall (i) pay Lender all reasonable out-of-pocket costs and expenses incurred by Lender, including, without limitation, any Breakage Costs or similar expenses, as a result of such failure and (ii) be obligated to provide a new Prepayment Notice as a condition to any prepayment of the Loan pursuant to the requirements of this Section 2.7.

(b) On each date on which Lender actually receives a distribution of Net Proceeds, and Lender does not otherwise make such Net Proceeds available to Borrower for Restoration, Lender shall, at its option, apply such proceeds to prepay the Debt in an amount equal to such Net Proceeds. Any such prepayment shall be accompanied by (i) any applicable Interest Shortfall, the applicable portion of the Exit Fee and any Breakage Costs, (ii) all other sums due and payable under the Loan Documents, and (iii) all out-of-pocket costs and expenses incurred by Lender in connection with such prepayment. Any prepayment received by Lender pursuant to this Section 2.7(b) on the date other than a Monthly Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing, Eligible Account at an Eligible Institution, which such interest accruing to the benefit of Borrower, and shall be applied



by Lender on the next Monthly Payment Date, with any interest on such funds paid to Borrower on such date provided no Event of Default then exists.

(c) If concurrently with or after an Event of Default (including, without limitation, after acceleration of the Debt), payment of all or any part of the principal of the Loan is tendered by or on behalf of Borrower (including, without limitation, by virtue of an application of Reserve Funds or any other cash collateral for the Loan by Lender pursuant to the terms and conditions of the Loan Documents), a purchaser at foreclosure or any other Person, Borrower, such purchaser at foreclosure or other Person shall pay the Minimum Interest Payment, the Exit Fee and the Breakage Costs, in each case to the extent applicable, in addition to (A) the outstanding principal balance of the Loan, and (B) all accrued and unpaid interest and other amounts payable under the Loan Documents (including, without limitation, the Interest Shortfall). Notwithstanding anything to the contrary contained herein or in any other Loan Document, any prepayment of the Debt shall be applied to the Debt in such order and priority as may be determined by Lender in its sole discretion.

(d) In all events and under all circumstances Borrower shall be obligated to pay to Lender minimum interest in an amount equal to [*1.25x on the original maximum principal amount of the Loan*] (the “**Minimum Interest**”). Upon prepayment or repayment in full of the Obligations or the acceleration thereof in accordance with the terms of any of the Loan Documents, Borrower shall pay to Lender an amount (such amount, the “**Minimum Interest Payment**”) equal to the positive difference, if any, between (i) the entire Minimum Interest, minus (ii) the aggregate total of all (w) Monthly Debt Service Payments, (x) Exit Fees, (y) Origination Fees, and (z) any payments of principal of the Loan, paid by Borrower during the term of the Loan (exclusive of any portions thereof constituting interest accrued at the Default Rate in excess of the Interest Rate that would apply hereunder but for the existence of any Event of Default). In furtherance of the foregoing, Borrower expressly acknowledges and agrees that (x) Lender shall have no obligation to accept any prepayment or repayment of the Loan unless and until Borrower shall have complied with this Section 2.7(d), and (y) Lender shall have no obligation to release or, if requested by Borrower, assign the Note and Security Instrument upon payment of the Obligations unless and until Lender shall have received the entire Minimum Interest Payment. In the event that any Minimum Interest Payment is due hereunder, Lender shall deliver to Borrower a statement setting forth the amount and determination of the Minimum Interest Payment, and, provided that Lender shall have in good faith applied the formula described above, 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 fifteen (15) day period preceding the date of such prepayment. Lender shall not be obligated or required to have actually reinvested the prepaid principal balance at the Benchmark or otherwise as a condition to receiving the Minimum Interest Payment. Borrower expressly acknowledges and agrees that the Minimum Interest Payment shall constitute additional consideration for the Loan, and shall, upon payment, be the sole and exclusive property of Lender.

(e) Any prepayment received by Lender in connection with Borrower’s exercise of an Extension Option under Section 2.11 of this Agreement shall be accompanied by (i) any applicable Interest Shortfall, the Exit Fee, the Minimum Interest (if due and payable) and any Breakage Costs, and (ii) all out-of-pocket costs and expenses incurred by Lender (including attorneys’ disbursements and reasonable fees) in connection with such prepayment.

(f) The Minimum Interest Payment and the Exit Fee is fully earned on the date hereof, and due and payable, on the date of such repayment or prepayment, or on the date such repayment or prepayment is required to be made, as applicable, and non-refundable when made. Without limiting the generality of the foregoing, and notwithstanding anything to the contrary in this Agreement or any Loan Document, it is understood and agreed that if the Obligations are accelerated as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise), the Minimum Interest Payment, if any, determined as of the date of acceleration, and the Exit Fee will also be due and payable and will be treated and deemed as though the Loan was prepaid as of such date and shall constitute part of the Obligations for all purposes herein. The Minimum Interest Payment, if any, and the Exit Fee shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. **THE BORROWER EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING MINIMUM INTEREST PAYMENT OR THE EXIT FEE IN CONNECTION WITH ANY SUCH ACCELERATION.** Borrower expressly agrees that (i) each of the Minimum Interest Payment and the Exit Fee is reasonable and is the product of an arm’s length transaction between sophisticated business people, ably represented by counsel, (ii) each of the Minimum Interest Payment and the Exit Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between Lender and Borrower giving specific consideration in this transaction for such agreement to pay the Minimum Interest Payment and the Exit Fee, (iv) Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section 2.7(f), (v) Borrower’s agreement to pay the Minimum Interest Payment and the Exit Fee is a material inducement to the Lender to make the Loan, and (vi) each of the Minimum Interest Payment and the Exit Fee represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lender and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lender or profits lost by the Lender as a result of any event giving rise to an obligation to pay the Minimum Interest Payment or the Exit Fee. The parties hereto further acknowledge and agree that neither the Minimum Interest Payment nor the Exit Fee is intended to act as a penalty or to punish Borrower for any such repayment or prepayment.

(g) **[MEZZ LOAN AT CLOSING (ADAPT AS APPROPRIATE)** – Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, in no event shall Borrower permit Mezzanine Borrower or any other Person to repay at maturity, or prepay (which shall be deemed to include any repayment in connection with any acceleration of the Mezzanine Loan and any acquisition of the Mezzanine Loan by Mezzanine Borrower, Guarantor, or any Affiliate of either of the foregoing), the

Mezzanine Loan, in whole or in part, unless (i) the Debt is contemporaneously repaid in full in accordance with the applicable terms and conditions of this Agreement or (ii) the Debt has been previously repaid pro-rata in accordance with the applicable terms and conditions of this Agreement in connection with satisfying any applicable extension conditions of the Mezzanine Loan or the Loan. Borrower's failure to comply with the foregoing shall, at Lender's option, constitute an Event of Default hereunder.]

## Section 2.8 Interest Rate Cap Agreement

(a) Prior to or contemporaneously with the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a Benchmark strike rate equal to the Strike Rate. The Interest Rate Cap Agreement (i) shall at all times be in a form and substance acceptable to Lender, (ii) shall at all times be with a Counterparty, (iii) shall at all times be for a period equal to the term of the Loan, and (iv) shall at all times have a notional amount equal to or greater than the face amount of the Note and shall at all times provide for the applicable Benchmark strike rate to be equal to the Strike Rate. Borrower shall direct such Counterparty to deposit directly into the Interest Rate Cap Reserve Account (or into such Account as Lender designates) any amounts due Borrower under such Interest Rate Cap Agreement so long as any portion of the Debt is outstanding, provided that the Debt shall be deemed to be outstanding if the Property is transferred by judicial or non-judicial foreclosure or deed-in-lieu thereof. Additionally, Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest in and to the Interest Rate Cap Agreement (and any replacements thereof), including, without limitation, its right to receive any and all payments under the Interest Rate Cap Agreement (and any replacements thereof), and Borrower shall, and shall cause Counterparty to, deliver to Lender a fully executed Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be deposited directly into the Interest Rate Cap Reserve Account, or into such other Account as Lender may designate).

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

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty below a long term rating of "A3" by Moody's, Borrower shall (x) replace the Interest Rate Cap Agreement not later than ten (10) Business Days following receipt of notice of such downgrade, withdrawal or qualification with an Interest Rate Cap Agreement in form and substance reasonably satisfactory to Lender (and meeting the requirements set forth in this Section 2.8) (a "**Replacement Interest Rate Cap Agreement**") from a Counterparty reasonably acceptable to Lender having a Minimum Counterparty Rating or (y) if provided for in such Interest Rate Cap Agreement, cause the Counterparty to deliver collateral to secure Borrower's exposure under the Interest Rate Cap Agreement.

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

(e) Each Interest Rate Cap Agreement shall contain the following language or its equivalent: "In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty below a long term rating of "A3" by Moody's, the Counterparty must, within ten (10) business days, either (x) post collateral on terms acceptable to Borrower, or (y) find a replacement Counterparty, at the Counterparty's sole cost and expense, acceptable to Borrower; provided that, notwithstanding such a downgrade, withdrawal or qualification, unless and until the Counterparty transfers the Interest Rate Cap Agreement to a replacement Counterparty pursuant to the foregoing clause (y), the Counterparty will continue to perform its obligations under the Interest Rate Cap Agreement. Failure to satisfy the foregoing shall constitute an "Additional Termination Event" as defined by Section 5(b)(v) of the ISDA Master Agreement, with the Counterparty as the "Affected Party." In the event that a Counterparty is required pursuant to the terms of an Interest Rate Cap Agreement to (i) deliver collateral as specified in the applicable Interest Rate Cap Agreement, or (ii) find a replacement Counterparty, Borrower covenants and agrees that Borrower shall seek Lender's approval with respect thereto and shall not approve or consent to the foregoing unless and until Borrower receives Lender's prior written approval and shall approve or consent to the foregoing upon receipt of Lender's prior written approval. Borrower's failure to comply with the requirements of this Section 2.8(e) shall constitute, at Lender's option, an immediate Event of Default.

(f) Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) which shall be in customary form reasonably acceptable to Lender.

(g) In the event of a conversion of the Loan from a Benchmark Rate Loan to a Prime Rate Loan, or vice versa, or the replacement of the Benchmark with a Benchmark Replacement, Borrower shall replace the Interest Rate Cap Agreement not later than ten (10) Business Days following the occurrence thereof with a Replacement Interest Rate Cap Agreement (or other hedge arrangement reasonably acceptable to Lender and generally accepted as industry standard, as reasonably determined by Lender) pursuant to the requirements of this Agreement and in form and substance reasonably acceptable to Lender (including, without limitation, with respect to the strike rate or swapped rate, as applicable).

(h) Borrower shall deliver to Lender a new Collateral Assignment of Interest Rate Cap Agreement acceptable to Lender in connection with each Replacement Interest Rate Cap Agreement.

**Section 2.9 Original Issue Discount.** Borrower acknowledges that at closing, the Loan will be funded with a non-refundable discount of [ ] percent ([ ]%) of the maximum amount of the Loan (i.e., [\$\_\_\_\_\_ .00]) (the “**Original Issue Discount**”). The parties intend that the non-refundable discount will be treated as an Original Issue Discount for tax purposes. FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE CODE, THE LOAN IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. REQUESTS FOR INFORMATION REGARDING THE ORIGINAL ISSUE DISCOUNT ON THE LOAN MAY BE DIRECTED TO LENDER AT ITS ADDRESS FOR NOTICE IN SECTION [ ] HEREOF.

**Section 2.10 Payment of Exit Fee.**

(a) Borrower shall be obligated to pay the Exit Fee to Lender as follows: (i) upon any (and each) partial prepayment of the Loan in accordance with the terms hereof, in addition to all other amounts payable to Lender under Section 2.7 hereof, Borrower shall pay to Lender, on account of the Exit Fee, an amount equal to [ ] percent ( [ ]%) of the amount so prepaid; (ii) upon any (and each) application of any condemnation awards or Net Proceeds to the Debt in accordance with the terms of this Agreement and the Security Instrument, [ ] percent ( [ ]%) of the amount thereof shall be retained by Lender on account of the Exit Fee and the balance thereof shall be applied to the Debt; and (iii) upon repayment in full of the Debt or the acceleration thereof in accordance with the terms of any of the Loan Documents, Borrower shall pay to Lender the entire Exit Fee which would be due on such date, less any amounts on account thereof previously paid to Lender under the foregoing clauses (i) and (ii) of this Section 2.10(a).

(b) In furtherance of the foregoing, Borrower expressly acknowledges and agrees that Lender shall have no obligation to accept any prepayment of the Loan unless and until Borrower shall have complied with this Section 2.10.

(c) Borrower expressly acknowledges and agrees that the Exit Fee shall constitute additional consideration for the Loan.

**Section 2.11 Extension of the Maturity Date.** Borrower shall have the option to extend the term of the Loan beyond the initial Maturity Date for [two (2)] successive terms (the “**Extension Option**”) of [twelve (12) months] each (each, an “**Extension Period**”) to (i) [ ], 20[ ] if the first Extension Option is exercised, and (ii) [ ], 20[ ] if the second Extension Option is exercised (each such date, the “**Extended Maturity Date**”) upon satisfaction of the following terms and conditions (in each case as determined by Lender):

(a) no Event of Default shall have occurred and be continuing at the time an Extension Option is exercised and on the date that the applicable Extension Period is commenced;

(b) Borrower shall notify Lender of its irrevocable election to extend the Maturity Date as aforesaid not earlier than ninety (90) days and no later than sixty (60) days prior to the applicable Maturity Date; provided, however, that Borrower shall be permitted to revoke such notice at any time up to five (5) Business Days before the Maturity Date provided that Borrower pays to Lender all actual out-of-pocket costs incurred by Lender in connection with such notice, including, without limitation, any Breakage Costs;

(c) Borrower shall obtain and deliver to Lender prior to exercise of such Extension Option, pursuant to the applicable terms and conditions of Section 2.8 hereof, a Replacement Interest Rate Cap Agreement, which Replacement Interest Rate Cap Agreement shall be effective commencing on the first day of the related Extension Period and shall have a maturity date not earlier than the last day of the related Extension Period;

(d) Borrower shall have paid to Lender the Extension Fee on the date the related Extension Period is commenced;

(e) the Reserve Accounts shall contain the amounts required under this Agreement as of the date of commencement of the Extension Period, including, without limitation, depositing amounts in the Interest Reserve Account sufficient to pay all Monthly Debt Service Payments and, as applicable, due through the Extended Maturity Date, and Borrower shall deposit such additional reserve funds with Lender as Lender may require [CONFIRM RESERVES];

(f) each Guarantor shall execute and deliver a reaffirmation, in form and substance satisfactory to Lender, of such Guarantor’s obligations under each of the Loan Documents executed and delivered by such Guarantor;

(g) Borrower shall deliver to Lender such other certificates, documents or instruments as Lender may reasonably require, including, without limitation, an Officer’s Certificate stating that all representations and warranties of Borrower set forth in Article 3 hereof remain true and correct, subject to any changes in facts or circumstances permitted to have occurred, or not prohibited from having occurred, pursuant to the terms of the Loan Documents (in which case such change of facts and circumstances shall be set forth in such Officer’s Certificate with reference to the applicable representations and warranties) or setting forth any exceptions to such representations and warranties, which exceptions shall be satisfactory to Lender;

(h) if required by Lender, Lender shall have received, at Borrower’s expense, a title continuation from the title company that provided the Title Insurance Policy evidencing that there are no liens against the Property other than Permitted Encumbrances;

(i) Final Completion has been achieved;

(j) [in connection with the first Extension Option, the LTV [shall be less than [\_\_]% at the time such Extension Option is exercised and on the date that such Extension Period is commenced; provided, however, that if the foregoing condition is not satisfied, Borrower may prepay a portion of the outstanding principal balance of the Loan as may be necessary so that such condition is satisfied, provided that any such prepayment shall be subject to Borrower's obligation to pay the proportionate share of the Exit Fee applicable thereto pursuant to Section 2.10 hereof;]

(k) [in connection with the second Extension Option, the LTV [shall be less than [\_\_]% at the time such Extension Option is exercised and on the date that such Extension Period is commenced; provided, however, that if the foregoing condition is not satisfied, Borrower may prepay a portion of the outstanding principal balance of the Loan as may be necessary so that such condition is satisfied, provided that any such prepayment shall be subject to Borrower's obligation to pay the proportionate share of the Exit Fee applicable thereto pursuant to Section 2.10 hereof;]

(l) [in connection with the first Extension Option, [the Debt Service Coverage Ratio [shall not be less than 1.[\_\_] to 1.00] [the Debt Yield [shall not be less than \_\_%] at the time such Extension Option is exercised and on the date that such Extension Period is commenced; provided, however, that if the foregoing condition is not satisfied, Borrower may prepay a portion of the outstanding principal balance of the Loan as may be necessary so that such condition is satisfied, provided that any such prepayment shall be subject to Borrower's obligation to pay the proportionate share of the Exit Fee applicable thereto pursuant to Section 2.10 hereof;]

(m) [in connection with the second Extension Option, [the Debt Service Coverage Ratio [shall not be less than 1.[\_\_] to 1.00] [the Debt Yield [shall not be less than \_\_%] at the time such Extension Option is exercised and on the date that such Extension Period is commenced; provided, however, that if the foregoing condition is not satisfied, Borrower may prepay a portion of the outstanding principal balance of the Loan as may be necessary so that such condition is satisfied, provided that any such prepayment shall be subject to Borrower's obligation to pay the proportionate share of the Exit Fee applicable thereto pursuant to Section 2.10 hereof - **ADD ADDITIONAL APPLICABLE TESTS FOR THE APPLICABLE NUMBER OF EXTENSION PERIODS**]; and

(n) Borrower shall have paid all out-of-pocket costs and expenses incurred by Lender in connection with the exercise by Borrower of the Extension Option.

(o) [the Mezzanine Loan has been extended (or will be contemporaneously extended), such that the term of the Mezzanine Loan shall not expire prior to the expiration of the term of the Loan.<sup>5</sup>]

All references in this Agreement and in the other Loan Documents to the Maturity Date shall mean the applicable Extended Maturity Date in the event an Extension Option is exercised.

**Section 2.12 Future Advances.** Following the initial advance of Loan proceeds to Borrower made on the Closing Date (the "**Initial Advance**"), Borrower may request in writing that Lender make one or more additional advances to Borrower (each, a "**Future Advance**") and subject to the limitations set forth in this Agreement, including, without limitation, this Article 2 and Section 4.39 hereof, Lender shall make each such Future Advance to Borrower or third parties directly, provided that all of the conditions set forth below have been satisfied to Lender's satisfaction with respect to each such Future Advance, within fifteen (15) Business Days of the satisfaction of all such conditions. Each such Future Advance funded by Lender shall be and constitute part of the Loan.

(a) The conditions to any Future Advance shall be as follows:

(i) each of the conditions in Section 2.3 hereof remains satisfied;

(ii) No Default or Event of Default has occurred and is continuing under this Agreement or any of the other Loan Documents at the time such request is made or at the time the applicable Future Advance is made;

(iii) the minimum amount of such Future Advance shall be [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)];

(iv) Lender shall not be required to make more than one Future Advance per calendar month (unless Lender elects in its sole and absolute discretion to make any Future Advance more frequently);

(v) Lender shall have received, at Borrower's sole cost and expense, a title endorsement to the Title Insurance Policy insuring each such Future Advance, and in the amount of such Future Advance, evidencing, among other things, showing that the Property remains free from all liens other than Permitted Encumbrances, in form and substance acceptable to Lender;

(vi) Lender shall have received an inspection report from Lender's Development Consultant in form and substance acceptable to Lender;

<sup>5</sup> Add if there is a Mezzanine Loan.

(vii) (A) the Property shall comply in all material respects with all Legal Requirements, and (B) if any Restoration is then continuing, Borrower is diligently pursuing such Restoration and Lender has determined that the non-completion of such Restoration prior to the making of the Future Advance is not reasonably likely to have a Material Adverse Effect;

(viii) Borrower submits a Draw Request for such Future Advance that complies with Sections 2.13 and 2.14 hereof;

(ix) Borrower has made any deposit into the Construction Reserve requested by Lender under Section 4.39 hereof (regardless of the time period by which Borrower is required to make such deposit under Section 4.39 hereof);

(x) there are no mechanics liens recorded against the Property or bonded stop notices served on Lender for which Borrower has not taken the actions required under Section 4.43(a) hereof (regardless of the time period by which Borrower is required to take such actions under Section 4.43(a) hereof); and

(xi) Borrower shall pay (A) all of Lender's costs and expenses (including, without limitation, reasonable attorneys' fees and any reports required by Lender or Lender's Development Consultant (including, without limitation, an engineering report)) associated with Borrower's request for a Future Advance (as well as any other then-outstanding fees and costs of Lender), whether or not the Future Advance is ultimately made, and (B) a future advance disbursement fee to Lender in the amount of [\$ \_\_\_\_\_][CONFIRM].

(xii) Neither the Property nor any portion thereof, shall be subject to any existing or threatened Condemnation or taking by eminent domain proceedings, similar proceedings or otherwise.

(xiii) The Property shall not have been injured or damaged by any Casualty, unless (i) Lender shall make the Net Proceeds available to Borrower for Restoration pursuant to this Agreement, (ii) Borrower is prosecuting such Restoration with reasonable diligence, and (iii) the Construction Schedule is not materially impacted.

(xiv) There shall be no pending or threatened in writing litigation known to Borrower, any Guarantor, against Borrower, Pledgor, any Guarantor or the Property, which, if decided unfavorably, could result in a Material Adverse Effect.

(xv) There shall be no Balancing Event.

(b) The portion of the Loan allocated in the Construction Budget for interest on the Loan through the initial Maturity Date (the "**Interest Holdback**") shall be held by Lender as an unfunded interest reserve (such unfunded reserve hereinafter referred to as the "**Carry Holdback**"). Borrower hereby authorizes Lender to make advances thereof to pay interest when due on the Loan. Such authorization is irrevocable and no further direction or authorization shall be required for Lender to make such advances. So long as no Event of Default has occurred and is continuing, Lender shall disburse to itself from the Interest Holdback the amount of interest due on each Payment Date provided that there are sufficient available undisbursed amounts in such Interest Holdback and Lender is otherwise obligated to make such Future Advances under this Agreement. If an Event of Default has occurred and is continuing, Lender may, but is not obligated to, disburse funds from the Interest Holdback for the payment of interest. Nothing in this provision shall prevent Borrower from paying interest on the Loan from additional equity contributed by Borrower's Members.

(c) The portion of the Loan allocated in the Construction Budget for payment of Taxes through the initial Maturity Date (the "**Tax Holdback**") shall be held by Lender in the Carry Holdback. Borrower hereby authorizes Lender to make advances thereof to pay Taxes when due prior. Such authorization is irrevocable and no further direction or authorization shall be required for Lender to make such advances. So long as no Event of Default has occurred and is continuing, Lender shall disburse from the Tax Holdback to pay Taxes when due provided that there are sufficient available undisbursed amounts in such Tax Holdback and Lender is otherwise obligated to make such Future Advances under this Agreement. If an Event of Default has occurred and is continuing, Lender may, but is not obligated to, disburse funds from the Tax Holdback for the payment of Taxes. Nothing in this provision shall prevent Borrower from paying Taxes from additional equity contributed by Borrower's Members.

(d) The portion of the Loan allocated in the Construction Budget for payment of Insurance Premiums through the initial Maturity Date (the "**Insurance Holdback**") shall be held by Lender in the Carry Holdback. Borrower hereby authorizes Lender to make advances thereof to pay Insurance Premiums when due. Such authorization is irrevocable and no further direction or authorization shall be required for Lender to make such advances. So long as no Event of Default has occurred and is continuing, Lender shall disburse from the Insurance Holdback to pay Insurance Premiums when due provided that there are sufficient available undisbursed amounts in such Insurance Holdback and Lender is otherwise obligated to make such Future Advances under this Agreement. If an Event of Default has occurred and is continuing, Lender may, but is not obligated to, disburse funds from the Insurance Holdback for the payment of Insurance Premiums. Nothing in this provision shall prevent Borrower from paying Insurance Premiums from additional equity contributed by Borrower's Members.

(e) Borrower acknowledges and agrees that Lender's obligation to make any particular Future Advance in accordance with Section 2.12 is an independent contract made by and between Lender and Borrower separate and apart from any obligation of Lender to fund any other Future Advance. The obligations of Borrower under this Agreement and the other Loan Documents shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Borrower, or any other party, against Lender by reason of Lender's failure to make any Future Advance. Borrower agrees that it shall not assert (and shall not have) any defense (including the assertion of any right of rescission, set-off, counterclaim or defense) to the

payment of the Debt owed to Lender in the event Lender breaches any obligation to make any Future Advance that it is required to make hereunder. The making of any Future Advance by Lender at the time when an Event of Default exists shall not be deemed a waiver by Lender or cure by Borrower of that Event of Default, nor shall Lender's rights and remedies be prejudiced in any manner thereby.

**Section 2.13 Disbursements of Future Advances Generally.**

(a) Lender shall disburse Future Advances to Borrower for further disbursement by (or at the direction of) Borrower to General Contractor, subcontractors and designers; provided, however, Lender reserves the right to make Future Advances to any third party payees directly. Such direct disbursements may be made individually or jointly with Borrower and/or General Contractor, as Lender may elect in its discretion. Such direct disbursements also may be made by check payable to the Person to whom a disbursement is to be made. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable direction and authorization for Lender to so disburse from the Future Advance. No further direction or authorization from Borrower shall be necessary or required for such direct disbursements and all such disbursements shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the applicable Loan Documents as fully as if made directly to Borrower, regardless of the disposition thereof by the applicable payee.

(b) Lender shall not be obligated to make Future Advances in respect of Hard Costs in excess of an amount equal to Hard Costs actually incurred by Borrower for work in place as part of the Construction, as certified by the Development Consultant, less a sum equal to the aggregate of (x) the aggregate deficiency which has been funded by Borrower under Section 4.39 hereof, if any, and (y) the Retainage with respect to such Hard Costs.

(c) Lender shall not be obligated to make Future Advances for any category of costs set forth as a line item of the Construction Budget which is greater than the sum of: (i) the amount set forth for such category in the applicable line item of the Construction Budget (as may be reallocated by the General Contractor or the Borrower, as the case may be, to the extent permitted by and in accordance with the requirements of Section 4.31 hereof and (ii) subject to Lender's prior approval, a portion of the unused Hard Costs contingency line item.

(d) Funds held in the Construction Reserve shall be disbursed by Lender (subject to satisfaction of all conditions to such disbursement) to fund the amount requested in a Draw Request prior to Lender funding a Future Advance.

**Section 2.14 Draw Requests.**

(a) Borrower shall submit to Lender and Development Consultant a complete draw request (a "**Draw Request**") substantially in the form required pursuant to this Section 2.14, with all supporting documentation, not less than fifteen (15) Business Days prior to the date of any requested Future Advance. If Borrower submits any portion of a Draw Request or any additional, supplemental or revised materials, information or documentation in connection with such Draw Request after the initial submission of a Draw Request, then the initial Draw Request shall be deemed incomplete and such fifteen (15) Business Day period shall recommence as of the last date of any such subsequent submission. Borrower shall not submit to Lender a Draw Request more than once per month.

(b) Each Draw Request shall specify the Costs to be paid from the requested Future Advance. Each such Draw Request shall specify the amount of any retainage previously withheld for Hard Costs and which has then become payable by Borrower with supporting documentation describing in detail acceptable to Lender the basis for any such disbursements.

(c) Each Draw Request shall include the following:

(i) a requisition letter in the form required by Lender which shall be executed by an authorized representative of Borrower, together with a requisition spreadsheet ("**Borrower's Requisition Spreadsheet**") which includes a written schedule of payees to be funded by the Draw Request in detail and otherwise in form satisfactory to Lender;

(ii) an executed borrowing certificate in a form approved by Lender with respect to any Draw Request for payment for Hard Costs, including the following:

(A) a complete Project Application and Certificate for Payment in a form acceptable to Lender that is prepared by General Contractor which shall include and/or attach the General Contractor's Project Application and Certificate for Payment (using AIA Document G702 and G703, or substantially similar forms) executed by Architect, General Contractor and General Contractor's subcontractors and the Development Consultant (or, if such Project Applications and Certificates for Payment are not executed by the Development Consultant, then the Draw Request shall include a confirmation from the Development Consultant in form acceptable to Lender), each of which shall be certified as true and complete by General Contractor and Borrower and shall be verified by Development Consultant. Such Project Application and Certificate for Payment shall include the General Contractor's Application and Certificate for Payment (using AIA Document G702 and G703, or substantially similar forms);

(B) Sworn Contractor's affidavit from the General Contractor in compliance with applicable Legal Requirements;

(C) with respect to the then last preceding Future Advance, an "Acknowledgment of Receipt" from the General Contractor in a form acceptable to Lender;

(D) (1) a duly executed conditional waiver and release of mechanics lien with the first (1st) Draw Request from the General Contractor establishing conditional receipt of payment or satisfaction of the payment requested by the General Contractor with respect to such Draw Request. Commencing with the second (2nd) Draw Request from the General Contractor, and for each Draw Request thereafter, executed unconditional waivers and releases of mechanics liens from the General Contractor for all amounts previously received, and conditional lien waivers and releases for all amounts requested on behalf of General Contractor in the current Draw Request. The forms of conditional and unconditional lien waivers and releases shall be as required under the General Contract and otherwise acceptable to Lender covering all work done and all sums received through the date of the Draw Request; and (2) commencing with the second (2nd) Draw Request, and for each Draw Request thereafter, duly executed unconditional waivers and releases of mechanics liens from all applicable trade contractors and subcontractors and all other Persons who are to be paid from the proceeds of such Construction Reserve Draw Request, establishing payment or satisfaction of the payment requested in or covered by the previous Draw Request. The form of unconditional lien waivers and releases shall be as required under the General Contract and otherwise acceptable to Lender;

(E) a completed confirmation from the Architect in a form acceptable to Lender and executed by the Architect;

(F) evidence of insurance against loss or casualty of any goods or material stored off site for which Borrower has included in the Draw Request Disbursement being requested;

(G) a list of all Trade Contracts, if any, executed by Borrower since the date of the then last preceding Future Advance, together with a statement by Borrower that copies of such Trade Contracts and all other contracts with any contractor or subcontractor involved with the Construction executed by Borrower since the date of the then last preceding Future Advance have been submitted to the Development Consultant prior to the date of such Draw Request;

(H) a list of all change orders that have not yet been submitted to Lender on the date of such Draw Request, together with a statement by Borrower that copies of the same have been submitted to the Development Consultant prior to the date of such Draw Request, together with a list of all change orders then to date and a list of all contemplated change orders;

(I) evidence satisfactory to Lender that the full amount of the portion of the proceeds of the then last preceding Future Advance have been paid out by Borrower to the Persons with respect to whom such Future Advance was made and otherwise in accordance with this Agreement or otherwise swept to or deposited into the Construction Reserve;

(J) such other information and documents as may be requested or required by Lender or the Development Consultant with respect to the Hard Costs covered by such Draw Request, including, without limitation, that such Hard Costs have been properly incurred and are due and payable and are within the amounts budgeted therefor in the Construction Budget; and

(K) a current [ALTA/TLTA/CLTA Endorsement No. [\_\_\_]] showing no exceptions other than the Permitted Encumbrances.

(iii) with respect to any Draw Request for payment for Soft Costs, the following:

(A) evidence as Lender shall request, including, without limitation, invoices and statements, that such Soft Costs have been properly incurred and are due and payable and are within the amounts budgeted therefor in the Construction Budget;

(B) evidence satisfactory to Lender, including, without limitation, check registers and wire records, that the full amount of the portion of the proceeds of the then last preceding Draw Request has been paid out by Borrower or the General Contractor to the Persons with respect to whom such disbursement was disbursed and otherwise in accordance with this Agreement;

(C) such other information and documentation as Lender shall request or require with respect to such Soft Costs covered by such Draw Request.

(iv) Prior to the submittal of a Draw Request to Lender, such Draw Request shall have been (a) approved by Borrower and, until Final Completion, by General Contractor and (b) recommended for payment by Development Consultant.

**Section 2.15 Retainage.** Each requested Future Advance for Hard Costs shall be reduced by the Retainage applicable to such Hard Costs, and the amount of all such Retainage with respect to a particular Trade Contract or the General Contract shall be advanced to Borrower when all of the work under such Trade Contract or the General Contract, as applicable, has been completed to the satisfaction of the Architect (as certified by such Architect and confirmed by the Development Consultant), and all applicable lien waivers (including, without limitation, a final lien waiver for all work contracted for and all work performed by such Trade Contractor or the General Contractor, as the case may be), have been obtained with respect to the applicable work performed.

**Section 2.16 Stored Materials.**

(a) Lender shall make disbursements for the payment of Stored Materials to be utilized in connection with the Construction upon satisfaction of the following criteria:

(i) Disbursements for Stored Materials to be utilized in connection with the Construction shall be in the amounts as approved in the applicable Draw Request. The aggregate amount of disbursements for such materials shall in no event at any time exceed the actual Hard Costs incurred by Borrower for such materials as verified by the Development Consultant pursuant to the provisions of this Agreement. In addition to the foregoing limitations, disbursements on account of Stored Materials shall be subject to the other provisions of this Agreement, and prior to any disbursement for Stored Materials being made, Lender must have received the following, in form and substance satisfactory to Lender;

(A) evidence that the Stored Materials are appropriate for purchase during the then current stage of construction;

(B) evidence that the Stored Materials are securely stored on site at the Property, properly inventoried, and clearly stenciled or otherwise marked to indicate that they are the property of Borrower;

(C) lien waivers or other evidence as may be applicable that the Stored Materials have been paid for and are owned by (or upon payment of the amounts to be disbursed in such Draw Request shall be paid for and owned by) Borrower free of all lien rights or claims of the vendor or any third party (provided, however, that Borrower shall be permitted limited disbursements, in the discretion of Lender, with respect to deposits and down payments for Stored Materials to the extent approved by Lender);

(D) certification from the Development Consultant that the Stored Materials are secured at the Property in a manner satisfactory to the Development Consultant and that the Stored Materials at the Property are not in excess of such building equipment and materials as would be kept at the Property in accordance with good construction practice for current installation or incorporation;

(E) a certificate or binder of insurance from Borrower or the supplier, fabricator or other subcontractor, satisfactory to it and covering it as a named insured and loss payee against casualty, loss and theft with respect to the Stored Materials, in a manner satisfactory to Lender; and

(F) certification from Architect, to the extent applicable, or Development Consultant if required by Lender in its discretion, shall certify that it has inspected said materials and they are in the condition required under the applicable trade contracts.

(b) In the event the Draw Request includes the cost of materials stored at a location other than the Property (“**Offsite Materials**”), such Draw Request shall also include each of the following: (A) evidence that the Offsite Materials have been purchased by Borrower (or upon payment of the relevant amounts to be disbursed in such Draw Request, shall be paid for and owned by Borrower), have been segregated from other materials in the facility and have been appropriately marked to indicate Borrower’s ownership thereof and Lender’s security interest therein; (B) evidence that the Offsite Materials are insured as required by this Agreement; and (C) evidence that the warehouse or other facility where such Offsite Materials are stored is bonded in a manner satisfactory to Lender.

(c) No Future Advances shall be made for Stored Materials in excess of \$ \_\_\_\_\_ [**TBD based on construction budget**] at any one time outstanding (it being agreed that once Borrower provides satisfactory evidence to Lender that such applicable Stored Materials have been installed or incorporated into the Project such aggregate amount of Future Advances available hereunder for Stored Materials shall be automatically restored on a dollar for dollar basis by the amount advanced for such incorporated materials).

(d) The foregoing provisions are not intended to apply to disbursements of proceeds of the Loan which are made for the purpose of making deposits required by vendors with respect to purchase orders of construction materials, and any such use of the proceeds of the Loan shall be subject to Lender’s approval; provided, however, that if and when any materials are fully fabricated, the provisions of this Section 2.16 shall apply.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as of the Closing Date and the date of each Future Advance that:

**Section 3.1 Existence and Authority.** Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of formation; (b) is duly qualified to transact business and is in good standing in the State; (c) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Property; and (d) has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Agreement, the Note, the Security Instrument and the other Loan Documents on Borrower’s part to be performed.

**Section 3.2 Borrower’s Principal Place of Business.** Borrower’s principal place of business and its chief executive office as of the date hereof is set forth in Section 5.5.



**Section 3.3 Validity of Documents.** (a) The execution, delivery and performance of this Agreement, the Note, the Security Instrument and the other Loan Documents by Borrower and Guarantor and the borrowing evidenced by the Note and this Agreement (i) are within the power and authority of such parties; (ii) have been authorized by all requisite organizational action of such parties; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or Governmental Authority, any license, certificate or other approval required to operate the Property, any applicable organizational documents, or any applicable indenture, agreement or other instrument, including, without limitation, the Management Agreement; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby and by the other Loan Documents; and (vi) will not require any authorization or license from, or any filing with, any Governmental Authority (except for the recordation of the Security Instrument in appropriate land records in the State and except for Uniform Commercial Code filings relating to the security interest created hereby), (b) this Agreement, the Note, the Security Instrument and the other Loan Documents have been duly executed and delivered by Borrower and Guarantor and (c) this Agreement, the Note, the Security Instrument and the other Loan Documents constitute the legal, valid and binding obligations of Borrower and Guarantor. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower 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, render the Loan Documents unenforceable (except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Creditors Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)). Neither Borrower nor Guarantor has asserted any right of rescission, set-off, counterclaim or defense with respect to the Loan Documents. The Assignment of Leases creates a valid assignment of, or a valid security interest in, certain rights under the Leases, subject only to a license granted to Borrower to exercise certain rights and to perform certain obligations of the lessor under the Leases, including the right to operate the Property. No Person other than Lender has any interest in or assignment of the Leases or any portion of the Rents due and payable or to become due and payable thereunder. No consent, approval, authorization or order of any court or Governmental Authority is required for the execution, delivery and performance by Borrower of, or compliance by Borrower with, the Loan Documents or the consummation of the transactions contemplated hereby, other than those which have been obtained by Borrower.

**Section 3.4 Agreements.** Borrower has no material financial obligation under any 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, (b) obligations under this Agreement, the Security Instrument, the Note and the other Loan Documents, and (c) the Construction Documents. Borrower is not a party to any agreement or instrument or subject to any restriction which would have a Material Adverse Effect. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations hereunder or under the Note to an obligation owed to another party.

**Section 3.5 Title; Permitted Encumbrances.** Borrower has good, marketable and insurable [fee simple/leasehold<sup>6</sup>] title to the real property comprising part of the Property and good title to the balance of the Property owned by it, free and clear of all liens whatsoever except the Permitted Encumbrances. None of the Permitted Encumbrances, individually or in the aggregate, (a) materially interfere with the benefits of the security intended to be provided by the Loan Documents, (b) materially and adversely affect the value of the Property, (c) impair the use or operation of the Property, (d) impair Borrower's ability to pay the Obligations in a timely manner, or (e) could otherwise reasonably be expected to have a Material Adverse Effect. 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 (i) a valid, first priority, perfected lien on Borrower's interest in the Property, subject only to Permitted Encumbrances, and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to the Permitted Encumbrances. There are no mechanics', materialman's or other similar liens or claims which have been filed for work, labor or materials affecting the Property which are or may become liens prior to, or equal or coordinate with, the lien of the Security Instrument.

**Section 3.6 Purchase Options.** Neither the Property nor any part thereof or interest therein are subject to any purchase options, rights of first refusal or offers to purchase or other similar rights in favor of any Person.

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<sup>6</sup> NTD: If Borrower holds a leasehold estate, ground lease provisions must be added to the loan documents.

**Section 3.7 Condemnation.** No Condemnation or other 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 the access to the Property.

**Section 3.8 Separate Lots; Flood Zone; Wetlands.** The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof. Except as expressly disclosed on the Survey, no portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

**Section 3.9 Use of Property.** Following Substantial Completion, the Property is to be used exclusively as [a  room hotel] and for other appurtenant and related uses.

**Section 3.10 Certain Additional Property Representations.**

(a) The Property and the present and contemplated use and occupancy thereof are (and following Substantial Completion will be) in full compliance with all applicable zoning ordinances, building codes, land use laws, Environmental Laws and other similar Legal Requirements.

(b) Following Substantial Completion, the Property will be served by public water and sewer systems and sanitary sewer and storm drain facilities, in each case adequate to safely service the Property for its intended uses.

(c) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, dedicated to public use and accepted by all Governmental Authorities. The Property has either direct access to such public roads or streets or access to such public roads or streets by virtue of a perpetual easement or similar agreement inuring in favor of Borrower and any subsequent owners of the Property.

(d) All Permits required from Governmental Authorities under applicable Legal Requirements or otherwise necessary for the commencement, prosecution and completion of Construction of the Improvements have been obtained and are not subject to any appeal period or any pending appeals, litigation or other attempts to repeal such Permits. All such Permits are current and in full force and effect and, to the knowledge of Borrower, there is no pending threat of modification or cancellation of any of the same or default, violation or breach by Borrower thereof or any failure to satisfy any conditions for approval thereof. The Property does not depend upon any variance, special exception or other special approval of a Governmental Authority for its continued legality.

(e) [At Closing, the Property is vacant land and there are no buildings or improvements located on the Property.] **[OR]** [The Property is free from damage caused by fire or other casualty. 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 (excepting ordinary wear and tear). There exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.] **[NOTE: TAILOR AS APPLICABLE]**

(f) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than Tenants' property), if any, used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created by this Agreement, the Note, the Security Instrument and the other Loan Documents.

(g) To Borrower's knowledge after due inquiry, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(h) All the Improvements, as and when constructed, lie within the boundaries of the Land and any building restriction lines applicable to the Land. All easements, cross easements, licenses, air rights and rights of way or other similar property interests, if any, necessary for the full utilization of the Improvements for their intended purposes have been obtained, are described in the Title Insurance Policy and are in full force and effect without default thereunder.

(i) There are no outstanding or disputed claims for any Labor and Materials Charges and there are no outstanding liens or security interests in connection with any Labor and Materials Charges. All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(j) The Property is duly and validly zoned for use as a hotel property with accompanying amenity space. Such zoning is unconditional and no attacks or challenges are pending or, to the knowledge of Borrower, threatened with respect thereto. Neither the zoning of the Property for hotel purposes or the Property's compliance with any other Legal Requirement (including, without limitation, environmental protection, public highway, water use, zoning, building, fire, health, safety or similar Legal Requirements), is

to any extent dependent upon or related to (a) any other real property or (b) any facilities located on any other real property, except those provided pursuant to perpetual, non-terminable and insurable easements or other real property interests inuring to the benefit of the Property.

**Section 3.11 Financial Condition.** Borrower is solvent and Borrower has received reasonably equivalent value for the granting of the Security Instrument. No proceeding under Creditors Rights Laws with respect to any Borrower Party has been initiated. In the last ten (10) years, no (i) petition in bankruptcy has been filed by or against any Borrower Party and (ii) Borrower Party has ever made any assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws. No Borrower Party is contemplating either the filing of a petition by it under any Creditors Rights Laws or the liquidation of its assets or property and Borrower has no knowledge of any Person contemplating the filing of any such petition against any Borrower Party. With respect to any loan or financing in which any Borrower Party or any Affiliate thereof has been directly or indirectly obligated for or has, in connection therewith, otherwise provided any guaranty, indemnity or similar surety (including, without limitation and to the extent applicable, any loan which is being refinanced by the Loan), none of such loans or financings has ever been (i) more than thirty (30) days in default or (ii) transferred to special servicing.

**Section 3.12 Financial Information.** All financial data, including, without limitation, the balance sheets, statements of cash flow, statements of income and operating expense and rent rolls, that have been delivered to Lender in respect of Borrower, Sponsor, Guarantor and/or the Property (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Borrower, Sponsor, Guarantor or 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 the Approved Accounting Method throughout the periods covered, except as disclosed therein. None of Borrower, Sponsor or Guarantor has any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are reasonably likely to have a Material Adverse Effect, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower, Sponsor or Guarantor from that set forth in said financial statements. Borrower shall promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report (including, without limitation, customer satisfaction reports), formal correspondence and material estimate received by it under the Franchise Agreement.

**Section 3.13 Fraudulent Conveyance.** Borrower (a) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

**Section 3.14 Disclosure.** Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

**Section 3.15 No Plan Assets.** Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA. Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA. Transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans. None of the assets of Borrower constitutes "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Neither Borrower, nor any member of a "controlled group of corporations" (within the meaning of Section 414 of the IRS Code), maintains, sponsors or contributes to a "defined benefit plan" (within the meaning of Section 3(35) of ERISA).

**Section 3.16 Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the IRS Code.

**Section 3.17 Business Purposes.** The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

**Section 3.18 Litigation.** There is no action, suit, proceeding or governmental investigation, in each case, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against or relating to Borrower, Sponsor or Guarantor or against or affecting the Property or the Construction.

**Section 3.19 Leases and Rent Roll.** There are no Leases affecting the Property or any portion thereof. [NOTE: to be adjusted if any Leases in place]

**Section 3.20 Taxes.**

(a) All Taxes and governmental assessments owing in respect of the Property have been paid or an escrow of funds in an amount sufficient to cover such payments has been established hereunder. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(b) Borrower has filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. Borrower knows of no basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

(c) 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 this Agreement, the Security Instrument, the Note and the other Loan Documents, have been paid or will be paid.

**Section 3.21 Insurance.** There are no present claims of any material nature under any of the Policies, and to Borrower's knowledge, no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

**Section 3.22 [Management Agreement.** [The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and, to Borrower's best knowledge, no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. As of the date hereof, no management fees under the Management Agreement are due and payable] **OR** [The Property is self-managed and Borrower has not entered into any management agreement with respect to the operation and management of the Property].

**Section 3.23 Illegal Activity/Forfeiture.** No portion of the Property has been purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property. There has not been committed by Borrower or 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 state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under this Agreement, the Note, the Security Instrument or the other Loan Documents.

**Section 3.24 Special Purpose Entity.** Since Borrower's, Pledgor's and any SPE Component Entity's creation and as of the date hereof, Borrower, Pledgor and each SPE Component Entity have complied with and are in compliance with the requirements set forth on Exhibit [ ] attached hereto.

**Section 3.25 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement, the Security Instrument, the Note or the other Loan Documents.

**Section 3.26 Reserved.**

**Section 3.27 Embargoed Person.** Neither Borrower nor any owner of a direct or indirect interest in Borrower (a) is listed on any Government Lists, (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of the Office of Foreign Assets Control ("OFAC") or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, (d) is a Prohibited Entity or a Prohibited Person, or (e) is currently under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "**Patriot Act Offense**" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (i) the criminal laws against terrorism; (ii) the criminal laws against money laundering, (iii) the Bank Secrecy Act, as amended, (iv) the Money Laundering Control Act of 1986, as amended, or (v) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "**Government Lists**" means (A) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (B) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrower in writing is now

included in “Government Lists”, or (C) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Lender notified Borrower in writing is now included in “Government Lists”. Borrower has implemented procedures to ensure that no Person who now or hereafter owns any equity interest in Borrower is a Prohibited Person or Controlled by a Prohibited Person.

**Section 3.28**     **Reserved.**

**Section 3.29**     **Reserved.**

**Section 3.30**     **[If Mezzanine Loan at closing: No Default Under Mezzanine Loan.** No Mezzanine Loan Event of Default has occurred and there exists no default that with the giving of notice would constitute a Mezzanine Loan Event of Default.]

**Section 3.31**     **Contracts.** Borrower has not entered into, and is not bound by, any Major Contract which continues in existence, except those previously disclosed in writing to Lender. Each of the Major Contracts is in full force and effect, there are no monetary or other material defaults by Borrower thereunder and, to the knowledge of Borrower, there are no monetary or other material defaults thereunder by any other party thereto. None of Borrower, Manager or any other Person acting on Borrower's behalf has given or received any notice of default under any of the Major Contracts that remains uncured or in dispute. Borrower has delivered true, correct and complete copies of the Major Contracts (including all amendments and supplements thereto) to Lender. No Major Contract has as a party an Affiliate of Borrower. All fees and other compensation for services previously performed under the Major Contracts have been paid in full.

**Section 3.32**     **[If Mezzanine Loan at closing: Mezzanine Loan Representations.** All of the representations and warranties contained in the Mezzanine Loan Documents are hereby incorporated into this Agreement and deemed made hereunder for the benefit of Lender as and when made thereunder (including, for purposes of clarity, that any exceptions thereto for matters “otherwise disclosed to Lender” or words of similar effect shall be deemed to refer to Lender) and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mezzanine Lender or to whether the related Mezzanine Loan Document has been repaid, defeased or otherwise terminated, unless otherwise consented to in writing by lender.]

**Section 3.33**     **No Change in Facts or Circumstances; Disclosure.** All information submitted by (or on behalf of) Borrower, Guarantor or Sponsor to Lender and in all financial statements, rent rolls, 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, Sponsor and/or Guarantor in this Agreement or in the other Loan Documents, are accurate, complete and correct in all material respects. 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 have a Material Adverse Effect. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

**Section 3.34**     **Hotel Representations.**

(a)     Other than as set forth on Exhibit [ ] hereof (such leases or agreements, the “**Equipment Leases**”), the Property is not subject to equipment leases or any other similar leases or agreements.

(b)     Except for any incentive compensation systems designed to promote increased customer use of the Property, there are no: (i) collective bargaining agreements and/or other labor agreements to which Borrower or the Property, or any portion thereof, is a party or by which either is or may be bound; (ii) employment, profit sharing, deferred compensation, bonus, stock option, stock purchase, pension, retainer, consulting, retirement, health, welfare, or incentive plans and/or contracts to which Borrower or the Property, or any portion thereof is a party, or by which either is or may be bound or (iii) plans and/or agreements under which “fringe benefits” (including, but not limited to, vacation plans or programs, and related or similar dental or medical plans or programs, and related or similar benefits) are afforded to employees of Borrower or the Property, or any portion thereof. Borrower has not violated in any material respects any applicable laws, rules and regulations relating to the employment of labor, including those relating to wages, hours, collective bargaining and the payment and withholding of taxes and other sums as required by appropriate Governmental Authorities.

(c)     **[W/FRANCHISE** – Except for the Scheduled PIP, there is currently no PIP or other similar requirement imposed under the Franchise Agreement.

(d)     The Franchise Agreement has not been amended, restated, supplemented or otherwise modified, 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 giving of notice, would constitute a default thereunder.]

(e) Borrower has delivered to Lender copies of all Permits in effect with respect to the Property relating to the serving of alcoholic beverages, and all Permits necessary for the servicing of alcoholic beverages at the Property are in the name of [Borrower / Manager], and are in full force and effect.

**Section 3.35 Loan Proceeds and Adequacy.** The Loan Proceeds, together with the [proceeds of the Mezzanine Loan and<sup>7</sup>] all equity funded by Borrower to date, as confirmed by Lender, are sufficient to construct, develop, renovate and complete the Improvements in accordance with the Plans and Specifications, the Construction Contracts and the terms and conditions of this Agreement and the other Loan Documents.

**Section 3.36 Construction Matters.**

(a) The Plans and Specifications set forth all of the plans and specifications in sufficient detail as is necessary for the completion of the Construction of the Improvements, and when Construction is completed in accordance with the Plans and Specifications, the Property shall contain all the Improvements contemplated by the Construction Documents. The Plans and Specifications have been approved by all applicable Governmental Authorities.

(b) In the aggregate, the General Contract, the subcontracts with General Contractor thereunder and the other Trade Contracts identified in Schedule 3.36 cover all labor, material and equipment required by the Plans and Specifications to complete the Improvements in accordance with the Construction Documents and the Loan Documents.

(c) Subject only to payment of fees reflected in the Construction Budget and completion of the Improvements in accordance with the Construction Documents, all utility and municipal services required for the construction, occupancy and operation of the Property, including, without limitation, water supply, storm and sanitary sewage disposal systems, gas, electric and telephone facilities, are or will be available for use and tap on at the boundaries of the Property, and written permission has been or will be obtained from the applicable utility companies or municipalities to connect the Improvements to each of said services.

(d) The storm and sanitary sewage disposal system, water system and all mechanical systems of the Property do (or when completed in accordance with the Plans and Specifications will) comply with all applicable Legal Requirements, including, without limitation, all Environmental Laws. The applicable environmental protection agency, pollution control board and/or all other Governmental Authorities having jurisdiction over the Property have, to the extent required by applicable Legal Requirements, issued their permits for the construction, tap on and operation of those systems.

(e) If the Improvements are completed in accordance with the Plans and Specifications, the use, occupancy and operation of the Property will not violate: (a) any Legal Requirements applicable to the Property or the construction, use, occupancy or operation thereof, or (b) any Contracts. If the Improvements are completed in accordance with the Plans and Specifications, the Property will be in full compliance with all applicable Legal Requirements, including zoning requirements (including, without limitation, those relating to setbacks, height, parking, floor area ratio and percentage of land coverage) and all Permits.

(f) Borrower has delivered to Lender a full, accurate and complete copy of the General Contract, the Architect Contract, each of the design agreements and each Trade Contract executed on or prior to the date hereof.

(g) With respect to each Construction Document, Borrower hereby represents that (a) each Construction Document is in full force and effect and has not been amended, restated, replaced or otherwise modified (except, in each case, as expressly set forth herein), (b) there are no defaults under any Construction Document by any party thereto and, to Borrower's knowledge, no event has occurred which, but for the passage of time, the giving of notice, or both, would constitute a default under any Construction Document, (c) all sums due and payable under the Construction Documents have been paid in full, (d) no party to any Construction Document has commenced any action or given or received any notice for the purpose of terminating any Construction Document and (e) the representations made in any estoppel or similar document delivered with respect to any Construction Document in connection with the Loan are true, complete and correct and are hereby incorporated by reference as if fully set forth herein.

(h) The Development Agreement is in full force and effect and there is no default thereunder by any party thereto and, to Borrower's knowledge, no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. As of the date hereof, no Developer Fees under the Development Agreement are due and payable.

(i) As of the date hereof, no steps whatsoever have been taken by Borrower or any other Person to commence construction on the Land, including, without limitation, demolition, excavation, removal of trees, vegetation, utilities or utility lines or other clearance of the Land, installation of security fences or the delivery of material for use in construction of the Improvements.

**Section 3.37 Major Trade Contracts.** Borrower has not entered into, and is not bound by, any Major Trade Contract which continues in existence, except those listed on Schedule 3.36. Each of the Major Trade Contracts is in full force and effect, there are no monetary or other defaults by Borrower thereunder and, to the knowledge of Borrower, there are no monetary or other defaults thereunder by any other party thereto. Neither Borrower nor any other Person acting on Borrower's behalf has given or received any notice of default under any of the Major Trade Contracts that remains

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<sup>7</sup> Include if there is a Mezzanine Loan.

uncured or in dispute. Borrower has delivered true, correct and complete copies of the Major Trade Contracts (including all amendments and supplements thereto) to Lender. No Major Trade Contract has as a party an Affiliate of Borrower. All fees and other compensation for services previously performed under the Major Trade Contracts have been paid in full.

**Section 3.38 Construction Document Representations.** With respect to each Construction Document, Borrower hereby represents that (a) each Construction Document is in full force and effect and has not been amended, restated, replaced or otherwise modified (except, in each case, as expressly set forth herein), (b) there are no defaults under any Construction Document by any party thereto and, to Borrower's knowledge, no event has occurred which, but for the passage of time, the giving of notice, or both, would constitute a default under any Construction Document, (c) all sums due and payable under the Construction Documents have been paid in full, (d) no party to any Construction Document has commenced any action or given or received any notice for the purpose of terminating any Construction Document and (e) the representations made in any estoppel or similar document delivered with respect to any Construction Document in connection with the Loan are true, complete and correct and are hereby incorporated by reference as if fully set forth herein.

**Section 3.39 Required Borrower's Equity.** As of the date hereof, Borrower's member(s) have invested in Borrower with respect to the Property not less than the Required Borrower Equity. All of the Required Borrower Equity is derived from Borrower's direct and indirect beneficial owners and investors from their own funds without any mezzanine or other borrowings.

*[Reps and covenants re intellectual property to be included if Borrower owns any IP in connection with the hotel]*

Borrower agrees that, unless expressly provided otherwise, all of the representations and warranties of Borrower set forth in this Article 3 and elsewhere in this Agreement and the other Loan Documents shall survive for so long as any portion of the Debt remains owing to Lender.

## ARTICLE 4

### BORROWER COVENANTS

Borrower hereby covenants and agrees with Lender that, from the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents:

**Section 4.1 Existence<sup>8</sup>.** Borrower shall not (i) engage in any division, dissolution, liquidation or consolidation or merger with or into any other business entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of Borrower except to the extent expressly permitted by the Loan Documents, or (iv) cause, permit or suffer any SPE Component Entity to (A) divide, dissolve, wind up or liquidate or take any action, or omit to take any action, as a result of which such SPE Component Entity would be dissolved, wound up or liquidated in whole or in part or (B) amend, modify, waive or terminate the organizational documents of such SPE Component Entity, in each case without obtaining the prior written consent of Lender.

**Section 4.2 Change of Name, Identity or Structure.** Borrower shall not change (or permit to be changed) Borrower's or the SPE Component Entity's (a) name, (b) identity (including its trade name or names), (c) principal place of business set forth in this Agreement, or (d) corporate, partnership or other structure or state of formation, without, in each case, notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's or the SPE Component Entity's structure or state of formation, without first obtaining the prior written consent of Lender.

Borrower shall execute and deliver to Lender, 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 or the SPE Component Entity intends to operate the Property, and representing and warranting that Borrower or the SPE Component Entity does business under no other trade name with respect to the Property.

**Section 4.3 Ownership of Borrower and Accommodation Pledgor.** At all times while the Debt is outstanding, (i) Borrower shall remain solely owned and under Control of Accommodation Pledgor, (ii) Accommodation Pledgor shall remain solely owned and under Control of Mezzanine Borrower, and (iii) Borrower shall not, and shall not permit any other Borrower Member to issue any additional equity interest in Borrower. **[Adjust for Mezz as applicable]**

**Section 4.4 Title to Property; Legal Requirements.** Borrower shall warrant and defend the validity and priority of the liens of the Security Instrument and the Assignment of Leases on the Property against the claims of all Persons whomsoever, subject only to the Permitted Encumbrances. Borrower shall promptly comply and shall cause the Property to comply with all Legal Requirements affecting the Property or the use thereof (which such covenant shall be deemed

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<sup>8</sup> Include Pledgor and Mezzanine Borrower, as applicable.

to (i) include Environmental Laws and (ii) require Borrower to keep all Permits in full force and effect). Borrower shall give prompt notice to Lender of the receipt by Borrower 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.

**Section 4.5 Maintenance and Use of Property.** Borrower shall cause the Property to be maintained in a good and safe condition and repair and shall not commit or suffer any waste of the Property. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property), once constructed and installed, without the consent of Lender or as otherwise permitted pursuant to Section 4.18 hereof. Borrower shall not, without the prior written consent of Lender, initiate, join in, acquiesce in, or consent to any change in any restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

**Section 4.6 Taxes and Other Charges.**

(a) Borrower shall pay (or cause to be paid) 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. 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 for all utility services provided to the Property.

(b) Following receipt of the prior written consent of Lender, Borrower, at its own expense, may contest (or permit to be contested) 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, which consent may be conditioned upon, among other things, Borrower furnishing such security or reserve deposits as may be required by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender 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, canceled or lost or there shall be any danger of the lien of the Security Instrument being primed by any related lien.

**Section 4.7 Labor and Materials.**

(a) Subject to Section 4.7(b) below, Borrower will promptly pay (or cause to be paid) when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (any such bills and costs, a “**Labor and Materials Charge**”) and never permit to exist in respect of the Property or any part thereof any lien or security interest, 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 created hereby and by the Security Instrument, except for the Permitted Encumbrances. If any claim of lien is asserted against the Property for any Labor and Materials Charge, Borrower shall promptly give notice of the same to Lender and shall, promptly and in any event within thirty (30) days after Lender’s demand, (i) pay and discharge the same, (ii) effect the release thereof by delivering to Lender a surety bond complying with the requirement of applicable Legal Requirements for such release, (iii) with respect to mechanic’s liens, deliver to Lender the unconditional commitment of the Title Company to indemnify, defend and hold Lender and the Property harmless from and against all loss, liability, expense, claims, actions and costs (including reasonable attorneys’ fees and costs) arising out of or in connection with such mechanic’s lien, or (iv) take such other action as Lender may approve in writing to release Lender from any obligation or liability with respect to such stop notice or claim.

(b) Following receipt of written consent of Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Labor and Materials Charge, the applicability of any Labor and Materials Charge to Borrower or to the Property or any alleged non-payment of any Labor and Materials Charge and defer paying the same, which consent may be conditioned upon, among other things, Borrower furnishing such security as may be required by Lender, to insure the payment of any such contested Labor and Materials Charge, together with all interest and penalties thereon. Lender may apply any such security or part thereof, as necessary to pay for such Labor and Materials Charge at any time when, in the judgment of Lender, the validity, applicability or non-payment of such Labor and Materials Charge 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 or there shall be any danger of the lien of the Security Instrument being primed by any related lien.

(c) For avoidance of doubt, until such claim or lien is either released, discharged, bonded or paid in accordance with the terms of Section 4.6(a), Lender shall have no obligation to fund Future Advances to Borrower.

**Section 4.8 Property Access.** Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice, subject to the rights of Tenants.

**Section 4.9 Litigation.** Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower or the Property which might have a Material Adverse Effect.



**Section 4.10 Title Insurance Proceeds.** Borrower covenants, subject to Lender's rights under the Loan Documents, to remit to Lender all title insurance proceeds paid by the title insurance company insuring Borrower's title to the Property upon the occurrence of any loss under such title insurance policy; provided however, in no event shall such title insurance proceeds paid to Lender exceed, in the aggregate, the outstanding amount of the Debt.

**Section 4.11 Books and Records.**

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with the requirements set forth on Exhibit [ ] hereof and the Approved Accounting Method, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower 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 and retain such copies or extracts thereof as Lender shall desire.

(b) Borrower will furnish to Lender annually, within ninety (90) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's annual financial statements prepared and reviewed by an independent certified public accountant acceptable to Lender (provided, however, that at any time an Event of Default exists or Lender has a reasonable basis to believe any such financial statements are inaccurate in any material respect or do not fairly represent the financial condition of Borrower or the Property, the same shall, upon Lender's written request, be audited by such independent certified public accountant) in accordance with the Approved Accounting Method covering the Property for such Fiscal Year and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual net operating income, net cash flow, gross income, operating expenses and occupancy statistics for the Property (including an average daily room rate).

(c) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) 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 and fairly present the financial condition and results of the operations of Borrower and the Property as applicable: (i) prior to Final Completion, a status report (in form reasonably acceptable to Lender) detailing the progress of the completion of the Work and any expenditures for costs of Construction; and (ii) from and after Substantial Completion, (A) a rent roll for the subject quarter, (B) an occupancy report for the Property (including an average daily room rate) and any franchise scores, franchise inspection reports or other similar information made available to Borrower during the subject quarter, (C) FF&E and PIP expenditures, (D) the most current Smith Travel Research Reports, in a form reasonably acceptable to Lender, then available to Borrower reflecting market penetration and relevant hotel properties competing with the Property, and (E) quarterly and year-to-date operating statements (including expenditures for FF&E) prepared for each calendar quarter, noting net operating income, gross income, and operating expenses (not including any contributions to the [FF&E Reserve Funds]). In addition, such certificate shall also be accompanied by an Officer's Certificate stating that Borrower is in compliance with the requirements set forth in Section 4.22 as of the date of such certificate.

(d) Borrower will furnish, or cause to be furnished, to Lender on or before twenty (20) days after the end of each calendar month 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 and the Property (subject to normal year-end adjustments) as applicable: (x) prior to Final Completion, a status report (in form reasonably acceptable to Lender) detailing the progress of the completion of the Work and any expenditures for Construction Costs; and (y) from and after Final Completion (i) a rent roll for the subject month, (ii) an accounts payable aging report and an accounts receivable aging report for the subject month, (iii) an occupancy report for the Property (including an average daily room rate) and any franchise scores, franchise inspection reports or other similar information made available to Borrower during the subject month, (iv) FF&E and PIP expenditures, (v) the most current Smith Travel Research Reports, in a form reasonably acceptable to Lender, then available to Borrower reflecting market penetration and relevant hotel properties competing with the Property, (vi) monthly and year-to-date operating statements (including expenditures for FF&E) prepared for each calendar month, noting net operating income, gross income, and operating expenses (not including any contributions to the [FF&E Reserve Funds] and the [Immediate Repair Funds]), and (vii) other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing a comparison of budgeted income and expenses and the actual income and expenses.

(e) For the partial year period commencing on the Substantial Completion Date, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than sixty (60) days prior to the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval (each such Annual Budget so approved by Lender, an "**Approved Annual Budget**"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower in accordance with this Section 4.11, 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. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, (1) to the extent that an Approved Annual Budget does not exist for the immediately preceding calendar year, all operating expenses of the Property for the then current calendar year shall be deemed

extraordinary expenses of the Property and shall be subject to Lender's prior written approval (not to be unreasonably withheld or delayed) and (2) to the extent that an Approved Annual Budget exists for the immediately preceding calendar year, such Approved Annual Budget shall apply to the then current calendar year; provided, that such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and utilities expenses;

(f) Borrower shall furnish 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, Guarantor and Sponsor as may be reasonably requested by Lender.

(g) Borrower shall furnish 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 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 after request therefor).

(h) If Borrower shall consist of more than one Person, then the annual financial statements required to be delivered hereunder shall be in the form of an annual combined balance sheet of each Borrower (and no other Person), together with the related combined statements of operations, members' capital and cash flows with respect to each Borrower, including a combined balance sheet and a statement of income for the Property on a combined basis.

(i) Borrower agrees that all financial information delivered to Lender pursuant to this Section 4.11 shall: (i) be complete and correct; (ii) present fairly the financial condition of the applicable Person; (iii) disclose all liabilities that are required to be reflected or reserved against; and (iv) be prepared (A) in the form required by Lender and certified by a Responsible Officer of Borrower (B) in hardcopy and electronic formats and (C) in accordance with the Approved Accounting Method. Borrower shall be deemed to warrant and represent that, as of the date of delivery of any such financial statement, there has been no material adverse change in financial condition, nor have any assets or properties been sold, transferred, assigned, mortgaged, pledged or encumbered since the date of such financial statement except as disclosed by Borrower in a writing delivered to Lender. Borrower agrees that all financial information delivered hereunder shall not contain any misrepresentation or omission of a material fact.

**Section 4.12 Contracts.** Borrower may enter into any Contract without Lender's consent so long as such Contract (a) contains terms that are commercially reasonable and comparable to existing local market terms for similar contractual agreements with respect to commercial properties similar to the Property, (b) is not a Construction Contract, and (c) does not contain any terms which would have a Material Adverse Effect. Notwithstanding anything to the contrary contained herein, Borrower shall be required to obtain Lender's prior written approval of all Major Contracts affecting the Property (including any renewals or extensions thereof, or any amendments or modifications thereto), which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions under each Contract to which it is a party, and do all things necessary to keep unimpaired its rights thereunder, (ii) promptly notify Lender of any notice of default given by any party under any Major Contract and deliver to Lender a copy of each such notice, and (iii) enforce the performance and observance of all of the material terms, covenants and conditions required to be performed and/or observed by the other party to each Contract and to which Borrower is a party in a commercially reasonable manner.

**Section 4.13 Cooperation in Proceedings.** Borrower shall 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 Note, the Security Instrument or the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**Section 4.14 Estoppel Certificates.**

(a) After request by Lender, Borrower, within ten (10) Business Days of such request, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the outstanding principal balance of the Note, (ii) the Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment and performance of the Obligations, and (v) any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations created and evidenced hereby and by the Security Instrument or the Property.

(b) From and after Substantial Completion, Borrower shall use commercially reasonable efforts to deliver to Lender, within ten (10) Business Days of request, duly executed estoppel certificates from any one or more Tenants as required by Lender attesting to such facts regarding the Lease as Lender may reasonably require, including, but not limited to, attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, no free rent or other concessions are due lessee and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Borrower shall use commercially reasonable efforts to deliver to Lender, within ten (10) Business Days of request, duly executed estoppel certificates from Franchisor as required by Lender attesting to such facts regarding the Franchise Agreement as Lender may reasonably require, including, but not limited to, attestations that the Franchise Agreement is in full force and effect with no defaults thereunder on the part of any party.

#### **Section 4.15 Leases and Rents.**

(a) All Leases and all renewals of Leases executed after the date hereof shall (i) provide for rental rates comparable to existing local market rates for similar properties, (ii) be on commercially reasonable terms with unaffiliated, third parties (unless otherwise consented to by Lender), (iii) provide that such Lease is subordinate to the Security Instrument and that the lessee will attorn to Lender and any purchaser at a foreclosure sale, (iv) not permit payment of rent by anything other than lawful money of the United States of America and (v) not contain any terms which would have a Material Adverse Effect. Notwithstanding anything to the contrary contained herein, in addition to the requirements set forth above, Borrower shall not, without the prior written approval of Lender (which approval may be given or withheld in Lender's sole but reasonable discretion), enter into, renew, extend, amend, modify, permit any assignment of or subletting under, waive any provisions of, release any party to, terminate, reduce rents under, accept a surrender of space under, or shorten the term of, in each case, any Lease.

(b) Without limitation of subsection (a) above, Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce the material 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; (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); and (v) shall hold all security deposits under all Leases in accordance with Legal Requirements. Upon request, Borrower shall furnish Lender with executed copies of all Leases.

(c) Borrower shall notify Lender in writing, within two (2) Business Days following receipt thereof, of Borrower's receipt of any early termination fee or payment or other termination fee or payment paid by any Tenant under any Lease, and Borrower shall deposit same in reserve with Lender to be disbursed by Lender for tenant improvement and leasing commission costs with respect to the Property and/or for payment of the Debt or otherwise in connection with the Loan, as so determined by Lender.

**Section 4.16 Notice of Default.** Borrower shall promptly advise Lender of any material adverse change in the condition (financial or otherwise) of any Borrower Party or the Property, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

**Section 4.17 Other Agreements.** Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing the Debt and any amendments, modifications or changes thereto.

**Section 4.18 Alterations.** Notwithstanding anything contained herein to the contrary, Lender's prior approval shall be required in connection with any alterations to any Improvements (a) that may have a Material Adverse Effect, (b) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Alteration Threshold or (c) that are structural in nature, which approval may be granted or withheld in Lender's sole discretion. If the total unpaid amounts incurred and to be incurred with respect to any alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall promptly deliver to Lender cash as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents.

**Section 4.19 [Management Agreement. [REVISE AS APPLICABLE]]**

(a) Borrower shall (i) cause Manager to manage the Property in accordance with the Management Agreement, (ii) diligently perform and observe all of the terms, covenants and conditions of the Management Agreement on the part of Borrower to be performed and observed, (iii) promptly notify Lender of any default under the Management Agreement of which it is aware, (iv) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, estimate, report and each material notice received by it under the Management Agreement, and (v) promptly enforce the performance and observance of all of the covenants required to be performed and observed by Manager under the Management Agreement.

(b) Borrower shall not, without the prior written consent of Lender (i) surrender, terminate, cancel, modify, renew or extend the Management Agreement (other than a renewal or extension provided for in the Management Agreement); provided, that, Borrower may replace Manager with a Qualified Manager pursuant to a Qualified Management Agreement.

(c) In the event that the Management Agreement expires or is surrendered, terminated or cancelled, Borrower shall enter into a Qualified Management Agreement with a Qualified Manager or with another manager approved by Lender contemporaneously with such expiration, surrender, termination or cancellation.

(d) Lender shall have the right to require Borrower to replace Manager with a Qualified Manager chosen by Borrower which is not an Affiliated Manager to manage the Property pursuant to a Qualified Management Agreement upon the occurrence of any one or more of the following events: (i) at any time following the occurrence of an Event of Default, (ii) if at any time a Cash Sweep Period has occurred and is continuing, (iii) if Manager shall be in default under the Management Agreement beyond any applicable notice and cure period, (iv) if Manager shall become insolvent or a debtor in any involuntary bankruptcy or insolvency proceeding that is not dismissed within ninety (90) days of the filing thereof, or any voluntary bankruptcy or insolvency proceeding, or (v) if at any time Manager has engaged in gross negligence, fraud or willful misconduct.

(e) Upon the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender.

(f) If at any time Lender consents to the appointment of a new manager and/or the execution of a management agreement under this Agreement, such manager and Borrower shall, as a condition of Lender's consent, execute an Assignment of Management Agreement and subordination of management fees substantially in the form then used by Lender (or in such other form and substance reasonably satisfactory to Lender.)]

**Section 4.20 No Joint Assessment.** Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

**Section 4.21 ERISA.** Borrower shall 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 hereunder or under the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its reasonable discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the IRS Code, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true: (A) equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3 101(b)(2); (B) less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3 101(f)(2); or Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R § 2510.3 101(c) or (e) or an investment company registered under The Investment Company Act of 1940, as amended. Borrower shall not maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any member of Borrower's "controlled group of corporations" to maintain, sponsor, contribute to or become obligated to contribute to a "defined benefit plan" or a "multiemployer pension plan" (as each of the same is defined in Section 3.15 of this Agreement).

**Section 4.22 Special Purpose Entity.** Borrower, Pledgor and each SPE Component Entity shall at all times comply with the requirements set forth on Exhibit [ ] attached hereto and shall not take or permit any action that would result in Borrower, Pledgor or any SPE Component Entity not being in compliance with the representations, warranties and covenants set forth in Section 3.24 and Exhibit [ ] attached hereto.

**Section 4.23 Debt Cancellation.** Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

**Section 4.24 Anti-Corruption Laws.** Borrower Compliance Party and each party hereto has complied, and will continue to comply, with all Applicable Laws, including, without limitation, the Anti-Corruption Laws and the Anti-Money Laundering Laws. Borrower Compliance Party has not, and agrees that it shall not, in connection with the transactions contemplated by this Agreement, or in connection with any other business transactions involving Lender or its subsidiaries, make any payment, transfer anything of value, or offer anything of value, directly or indirectly (i) to any governmental official or employee (including employees of a government corporation or public international organization) or to any political party or candidate for public office or (ii) to any other person or entity if such payments or transfers would violate the laws of the country in which made, the laws of the United States, the UK or the European Union including the trade sanction and economic embargo programs enforced by OFAC or the laws of any other applicable country. Lender shall have the right to perform a periodic anti-corruption re-diligence. Upon reasonable request, Borrower Compliance Party shall complete a re-diligence questionnaire to be returned to Lender's compliance group. Borrower shall not use, and shall ensure that its directors, officers, employees, and agents shall not use, the proceeds of the Loan, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any sanctioned person, or in any sanctioned country, or (iii) in any manner that would result in the violation of any sanctions applicable to any party hereto. Borrower shall conduct its business in compliance with Anti-Corruption Laws, maintain policies and procedures designed to promote and achieve compliance with such laws and take all reasonable and prudent steps to ensure that each of its agents, directors, employees and officers comply with such laws.

**Section 4.25 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any transfers of all or any portion of the Property or any direct or indirect equity or beneficial interests in Borrower or any

Guarantor that is not a natural person, (a) none of the funds or other assets of Borrower or any Guarantor shall constitute property of, or shall be beneficially owned, directly or indirectly, by any Person subject to trade restrictions under United States law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., the Patriot Act and any Executive Orders or regulations promulgated thereunder, each as may be amended from time to time, with the result that the investment in Borrower, Sponsor or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law (each, an “**Embargoed Person**”), or the Loan made by Lender would be in violation of law, (b) no Embargoed Person shall have any interest of any nature whatsoever in Borrower, Sponsor or any Guarantor, as applicable, with the result that the investment in Borrower, Sponsor or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law, and (c) none of the funds of Borrower, Sponsor or any Guarantor, as applicable, shall be derived from any unlawful activity with the result that the investment in Borrower, Sponsor or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law.

**Section 4.26 Patriot Act.** Borrower shall comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Property, including those relating to money laundering and terrorism. Lender shall have the right to audit Borrower’s compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Property, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Lender in connection therewith shall be secured by the Security Instrument and the other Loan Documents and shall be immediately due and payable.

**Section 4.27 No Plan Assets; Illegal Activity/Forfeiture.** Borrower shall take all necessary actions in order to remain in compliance with the representation contained in Sections 3.15 and 3.23 hereof at all times during the term of the Loan, and shall not take any actions that would cause Borrower to violate any of the same. Borrower covenants and agrees not to commit, permit or suffer to exist any act or omission affording any right of forfeiture described in Section 3.23.

**Section 4.28 O&M Program.** [Borrower hereby represents and warrants that Borrower has, as of the date hereof, complied in all respects with the O&M Program. Borrower hereby covenants and agrees that, during the term of the Loan, including any extension or renewal thereof, Borrower shall comply in all respects with the terms and conditions of the O&M Program.]

**Section 4.29 Commencement and Completion of Construction.**

- (a) Borrower shall cause Construction to be commenced by the applicable Milestone Date.
- (b) Borrower shall achieve, complete and perform each other Milestone by the applicable Milestone Date.
- (c) By the Substantial Completion Date, Borrower shall cause each of the following to occur:
  - (i) Borrower shall deliver to Lender all information, reports, Permits, documents and other items required to be delivered to Borrower by the General Contractor under the General Contract to evidence Substantial Completion under the General Contract and all conditions to substantial completion under the General Contract shall have been satisfied;
  - (ii) Borrower shall furnish to Lender such other certificates, approvals, licenses and permits of any Governmental Authority which are required under applicable Legal Requirement concerning the development, Construction, use, occupancy and operation of the Property (other than a final certificate of occupancy);
  - (iii) Borrower shall deliver to Lender a temporary certificate of occupancy with respect to all of the Improvements issued by the applicable Governmental Authority (and following the issuance of temporary certificate(s) of occupancy for the Property, Borrower shall diligently and continuously pursue the issuance of the final certificate(s) of occupancy for the Property thereafter and shall renew, if applicable, the temporary certificates until the final certificates of occupancy are obtained);
  - (iv) Borrower shall have substantially completed the Improvements in accordance with the Plans and Specifications, excluding only the Punchlist Items;
  - (v) Except with respect to the Punchlist Items, Borrower shall furnish Lender with progress and final lien waivers and releases in accordance with all Legal Requirements and as otherwise acceptable to Lender from (x) the General Contractor and all subcontractors and material suppliers that have provided materials, labor or both with respect to the Construction and (y) from [Designer/designers] and Architects;
  - (vi) Borrower shall furnish to Lender a certificate from Borrower, currently dated, in the form attached hereto as Exhibit [ ];
  - (vii) Borrower shall furnish to Lender a certificate from the Architect in the form attached as Exhibit [ ];

and

(viii) Lender shall receive a date down endorsement to its Title Insurance Policy satisfactory to Lender with an effective date not earlier than the Substantial Completion Date.

(d) On or before the Final Completion Date, Borrower shall cause the following to occur:

(i) Borrower shall deliver to Lender all information, reports, Permits, documents and other items required to be delivered to Borrower by the General Contractor under the General Contract to evidence Final Completion under the General Contract;

(ii) Borrower shall satisfy all conditions to the disbursement of Retainage under the General Contract;

(iii) Borrower shall cause all Punchlist Items to be one hundred percent (100%) completed;

(iv) Borrower shall deliver to Lender a certificate certifying that all Punchlist Items have been one hundred percent (100%) completed;

(v) Borrower shall deliver to Lender the Certificate of Occupancy (or its equivalent) issued by the applicable Governmental Authority with respect to all of the Improvements and any other final Permits issued by all applicable Governmental Authorities necessary for the occupancy, rental and operation of the Property for its intended purposes and in connection therewith;

(vi) Borrower shall fully pay for all items in connection with the Construction and all Punchlist Items and Lender shall receive: (i) a duly executed and acknowledged contractor's sworn statement and final affidavit in the form required by the Legal Requirements of the State; (ii) as applicable, an unconditional final lien waiver and release from the General Contractor in statutory form; (iii) a final payment affidavit from the General Contractor in statutory form; and (iv) unconditional waivers and releases upon final payment from the Architect, any designer and all subcontractors, sub-subcontractors, suppliers and materialmen in form required by the Legal Requirements of the State and as otherwise satisfactory to Lender, without any outstanding liens, demands or claims;

(vii) Borrower shall deliver to Lender a full set of "as-built" Plans and Specifications for all completed Improvements, in both document and CAD format and copies of all warranties applicable to the Improvements;

(viii) Borrower shall deliver to Lender the General Contractor's final accounting for the cost of the work and all required supporting documentation, as approved by Borrower;

(ix) Borrower shall deliver to Lender duly executed and completed warranties and guarantees for all material, equipment and workmanship as required by the Construction Documents from the subcontractors and manufacturers;

(x) Borrower shall deliver to Lender a final certificate of payment issued by the Architect in the form of Exhibit [ ];

(xi) Lender shall receive a date down endorsement to its Title Insurance Policy satisfactory to Lender with an effective date not earlier than the Final Completion Date;

(xii) Borrower shall deliver to Lender an As-Built Survey of the Property; and

(xiii) Borrower shall deliver to Lender an ALTA Zoning Endorsement 3.1 (with parking) to Title Insurance Policy and a date down to the ALTA Form 9 Comprehensive Endorsement with respect to the Improvements.

(e) At all times while any General Contractor's or sub-contractor's work remains outstanding, Borrower shall cause those bonds applicable to Contractor or sub-contractor to remain in full force and effect or be replaced. Any replacement bonds or new bonds for any contractor or sub-contractor shall be in form and substance acceptable to Lender.

#### **Section 4.30 Construction Schedule.**

(a) Completion. Attached as Exhibit [ ] is a projected schedule (the "**Construction Schedule**") for the progress of the Construction prepared by Borrower, including, without limitation, a trade-by-trade break down of the anticipated periods of the progress of Construction, the applicable Milestones and setting forth the projected monthly disbursements throughout the Construction period reflecting, among other things, the anticipated dates of Substantial Completion and Final Completion and the timing of disbursements of incremental amounts of various subcategories of the Construction Budget.

(b) Amendments to Construction Schedule. Borrower shall deliver to Lender any and all amendments to the Construction Schedule. In no event shall the Construction Schedule be amended to change any of the Milestone Dates or to provide that the Construction contemplated by the Construction Documents will not be Substantially Complete on or before the Substantial Completion Date or that Final Completion shall not occur by the Final Completion Date.

#### **Section 4.31 Construction Budget.**

(a) Budget. The Construction Budget is attached hereto as Exhibit [ ]. The Construction Budget contains a detailed full cost preliminary budget for the Costs of the Construction through Final Completion. The Construction Budget contains a contingency in the amount of not less than [ ] percent ([ ]%) of Hard Costs, and [ ] percent ([ ]%) of Soft Costs [TBD]. The Construction Budget shall not be amended, including without limitation, the creation of any new line items or reallocation between line items, without Lender's prior written consent. To the extent not paid for by reallocating the line item designated as "Contingency" or any Cost Savings, any new line items shall be paid for by Borrower from sources other than Loan Proceeds or Reserve Accounts. From time to time, Borrower or Lender may determine that modifications are necessary to the Construction Budget due to actual or anticipated changes in Hard Costs or Soft Costs. If, after due consultation and consideration of the views of Borrower, Borrower and Lender do not agree on the changes to the Construction Budget, Lender's determination shall control.

(b) Fees to Affiliates. The Construction Budget shall not contain any line items payable to Borrower or any Affiliate of Borrower.

(c) Contingency Line Items. Subject to the prior written approval of Lender, Borrower may revise the Construction Budget from time to time to move amounts available under any line item for Costs that are designated as (i) "Hard Cost Contingency" to other line items for Costs in the Construction Budget that are designated as Hard Costs and (ii) "Soft Cost Contingency" to other line items for Costs in the Construction Budget that are designated as Soft Costs.

(d) Determination of Cost Saving. If a component of the Construction (other than interest, fees and other expenses payable under the Loan) which is the subject of a line item shall be determined by Lender and verified by Development Consultant, to be completed without the expenditure of the entire amount allocated in the Construction Budget to such line item and the General Contractor and all subcontractors and other Persons have been paid in full for work performed and materials provided with respect to the component of the Construction which is the subject of such line item, the difference between the amount of such line item in the Construction Budget and the amount so expended for such line item shall be deemed to be a "Cost Saving".

(e) Use of Cost Savings. If there is a Cost Saving in a particular line item of the Construction Budget, and if such Cost Saving is substantiated by evidence reasonably satisfactory to Lender and verified by the Development Consultant, then Borrower shall have the right, upon prior written approval of Lender, not to be unreasonably withheld, to reallocate such Cost Saving to (i) another line item with respect to which additional costs have been or may be incurred in the Construction Budget, or (ii) a "Contingency" line item in the Construction Budget; provided, however, that Borrower shall not reallocate any portion of the line items for interest, fees and other expenses payable under the Loan, Taxes or Insurance Premiums or re-allocate any line item in contravention of applicable Legal Requirements or any agreement with any Person.

**Section 4.32 Construction Contracts.** Borrower shall ensure that the General Contractor and each Trade Contractor is properly licensed in the State. Borrower shall require the General Contractor to perform in accordance with the terms of the General Contract and shall not terminate, amend, modify or alter the responsibilities of the General Contractor under the General Contract without Lender's prior written consent. Borrower shall require each Major Trade Contractor to perform in accordance with the terms of its Major Trade Contract and shall not terminate, amend, modify or alter the responsibilities of any Major Trade Contractor under a Major Trade Contract without Lender's prior written consent. Borrower shall not, and shall not permit the General Contractor to, enter into any new Major Trade Contract without Lender's prior written consent, which consent shall not be unreasonably withheld.

**Section 4.33 Design Agreements.** Borrower shall ensure that each designer is properly licensed in the State. Borrower shall cause each designer to perform in accordance with the terms of its respective design agreements and shall not amend, modify or alter the responsibilities of the designers under its design agreements without Lender's prior written consent, which consent shall not be unreasonably withheld. Borrower shall not enter into any new design agreements without Lender's prior written consent, which consent shall not be unreasonably withheld.

**Section 4.34 Plans and Specifications; Change Order Approvals.**

(a) Changes; Lender Consent. Except as otherwise provided in this Agreement, Borrower shall not make any changes in the Plans and Specifications (other than immaterial field changes) without Lender's prior written consent if such change: (i) constitutes a change in the building material or equipment specifications, or in the architectural or structural design, value or quality of any of the Improvements; (ii) would result in an increase of Construction Costs in excess of \$[ ] for any single change or in excess of \$[ ] for all such changes; (iii) would affect the structural integrity, quality of building materials, or overall efficiency of operating systems or utility systems of the Improvements; (iv) would reduce (A) the square footage of the Improvements by more than a de minimis amount or (B) the number of hotel rooms; or (v) would result in the failure of Borrower to achieve Substantial Completion by the Substantial Completion Date or Final Completion by the Final Completion Date. Borrower shall provide prompt notice to Lender of all change orders, whether or not Lender's consent is required. Borrower shall at all times maintain, for inspection by Lender, a full set of working drawings of the Improvements.

(b) Changes; Submission Requirements. Borrower shall submit any proposed change in the Plans and Specifications to Lender and Development Consultant at least ten (10) days prior to the commencement of Construction relating to such proposed change whether or not such change is subject to Lender's consent. Borrower shall not implement any change order that requires Lender's consent hereunder unless Lender consents to such change order. Requests for any change which requires consent

shall be accompanied by working drawings and a written description of the proposed change, submitted on a change order form acceptable to Lender, signed by Borrower and by the Architect and the General Contractor. At its option, Lender may require Borrower to provide: (i) evidence satisfactory to Lender of the cost and time necessary to complete the proposed change; and (ii) a deposit in the amount of any increased costs into the Construction Reserve (except to the extent funds are re allocated or deducted from Contingency as permitted under Section 4.31).

**Section 4.35 Contractors/Construction Information.** Within fifteen (15) days after Lender's written request, Borrower shall deliver to Lender and Development Consultant from time to time in a form acceptable to Lender: (a) a list detailing the name, address and phone number of each contractor, subcontractor and material supplier to be employed or used for construction of the Improvements together with the dollar amount, including changes, if any, of each contract and subcontract, and the portion thereof, if any, paid through the date of such list; (b) copies of each Construction Contract identified in such list, including any changes thereto; (c) certificates of insurance from each contractor, subcontractor and material supplier to be employed or used for construction of the Improvements; (d) a cost breakdown of the projected total cost of constructing the Improvements, and that portion, if any, of each cost item which has been incurred; and (e) an updated Construction Schedule detailing the progress of Construction and the projected sequencing and completion time for uncompleted work, all as of the date of such schedule. Borrower agrees that Lender may disapprove any contractor, subcontractor or material supplier which, in Lender's determination, is deemed financially or otherwise unqualified or which is inadequately insured; provided, however, that the absence of any such disapproval shall not constitute a warranty or representation of qualification by Lender. Lender may contact any such contractor, subcontractor or material supplier with the Architect or Borrower's construction representative to discuss the course of Construction.

**Section 4.36 Prohibited Contracts.** Without Lender's prior written consent, Borrower shall not enter into any contract for the purchase or leasing of any materials, furnishings, equipment, fixtures or other parts or components of the Improvements, if any third party shall retain any ownership interest (other than lien rights created by operation of Legal Requirements) in such items after their delivery to the Property. Borrower shall have ten (10) days to effect the removal of any such retained interest. In the event Lender approves any such purchase or lease, Borrower shall provide Lender with an estoppel and a recognition agreement from such third party allowing Lender to acquire or lease such materials, furnishings, equipment, fixtures or other parts or components of the Improvements upon a foreclosure of the Security Instrument or transfer in lieu of foreclosure.

**Section 4.37 Construction Responsibilities.** Borrower shall cause all Improvements to be constructed in a good and workmanlike manner without defect according to the Construction Documents. Borrower shall be solely responsible for all aspects of the Construction of the Improvements, including, without limitation, the quality and suitability of the Plans and Specifications and their compliance with all Legal Requirements, the supervision of the work of Construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all Draw Requests and the proper application of all disbursements of Loan Proceeds and Reserve Accounts. Lender is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the Construction or any other matter referred to above.

**Section 4.38 Foundation Survey.** Borrower shall promptly deliver to Lender and Development Consultant: (a) upon completion of the foundations of the Improvements, a survey showing the location of the Improvements and confirming that the Improvements are located entirely within the Property and do not encroach upon any easement, or breach or violate any governmental requirement; and (b) upon Final Completion, an as built survey acceptable to a title insurer for purposes of issuing an ALTA policy of title insurance and otherwise satisfactory to Lender. All such surveys shall be performed and certified by a licensed engineer or surveyor acceptable to the Title Company and satisfactory to Lender.

**Section 4.39 Construction Loan In Balance.**

(a) Any undisbursed Loan Proceeds, together with all sums in the Construction Reserve shall be at all times equal to or greater than the amount which Lender from time to time determines necessary to: (i) pay all Hard Costs and Soft Costs in accordance with the Construction Budget, the General Contract and the Loan Documents; and (ii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Loan Documents through the Maturity Date (other than those obligations for which other Reserve Accounts are maintained under the Loan Documents) (the failure of the foregoing to be true, a "**Construction Balancing Event**"). If Lender determines at any time that the undisbursed Loan Proceeds and the funds in the Construction Reserve are insufficient for said purposes, Borrower shall, within ten (10) days after Lender's written demand therefor, deposit with Lender from its own funds the amount of such deficiency which funds shall be deposited into the Construction Reserve and disbursed in accordance with the terms and provisions of this Agreement.

(b) If, at any time during the term of the prior to the Final Funding Date, the unfunded Loan Proceeds allocated in the Carry Holdback are reduced to an amount equaling less than [\_\_\_\_\_ 00/100 Dollars (\$\_\_\_\_\_)] (a "**Carry Holdback Balancing Event**"), and together with any Construction Balancing Event, hereinafter individually and/or collectively, as applicable, a "**Balancing Event**"), Borrower shall, within ten (10) days after Lender's written demand therefor, deposit with Lender from its own funds an amount such that the balance in the Carry Holdback shall equal not less than [\_\_\_\_\_ 00/100 Dollars (\$\_\_\_\_\_)].



(c) In addition, from and after the Final Funding Date, in the event the amounts on deposit and held by Lender in the Tax Account, the Insurance Account, the Operating Expenses Account and/or the Interest Reserve Account shall, in the aggregate, subsequently fall below [ ] 00/100 Dollars (\$ ), Borrower shall, within ten (10) days after Lender's written demand therefor, deposit with Lender from its own funds the allocated amount of such deficiency into the Interest Reserve Account, the Tax Account, the Insurance Account, and/or the Operating Expense Account, as applicable, provided that in no event shall the aggregate amount of be less than [ ] 00/100 Dollars [(\$ )].

**Section 4.40 Cooperation with Regard to Liquor Licenses.** To the extent permitted by Legal Requirements, Borrower shall (and, if applicable, shall cause Manager and/or any applicable Affiliates to) execute and deliver to Lender such additional documents, instruments, certificates, assignments and other writings, and otherwise provide (and cause Manager and/or any applicable Affiliate to provide) such cooperation, in each case as may be necessary to transfer any liquor Licenses with respect to the Property into, or obtain the issuance of new liquor Licenses in, the name of Lender or its designee during the continuance of an Event of Default. Such cooperation shall include, without limitation, completing transfer requests, surrendering or cancelling any existing liquor Licenses, and using commercially reasonable efforts to make representatives of Borrower, Manager, and their Affiliates available for meetings with any applicable Governmental Authority in connection with the transfer or issuance of such liquor Licenses, subject in all instances to applicable Legal Requirements. Furthermore, neither Borrower, Manager, nor any of its Affiliates shall hinder or interfere with the liquor License transfers or issuances made or contemplated by this Agreement, or with efforts of Lender or its successors and assigns to obtain temporary or permanent liquor Licenses. Effective during the existence of an Event of Default, Borrower hereby irrevocably appoints Lender as its and as Affiliated Manager's agent and attorney-in-fact to execute all such documents and instruments as Lender shall require or deem advisable in order to cause the transfer or issuance of such liquor Licenses as Lender may require and to cause a cancellation of such existing liquor Licenses as Lender may require. The foregoing power of attorney is coupled with an interest and shall be irrevocable. In addition to all other remedies which Lender may have at law or in equity for the enforcement of the terms and provisions of this Agreement, Borrower expressly agrees that Lender shall have the right to bring an action in specific performance to enforce each and every term and provision of this Section 4.40.

**Section 4.41 Development Consultant.** Borrower shall deliver to Development Consultant copies of any item to be delivered to Lender by Borrower with respect to any matter pertaining to the Construction. Borrower acknowledges and agrees that Lender may require the Development Consultant, at Borrower's expense, to make periodic inspections of the Property and to review all change orders relating to the Project. Before making any Future Advance, Lender may request the Development Consultant to inspect all work and materials for which payment is requested and all other work upon the Property and/or submit to Lender a progress inspection report. Borrower agrees to bear and shall pay or reimburse Lender within ten (10) Business Days after demand for the Development Consultant's fees and all actual costs and expenses incurred by the Development Consultant. Borrower shall be responsible for making its own inspections of the Property during the course of Construction and shall determine to its own satisfaction that the work done and materials supplied are in accordance with applicable contracts with its contractors. By making a Future Advance after any inspection of the Property by Lender or the Development Consultant, Lender shall not be deemed to waive any Event of Default, to waive any right to require construction defects or any other work to be corrected, or to acknowledge that all or any portion of the construction conforms to the Plans and Specifications. Notwithstanding any provision of this Agreement to the contrary, in the event that Lender should determine that the actual quality or value of the work performed or the materials furnished does not correspond with the quality or value of the work required by the Plans and Specifications, upon Lender's demand Borrower shall promptly correct the conditions to which Lender objects.

**Section 4.42 Liens and Bonded Stop Notices.**

(a) If a claim of lien is recorded which affects the Property or Improvements or a bonded stop notice is served upon Lender or Borrower, Borrower shall, within thirty (30) calendar days after Borrower's receipt of notice of claim of lien or bonded stop notice cause such claim of lien or bonded stop notice to be released pursuant to Section 4.7(a).

(b) If Borrower fails to pay or discharge any lien (or bond in a manner acceptable to Lender) or any bonded stop notice as provided above, Lender, in addition to such other rights as may be available to it, may pay and discharge such lien or bonded stop notice or deposit in escrow an amount sufficient to do so, and the amount so paid or deposited shall be treated as a Future Advance of the Loan from Lender to Borrower.

**Section 4.43 Development Agreement. [IF APPLICABLE]**

(a) [Concurrently with the execution of this Agreement,] Borrower has entered into the Development Agreement with Developer. The Developer Fees shall be equal to [ ] % of the total Hard Costs and Soft Costs.] Notwithstanding anything to the contrary contained in the Development Agreement, the Developer Fees shall be fully deferred during the term of the Loan. Borrower shall perform, observe and enforce all of the terms, covenants and conditions of the Development Agreement on the part of Borrower to be performed, observed and enforced under the Development Agreement. Borrower shall not (i) surrender the Development Agreement, (ii) consent to the assignment by the Developer of its interest under the Development Agreement, (iii) without the prior written consent of Lender, terminate or cancel the Development Agreement, or (iv) without the prior written consent of Lender, which consent is not to be unreasonably withheld, change, supplement, alter or amend the Development Agreement. If Borrower desires to

engage another Person as the Developer, Borrower may engage such Person as the replacement Developer, provided that (i) Lender has approved such Person as the new Developer, (ii) the terms of the new development agreement to be entered into with the new Developer are reasonably satisfactory to Lender, and (iii) such new has executed and delivered to Lender an agreement subordinating its rights under the new development agreement to the Loan, in form and substance reasonably satisfactory to Lender.

(b) Lender shall have the right to require Borrower to terminate the Development Agreement and enter into a new development agreement reasonably satisfactory to Lender with a new Developer approved by Lender which is not an Affiliate of Borrower upon the occurrence of any one or more of the following events: (i) at any time following the occurrence of an Event of Default, (ii) if Developer shall be in default under the Development Agreement beyond any applicable notice and cure period, (iii) if Developer shall become insolvent or a debtor in any involuntary bankruptcy or insolvency proceeding that is not dismissed within ninety (90) days of the filing thereof, or any voluntary bankruptcy or insolvency proceeding, or (iv) if at any time Developer has engaged in gross negligence, fraud or willful misconduct.]

**Section 4.44 Construction Documents.** Without limiting the other provisions of this Agreement and the other Loan Documents, Borrower shall (a) 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 Construction Documents and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (b) promptly notify Lender of any default under the Construction Documents of which it is aware; (c) promptly deliver to Lender a copy of each notice, report and estimate received by it under the Construction Documents; (d) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed under the Construction Documents in a commercially reasonable manner; (e) cause the Work to be performed, in all material respects, in accordance with the Construction Documents; and (f) not, without the prior written consent of Lender, (i) enter into any new Construction Document or replace or execute modifications to any existing Construction Documents or renew or extend the same (exclusive of, in each case, any automatic renewal or extension in accordance with its terms), (ii) surrender, terminate or cancel the Construction Documents, (iii) reduce or consent to the reduction of the term of the Construction Documents, (iv) increase or consent to the increase of the amount of any charges under the Construction Documents, (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Construction Documents in any material respect or (vi) following the occurrence and during the continuance of an Event of Default, exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Construction Documents.

**Section 4.45 No Responsibility of Lender.** Borrower acknowledges and agrees that the relationship between Borrower and Lender is and shall remain solely that of borrower and lender, and Lender does not undertake or assume any responsibility to review, inspect, supervise, approve or inform Borrower of any matter in connection with any of the development, design or Construction, including matters relating to: (i) the Plans and Specifications, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of any of the Construction and its conformity with the Plans and Specifications; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Borrower by Lender in connection with such matters is solely for the protection of Lender and that neither Borrower nor any third party is entitled to rely on it. Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower. Lender shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property, whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; or (iii) any Property or any fire or other casualty or hazard thereon. By accepting or approving anything required to be performed or given to Lender under the Loan Documents, Lender shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Lender to anyone. The provisions of this Section 4.45 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of judgement of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

**Section 4.46 Prohibition against Distributions.** Upon achieving Substantial Completion, but subject to Article 8 of this Agreement, Borrower shall be permitted to make Distributions provided that no Cash Sweep Period, Default, or Event of Default, has occurred and is continuing.

**Section 4.47 Franchise Agreement Covenants.**

(a) Borrower shall cause the Property to be operated, in all material respects, in accordance with the Franchise Agreement. In the event that the Franchise Agreement expires or is terminated by Franchisor (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Franchise Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Franchise Agreement with Franchisor, such that the Property shall continuously be operated under the flag or brand associated with a Franchise Agreement or Replacement Franchise Agreement. Upon execution of any Replacement Franchise Agreement, Borrower shall also deliver to Lender a comfort letter in form and substance satisfactory to Lender.

(b) Borrower shall: (i) observe, comply with and enforce all of the terms and conditions of the Franchise Agreement and (ii) promptly notify Lender of any default under the Franchise Agreement of which it is aware.

(c) If (i) an Event of Default occurs and is continuing, (ii) Franchisor shall become bankrupt or insolvent or (iii) a default occurs under the Franchise Agreement by Franchisor, Borrower shall, at the request of Lender, terminate the Franchise Agreement and replace the Franchisor pursuant to a Replacement Franchise Agreement.

(d) Borrower shall complete and pay for in full any property improvement plan or similar requirement now or subsequently required by the Franchisor under the Franchise Agreement (any of the same, the "PIP") in a good, workmanlike and lien free manner within the time-frame set forth in the PIP (including, without limitation, the Scheduled PIP).

(e) Borrower shall not, without Lender's prior consent: (i) surrender, terminate or cancel the Franchise Agreement or consent to Franchisor's transfer of its interest thereunder; (ii) reduce or consent to the reduction of the term of the Franchise Agreement; (iii) increase or consent to the increase of the amount of any charges under the Franchise Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Franchise Agreement.

(f) Borrower shall deliver to Lender, within ten (10) days of request and no more than once every twelve (12) months unless an Event of Default has occurred and is continuing, a comfort letter and estoppel certificate (unless included in the comfort letter) from Franchisor in form and substance reasonably satisfactory to Lender.

(g) To the extent that Borrower fails to perform any obligation under the Franchise Agreement (including, without limitation, any obligation to perform any PIP), Borrower hereby grants Lender the right, as Borrower'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. Any exercise by Lender of the aforesaid right shall be deemed exercised in accordance with the applicable terms and conditions hereof and of the other Loan Documents.

## ARTICLE 5

### INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

#### Section 5.1 Insurance<sup>9</sup>.

(a) At all times during any construction until substantial completion of such construction at the Property, Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, the following insurance coverage:

(i) Builder's Risk. From the Closing Date until replaced by permanent property insurance pursuant to subsection (b) below, Borrower and General Contractor shall obtain and maintain the insurance provided for in subsection (b)(i) below, written on a Builder's Risk Completed Value Form (one hundred percent (100%) non reporting) in such amount equal to no less than the full insurable value of the Project and shall contain permission to occupy as acceptable to Lender (the "Builder's Risk Insurance"). Co-insurance shall be waived or an agreed value endorsement is to be evidenced. Such policy shall not have exclusion for sidewalks, retaining walls or underground property. Such insurance policy shall include coverage for:

(A) Loss suffered with respect to materials, equipment, machinery, supplies whether on site, in transit, or stored off site, with a limit acceptable to Lender.

(B) One hundred percent (100%) of the total hard costs of construction and the soft costs which are recurring costs, in each case, as contained in the Approved Annual Budget agreed to by Lender, and including coverage for all types (including, without limitation, interest expense, fees, and plans, specifications, blueprints and models in connection with any restoration following an insured loss); and

(C) Delayed opening loss of income/revenue coverage or delay of completion in amounts acceptable to Lender and, if applicable, rental income on an actual loss sustained basis in an amount acceptable to Lender. Lender reserves the right to require an endorsement providing for an extended period of indemnity for the rental income insurance.

(ii) Comprehensive. Comprehensive Broad Form Boiler and Machinery Insurance, covering all mechanical and electrical apparatus and pressure vessels. Such insurance shall provide coverage against loss or damage from an accident to and/or caused by boilers and machinery, including, without limitation: heating apparatus, pressure vessels, pressure pipes, electrical or air conditioning equipment on a blanket comprehensive coverage form, in such amount as Lender shall approve. Equipment testing shall be included.

(iii) Professional Liability. Borrower shall require design professionals, if any, including any architect, engineers (including Structural and MEP), contractors primarily, and all other primary engineers and design professionals to purchase and maintain continuous professional liability and with limits commensurate with the risk and acceptable to Lender, during the period commencing on the date of the architect's or engineer's contract and expiring no earlier than the expiration of the applicable statute of repose after completion of services or Substantial Completion of the Project.

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<sup>9</sup> To be reviewed/revised by Lender and its insurance consultant in connection with each financing.

(iv) Commercial General Liability. Borrower and General Contractor shall obtain and maintain commercial general liability and umbrella liability insurance covering claims related to the structural construction, repairs or alterations being made at the Property which are not covered by or under the terms or provisions of the commercial general liability and umbrella liability insurance policies required in subsections (b)(ii) and (vii) below.

(v) Worker's Compensation and Employer's Liability. The General Contractor shall maintain statutory Worker's Compensation and Employer's Liability insurance in force for all workers on the job, with minimum limits of no less than \$1,000,000 per accident, \$1,000,000 per illness, per employee and \$1,000,000 per illness, aggregate policy.

(vi) Commercial Automobile Liability. The General Contractor shall maintain commercial auto liability for all hired and non-owned vehicles, with a combined single limit no less than \$1,000,000.

(vii) Contractor's Liability. Borrower shall cause the General Contractor to obtain and maintain Commercial General Liability coverage and umbrella liability coverage, including, without limitation, products and completed operations to the extent available in the market and expiring no earlier than the expiration of the applicable statute of repose of the applicable jurisdiction after completion of services or substantial completion of the project, personal injury, bodily injury, death, and property damage. Such policies maintained by the General Contractor shall name Borrower and Lender as additional insureds by endorsement satisfactory to Lender and have limits no less than \$1,000,000 per occurrence and \$2,000,000 and in the annual aggregate, per location. The General Contractor's umbrella liability coverage shall provide a \$10,000,000 per occurrence limit and in the aggregate over the required policies above, shall be follow form, written on an occurrence basis, be at least as broad as each and every one of the underlying policies and shall include the interest of the additional insureds. The policies described in this paragraph shall also cover, without limitation: elevators, escalators, independent contractors, contractual liability (covering, to the maximum extent permitted by the commercial general liability policy, Borrower's obligation to indemnify Indemnities as required under this Loan Agreement).

(viii) Performance Bond. A Performance Bond and Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the contract sum shall be required by Borrower and each bond shall be in a form approved by Lender.

(ix) Wrap Up or Controlled Insurance Program. Borrower may cause the Project to be insured under an Owner Controlled Insurance Program ("OCIP") to satisfy the requirements set forth in this Section for Borrower, Lender and General Contractor, including commercial general liability and umbrella liability, workers compensation and auto liability, provided the OCIP meets the applicable requirements as set forth in this Section 5.1., the coverages are in form and substance acceptable to Lender and contain a deductible acceptable to Lender. Certificates of insurance and endorsements acceptable to Lender must be provided prior to any work being performed on the Property.

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

(i) property insurance against loss or damage by fire, wind (including named storms), lightning and such other perils as are included in a standard "all risk" or "special form" policy, including riot and civil commotion, vandalism, terrorist acts, malicious mischief, burglary and theft, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost" of the Property, which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) waiving depreciation. The Full Replacement Cost must be adjusted annually to reflect increased value due to inflation. If this is not provided, Inflation Guard Coverage shall be required; (B) written on a no co-insurance form or containing an agreed amount endorsement with respect to the Improvements and, if applicable, personal property at the Property waiving all co-insurance provisions; (C) providing for no deductible in excess of \$25,000.00 (except for deductibles for windstorm and earthquake coverage, which deductibles may be up to five percent (5%) of the total insurable value of the Property); and (D) containing "Ordinance or Law Coverage" if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, including coverage for Loss to the Undamaged Portion, Demolition Costs and Increased Cost of Construction, all in amounts acceptable to Lender. In addition, Borrower shall obtain: (y) if any 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 such additional amounts or other related and/or excess coverage as Lender shall require, in each case, and with deductibles acceptable to Lender; and (z) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverages against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so called "occurrence" form and containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000.00), with a combined limit per policy year, excluding umbrella coverage, of not less than Two Million and No/100 Dollars (\$2,000,000.00) applying "per location" if the policy covers more than one location; (B) to continue at not less than the aforesaid limit until required to be changed by Lender 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) contractual liability for all insured contracts; (5) contractual liability covering the indemnities contained in Article 11 hereof to the extent the same is available; and (6) acts of terrorism;

(iii) if required by Lender, rental loss and/or business income interruption insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above, subsections (iv) (if applicable), subsection (vi), subsection (x) and Section 5.1(i) below; (C) containing an extended period of indemnity endorsement which provides the continued loss of income shall be insured until such income either returns to the same level it was at prior to the loss, or the expiration of [ ] months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred percent (100%) of the projected Gross Rents from the Property for a period of [ ] months from the date of the Casualty. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the Gross Rents from the Property for the succeeding [ ] month period. Subject to Section 5.5(b), 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 Debt on the respective dates of payment provided for in the Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) reserved;

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

(vi) boiler and machinery/equipment breakdown insurance in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance Policy required under subsection (i) above (if applicable);

(vii) umbrella liability insurance in addition to primary coverage in an amount not less than [ ] Million and No/100 Dollars (\$[ ],000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) and, if applicable, the Policies required in subsection (v) above and (viii) below;

(viii) commercial auto liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, with limits which are required from time to time by Lender (if applicable);

(ix) if applicable, insurance against employee dishonesty in an amount not less than one month of Gross Rents from the Property and with a deductible not greater than Ten Thousand and No/100 Dollars (\$10,000.00) (if applicable); and

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

(c) All insurance provided for in Section 5.1(a) and (b) 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 form and substance including deductibles, loss payees and insureds. Not less than thirty (30) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance and, if requested by Lender, other documentation, in each case acceptable to Lender, evidencing the Policies, accompanied by evidence satisfactory to Lender of payment of the premiums then due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender.

(d) Any blanket insurance Policy shall be subject to Lender's approval and shall provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 5.1(a) and (b). Lender shall have determined based on a review of the schedule of locations and values that the amount of such coverage is sufficient in light of the other risks and properties insured under the blanket policy.

(e) All Policies of insurance provided for or contemplated by Sections 5.1(a) and (b) shall name Borrower as a named insured (or additional insured on the general liability and the umbrella liability coverages by any general contractor) and, in the case of liability coverages (except for the Policies referenced in Sections 5.1(a)(v), 5.1(a)(vi), 5.1(b)(v) and (viii)) shall name Lender and its successors and/or assigns as the additional insured, as its interests may appear, and in the case of property insurance coverages, including but not limited to boiler and machinery, terrorism, flood and earthquake insurance, shall contain a standard non-contributing mortgagee/lender's loss payable clause in favor of Lender providing that the loss thereunder shall be payable to Lender. Additionally, if Borrower obtains property insurance coverage in addition to or in excess of that required by Sections 5.1(a)(i) and 5.1(b)(i), then such insurance policies shall also contain a standard non-contributing mortgagee/lender's loss payable clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(f) All property insurance Policies provided for in Section 5.1(a) and (b) shall:

(i) provide that no act or negligence of Borrower or any other insured under the Policy, 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) provide that 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 Insurance Premiums and, if obtainable by Borrower using commercially reasonable efforts, shall not be materially changed (other than to increase the coverage provided thereby) without such a thirty (30) day notice; and

(iii) not contain any provision that would make Lender liable for any Insurance Premiums thereon or subject to any assessments thereunder, except that Lender is permitted to make payments to effect the continuation of such Policy upon notice of cancellation due to non-payment of Insurance Premiums pursuant to the mortgagee clause required herein.

(g) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, or Borrower shall fail to deliver certificates of insurance and, if requested by Lender, other documentation evidencing the Policies, evidence of payment and any other information required by Section 5.1(j), no less than thirty (30) days prior to the expiration date of any Policies, 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 sole discretion deems appropriate and all Insurance 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. 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.

(h) 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.

(i) If any of the all-risk/special form property, rental loss and/or business interruption, commercial general liability or umbrella liability Policies include any exclusions for loss, cost, damage or liability caused by "terrorism" or "terrorist acts", Borrower shall obtain and maintain terrorism coverage to cover such exclusion(s) from a carrier which otherwise satisfies the rating criteria specified in Section 5.1(i) (a "Qualified Carrier") or, in the event that such terrorism coverage is not available from a Qualified Carrier, Borrower shall obtain such terrorism coverage from the highest rated insurance company providing such terrorism coverage.

(j) All Policies required pursuant to Section 5.1(a) and (b): (i) shall be issued by companies authorized to do business in the State with a financial strength and claims paying ability rating of [ ] or better by [ ]; (ii) shall, with respect to the property, rental loss and/or business interruption, commercial general liability and umbrella Policies, contain a waiver of subrogation against Lender; (iii) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies; and (iv) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Certified copies of the Policies shall be delivered to Lender, at [ ], on the date hereof with respect to the current Policies and within thirty (30) days after the effective date thereof with respect to all renewal Policies; provided, however, that if certified copies of the current Policies are not available on the date hereof, Borrower shall deliver to Lender on the date hereof documentation acceptable to Lender evidencing such Policies and shall deliver to Lender certified copies of such Policies within ten (10) days after such Policies are available. Borrower shall pay the Insurance Premiums annually in advance as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided, however, that Borrower shall not be required to pay such Insurance Premiums nor furnish such evidence of payment to Lender in the event that the amounts required to pay such Insurance Premiums have been deposited into the Insurance Account pursuant to Section 7.2 hereof). In addition to the insurance coverages described in Section 5.1(a) above, Borrower shall obtain such other insurance as may from time to time be reasonably required by Lender in order to protect its interests. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

**Section 5.2 Casualty.** If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the Restoration of the Property and otherwise comply with the provisions of this Agreement. Borrower shall pay all costs of Restoration (including, without limitation, any applicable deductibles under the Policies) whether or not such costs are covered by the Net Proceeds. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower. Borrower may settle and adjust such claim only with the prior written consent of Lender and Lender shall have the opportunity to participate, at Borrower's cost, in any such adjustment; provided, however, if Borrower fails to settle and adjust such claim within ninety (90) days after the Casualty, Lender shall have the right to settle and adjust such claim at Borrower's cost and without Borrower's consent. Notwithstanding any

Casualty, 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.

**Section 5.3 Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property of which Borrower has knowledge and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Borrower may settle and compromise the Condemnation only with the prior written consent of Lender and Lender shall have the opportunity to participate, at Borrower's cost, in any litigation and settlement discussions in respect thereof, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute 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. Following any Condemnation, Borrower shall promptly commence and diligently prosecute any Restoration of the Property that is required in order to restore the Property as nearly as possible to the condition the Property was in immediately prior to such Condemnation, and Borrower shall otherwise comply with the provisions of Section 5.4. Borrower shall pay all costs of Restoration whether or not such costs are covered by the Net Proceeds. Net Proceeds shall be retained, disbursed, or applied by Lender in Lender's sole and absolute discretion. If Lender shall receive and retain any such Net Proceeds, the lien of the Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt. 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 any taking by any public or quasi-public authority through Condemnation or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and 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. 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.

**Section 5.4 Restoration.** The Net Proceeds shall be held by Lender and, until disbursed in accordance with the provisions of this Section 5.4, shall constitute additional security for the Debt and other obligations under this Agreement, the Security Instrument, the Note and the other Loan Documents. The Net Proceeds shall be retained or disbursed by Lender in its sole and absolute discretion. 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 shall be subject to prior review and acceptance by Lender. All 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, shall be paid by Borrower. Lender shall, at its election, have the exclusive right to settle or adjust any claims made under the Policies in the event of a Casualty.

## ARTICLE 6

### NO SALE OR ENCUMBRANCE; PERMITTED TRANSFERS

**Section 6.1 No Sale/Encumbrance.** It shall be an Event of Default hereunder if, without the prior written consent of Lender, a Prohibited Transfer occurs, other than (i) pursuant to Leases in accordance with the provisions of this Agreement and (ii) as expressly permitted pursuant to the terms of this Article 6.

**Section 6.2 Lender's Rights.** Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and on assumption of this Agreement and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) payment of a transfer fee and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) the proposed transferee's continued compliance with the covenants set forth in this Agreement, including, without limitation, the covenants in Section 4.22, (d) intentionally omitted and/or (e) such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. 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 a Prohibited Transfer without Lender's consent. This provision shall apply to every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer. Any Prohibited Transfer effected without Lender's prior written consent in accordance with this Section 6.2 shall be void *ab initio*.

**Section 6.3 Costs and Expenses.** Borrower shall pay all costs and expenses of Lender in connection with any transfer, assumption and/or replacement of any Guarantor, all reasonable fees and expenses of Lender's counsel, and the cost of any required counsel opinions.

## ARTICLE 7

### RESERVE FUNDS

#### Section 7.1 Construction Reserve.

(a) Lender shall establish an Eligible Account held by Lender (the “**Construction Reserve**”), into which Borrower shall deposit any amounts required pursuant to Sections 4.34(b) and 4.39.

(b) Lender shall not be responsible for any losses resulting from investment of the Construction Reserve or for obtaining any specific level or percentage of earnings on such investment.

(c) So long as no Event of Default then exists, the funds in the Construction Reserve shall be disbursed by Lender at Borrower’s request for Construction Costs pursuant to Section 2.12 (as if any such disbursements from the Construction Reserve were considered Future Advances) in the same manner, and disbursed subject to the terms and conditions applicable to, Future Advances, and notwithstanding anything to the contrary contained in this Agreement, such funds shall be fully disbursed to Borrower prior to the making of any further Future Advances for Construction Costs; provided, however, if a Balancing Event occurs that is related solely to line items for Taxes, Insurance Premiums, other Operating Expenses and/or interest payable hereunder, then such funds shall be disbursed only for such line items and Future Advances for other Construction Costs shall be made prior to the full disbursement thereof, provided Borrower otherwise satisfies the applicable conditions to such Future Advances.

**Section 7.2 Tax and Insurance Funds.** On the Final Funding Date, Borrower shall make an initial deposit with Lender with respect to Taxes and Insurance Premiums in an amount reasonably determined by Lender, to be held into Eligible Accounts held by Lender and hereinafter respectively referred to as the “**Tax Account**” and the “**Insurance Account**”.. In addition, from and after the Final Funding Date, Borrower shall pay (or cause to be paid) to Lender on each Monthly Payment Date (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months assuming that said Taxes are to be paid in full on the Tax Payment Date (the “**Monthly Tax Deposit**”), each of which such deposits shall be held in the Tax Account, and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies on the Insurance Payment Date (the “**Monthly Insurance Deposit**”), each of which such deposits shall be held in the Insurance Account (amounts held in the Tax Account and the Insurance Account are collectively herein referred to as the “**Tax and Insurance Funds**”). If, at any time, Lender determines that amounts on deposit or scheduled to be deposited in (i) the Tax Account will be insufficient to pay all applicable Taxes in full on the Tax Payment Date and/or (ii) the Insurance Account will be insufficient to pay all applicable Insurance Premiums in full on the Insurance Payment Date, Borrower shall make a payment into the applicable Reserve Account in an amount which will be sufficient to make up such insufficiency, as reasonably determined by Lender. Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes directly from the appropriate taxing authority. Provided there are sufficient amounts in the Tax Account and Insurance Account, respectively, and no Event of Default exists, Lender shall pay the Taxes and Insurance Premiums as they become due on their respective due dates on behalf of Borrower by applying the Tax and Insurance Funds to the payment of such Taxes and Insurance Premiums. If the amount of the Tax and Insurance Funds shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 4.6 and 5.1 hereof, Lender shall either return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Funds (such election to be made by Lender in its sole discretion).

**Section 7.3 Operating Expense Funds.** On each Monthly Payment Date occurring during the occurrence and continuance of a Cash Sweep Period, Borrower shall deposit (or shall cause there to be deposited) into an Eligible Account held by Lender (the “**Operating Expense Account**”) an amount equal to the aggregate amount of Approved Operating Expenses and Approved Extraordinary Expenses to be incurred by Borrower for the then current Interest Period (such amount, the “**Operating Expense Monthly Deposit**”). Amounts deposited pursuant to this Section 7.3 are referred to herein as the “**Operating Expense Funds**”. Provided no Event of Default has occurred and is continuing, Lender shall disburse the Operating Expense Funds to Borrower not more frequently than monthly to pay Approved Operating Expenses and/or Approved Extraordinary Expenses within [ ] days following Lender’s receipt of Borrower’s written request (which such request shall be accompanied by an Officer’s Certificate detailing the applicable expenses to which the requested disbursement relates and attesting that such expenses shall be paid with the requested disbursement). If, at any time, Lender determines that amounts on deposit or scheduled to be deposited in the Operating Expense Account will be insufficient to pay all applicable operating expenses in full, Borrower shall make a payment into the Operating Expense Account in an amount which will be sufficient to make up such insufficiency, as reasonably determined by Lender.

**Section 7.4 Excess Cash Flow Funds.** On each Monthly Payment Date occurring after the occurrence and continuance of a Cash Sweep Period, Borrower shall deposit (or cause to be deposited) into an Eligible Account with Lender (the “**Excess Cash Flow Account**”) an amount equal to the Excess Cash Flow (the amounts on deposit in the Excess Cash



Flow Account being herein referred to as the “**Excess Cash Flow Funds**”). Provided no Event of Default has occurred and is continuing, any Excess Cash Flow Funds remaining in the Excess Cash Flow Account upon the expiration of all Cash Sweep Periods in accordance with the applicable terms and conditions hereof shall be deposited into the Cash Management Account to be applied in accordance with the provisions of Section 8.3 hereof.

#### **Section 7.5 The Accounts Generally.**

(a) Borrower grants to Lender a first-priority perfected security interest in each of the Accounts and any and all sums now or hereafter deposited in the Accounts as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Accounts and the funds deposited therein shall constitute additional security for the Debt. The provisions of this Section 7.5 (together with the other related provisions of the other Loan Documents) are intended to give Lender “control” of the Accounts and the Account Collateral and serve as a “security agreement” and a “control agreement” with respect to the same, in each case, within the meaning of the UCC. Borrower acknowledges and agrees that the Accounts are subject to the sole dominion, control and discretion of Lender, its authorized agents or designees, subject to the terms hereof, and Borrower shall have no right of withdrawal with respect to any Account except with the prior written consent of Lender or as otherwise provided herein. The funds on deposit in the Accounts shall not constitute trust funds and may be commingled with other monies held by Lender (or its Servicer). Notwithstanding anything to the contrary contained herein, unless otherwise consented to in writing by Lender, Borrower shall only be permitted to request (and Lender shall only be required to disburse) Reserve Funds on account of the liabilities, costs, work and other matters (as applicable) for which said sums were originally reserved hereunder, in each case, as reasonably determined by Lender.

(b) Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Accounts or the sums deposited therein or permit any lien to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Borrower hereby authorizes Lender to file a financing statement or statements under the UCC in connection with any of the Accounts and the Account Collateral in the form required to properly perfect Lender’s security interest therein. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to any Account or Account Collateral.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, (1) Lender shall have no obligation to disburse funds from any Reserve Account within the ninety (90) day period prior to the Maturity Date and (2) upon the occurrence and during the continuance of an Event of Default, without notice from Lender (i) Borrower shall have no rights in respect of the Accounts, and (ii) Lender shall have all rights and remedies with respect to the Accounts and the amounts on deposit therein and the Account Collateral as described in this Agreement and in the Security Instrument, in addition to all of the rights and remedies available to a secured party under the UCC, and, notwithstanding anything to the contrary contained in this Agreement or in the Security Instrument, may apply the amounts of such Accounts as Lender determines in its sole discretion including, but not limited to, payment of the Debt.

(d) The insufficiency of funds on deposit in the Accounts shall not absolve Borrower of 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.

(e) 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 Accounts, the sums deposited therein or the performance of the obligations for which the Accounts were established, except to the extent arising from the gross negligence or willful misconduct of Lender, its agents or employees. Borrower shall 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 Accounts; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Borrower and Lender shall maintain each applicable Account as an Eligible Account to be held by an Eligible Institution, except as may be otherwise expressly agreed to in writing by Lender. In the event that any institution holding an Account no longer satisfies the criteria for an Eligible Institution, Borrower shall cooperate with Lender in transferring the applicable Account(s) to an institution that satisfies such criteria. Borrower hereby grants Lender power of attorney (irrevocable for so long as the Loan is outstanding) with respect to any such transfers and the establishment of accounts with a successor institution.

(g) Interest accrued on any Account shall not be required to be remitted either to Borrower or to any Account and may instead be retained by Lender.

(h) Borrower acknowledges and agrees that it solely shall be, and shall at all times remain, liable to Lender for all fees, charges, costs and expenses in connection with the Accounts, this Agreement and the enforcement hereof, including, without limitation, any monthly or annual fees or charges as may be assessed by Lender or any holder of an Account in connection with the administration of the Accounts and the reasonable fees and expenses of legal counsel to Lender as needed to enforce, protect or preserve the rights and remedies of Lender under this Agreement.

## **Section 7.6 Interest Reserve Funds.**

(a) A reserve (the “**Interest Reserve**”) shall be established in an Eligible Account held by Lender (the “**Interest Reserve Account**”), as additional security for the Debt and all of the other Obligations, to be governed by this Section 7.6. On the Final Funding Date and monthly thereafter, Borrower shall deposit into the Interest Reserve an amount equal to any projected shortfall for the payment of Debt Service payable for the remaining term of the Loan as determined by Lender. If, at any time, Lender determines that the funds in the Interest Reserve are not sufficient to pay Debt Service through the Maturity Date (as may be extended in accordance with the terms hereof), Borrower shall deposit in the Interest Reserve Account an amount from Borrower’s own funds equal to the shortfall determined by Lender (the “**Interest Reserve Shortfall**”) within five (5) Business Days after Lender’s demand.

(b) Beginning on the Monthly Payment Date following the Final Funding Date until the Maturity Date, Lender shall disburse to itself from the Interest Reserve Account the amount of interest accrued and due and payable under the Loan to the extent funds are not sufficient to pay such interest under Section 8.3 of this Agreement at the Interest Rate. Depletion of the Interest Reserve Account shall not release Borrower from any of Borrower’s obligations under the Loan Documents, including, without limitation, payment of all interest due under this Agreement and other Loan Documents.

(c) In no event shall Lender be obligated to authorize the disbursement of funds in the Interest Reserve if a Default or an Event of Default has occurred and is continuing under this Agreement or under any of the other Loan Documents. Any disbursement of funds from the Interest Reserve after the occurrence and during the continuance of a Default or an Event of Default shall not constitute a waiver of such Default or Event of Default.

## **Section 7.7 [HOTEL LOANS W/FRANCHISE – PIP Reserve Funds.**

(a) Borrower shall deposit into an Eligible Account held by Lender (the “**PIP Reserve Account**”) [(i) on the Closing Date, the sum of \$[ ] on account of the Scheduled PIP, and (ii)] on the date that any New PIP is imposed by the Franchisor pursuant to the Franchise Agreement, an amount equal to one hundred twenty-five percent (125%) of the sum required to pay for such New PIP. Amounts held in the PIP Reserve Account are herein referred to as the “**PIP Reserve Funds**”.

(b) Lender shall make disbursements from the PIP Reserve Funds as requested by Borrower to reimburse Borrower for Borrower’s actual, out-of-pocket expenses incurred in connection with the performance of any work related to the PIP (the “**PIP Work**”) provided that all of the following conditions are satisfied in connection therewith: (i) such request is made (A) on a form of draw request specified or approved by Lender and which shall at a minimum set forth (1) a general description of the PIP Work for which such disbursement is requested and (2) the accuracy of the invoices, to be attached thereto, which shall provide the quantity and price of each item purchased, if the PIP Work includes the purchase or replacement of specific items (such as appliances) and the price of all materials (grouped by type or category) used in any item of PIP Work other than the purchase or replacement of specific items and the cost of all contracted labor or other services applicable to each item of PIP Work for which such request for disbursement is made and (B) at least ten (10) days prior to the date on which Borrower requests such disbursement be made; (ii) on the date such request is received by Lender and on the date such disbursement is to be made, (A) no Event of Default shall exist and remain uncured and (B) the Franchise Agreement (1) is in full force and effect, with no defaults having occurred thereunder which are continuing, or (2) has been replaced with a Replacement Franchise Agreement in accordance with the terms and conditions of this Agreement; (iii) at Lender’s option, if the cost of any individual PIP Work exceeds \$25,000, Lender shall have verified (by an inspection conducted at Borrower’s expense) performance of the associated PIP Work; (iv) the request for disbursement is accompanied by (A) an Officer’s Certificate certifying that (1) such funds will be used to reimburse Borrower for, or to pay for, PIP Work and a general description thereof, (2) the same has not been the subject of a previous disbursement, (3) all previous disbursements have been used to pay or reimburse for the previously identified PIP Work and (4) any construction work associated with such PIP Work has been completed in a good and workmanlike manner and in accordance with the Franchise Agreement and all applicable Legal Requirements, (B) if requested by Lender, such additional reasonably detailed documentation satisfactory to Lender as to the amount, necessity and purpose therefor, (C) to the extent such disbursement is a reimbursement, copies of paid invoices for the amounts requested and, to the extent such disbursement is for payment, copies of the applicable unpaid invoices for the amounts requested and (D) if required by Lender, lien waivers and releases from all parties furnishing materials and/or services in connection therewith; (v) funds remaining in the PIP Reserve Account are, in Lender’s judgment, sufficient to complete such PIP Work and all other outstanding PIP Work when required; (vi) at Lender’s option, Lender shall have received a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances other than Permitted Encumbrances; and (vii) Lender shall have received such other evidence as Lender shall request that the PIP Work to be funded by the requested disbursement has been (A) completed and (B) paid for (or will be paid for upon such disbursement). Lender shall not be required to disburse PIP Reserve Funds more frequently than once each calendar month nor in an amount less than the Minimum Disbursement Amount (unless the total amount of PIP Reserve Funds is less than the Minimum Disbursement Amount in which case only one disbursement of the amount remaining in the account shall be made).

(c) Nothing in this Section 7.7 shall (i) make Lender responsible for making or completing any PIP Work; (ii) require Lender to expend funds in addition to the PIP Reserve Funds to complete any PIP Work; (iii) obligate Lender to proceed with the PIP Work; or (iv) obligate Lender to demand from Borrower additional sums to complete any PIP Work.

(d) The insufficiency of any balance in the PIP Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents and to complete any PIP that may be required under the Franchise Agreement or otherwise by Franchisor.

(e) Upon the written request of Borrower following (i) completion of all outstanding PIP in accordance with the terms and conditions hereof and (ii) Lender's receipt of the PIP Completion Evidence, any remaining PIP Reserve Funds on deposit in the PIP Reserve Account shall be deposited into the [FF&E Reserve Account] and held in accordance with the terms and conditions of Section 7.3 hereof.]

**Section 7.8 MEZZ LOAN AT CLOSING – Disbursements to Mezzanine Lender.** In all instances in this Article 7 where any excess Reserve Funds are to be disbursed to Borrower (and are not required to be applied to any specified expenses or other uses), such Reserve Funds shall instead be, and Borrower hereby directs the same to be, disbursed to Mezzanine Lender, as a distribution permitted in accordance with applicable Legal Requirements, if Lender has received notice that a Mezzanine Loan Event of Default then exists.

**Section 7.9 Interest Rate Cap Reserve Funds.** Unless otherwise directed by Lender, Borrower shall deposit (or shall cause to be deposited directly by Counterparty) into an Eligible Account held by Lender (the “**Interest Rate Cap Reserve Account**”) any and all amounts paid by Counterparty pursuant to any Interest Rate Cap Agreement, within one (1) Business Day of Borrower's receipt thereof (if received by Borrower and not directly deposited by Counterparty), all such amounts to be held as additional security for the Debt and all of the other Obligations. Amounts deposited pursuant to this Section 7.9 are referred to herein as the “Interest Rate Cap Reserve Funds”. Provided no Event of Default has occurred and is continuing, on each Monthly Payment Date Lender shall disburse an amount of available Interest Rate Cap Reserve Funds in payment of the Monthly Debt Service Payment then due, up to the amount of such Monthly Debt Service Payment.

## ARTICLE 8

### CASH MANAGEMENT

#### Section 8.1 Establishment of Certain Accounts.

(a) Borrower shall establish with the Bank an Eligible Account (the “**Clearing Account**”) within ten (10) Business Days following the first occurrence of a Clearing Account Trigger Event, pursuant to the Clearing Account Agreement, in the name of Borrower for the sole and exclusive benefit of Lender, into which Borrower shall deposit (or cause to be deposited) all revenue generated by the Property. Pursuant to the Clearing Account Agreement, funds on deposit in the Clearing Account shall be transferred to or at the direction of Borrower unless a Cash Sweep Period exists, in which case such funds shall be transferred on each Business Day to the Cash Management Account.

(b) [Upon the first occurrence of a Cash Sweep Period], Lender, on Borrower's behalf, shall establish (i) an Eligible Account with the Bank or another Eligible Institution selected by Lender (the “**Cash Management Bank**”), in the name of Borrower for the sole and exclusive benefit of Lender (the “**Cash Management Account**”) and (ii) an Eligible Account with Lender into which Borrower shall deposit, or cause to be deposited, the amounts required for the payment of Debt Service under the Loan (the “**Debt Service Account**”). Notwithstanding anything herein to the contrary, in the event Borrower fails to cooperate with Lender or Cash Management Bank, as applicable, within two (2) Business Days following written request to establish the Cash Management Account in the name of Borrower, Borrower hereby authorizes Lender to establish the Cash Management Account in the name of Lender.

#### Section 8.2 Deposits into and Maintenance of Clearing Account.

(a) Borrower represents, warrants and covenants that, [upon the first occurrence of a Clearing Account Trigger Event and thereafter] for so long as the Debt remains outstanding, (i) Borrower shall, or shall cause Manager to, immediately deposit all revenue derived from the Property and received by Borrower or Manager, as the case may be, into the Clearing Account; (ii) Borrower shall instruct Manager to immediately deposit (A) all revenue derived from the Property collected by Manager, if any, pursuant to the Management Agreement (or otherwise) into the Clearing Account and (B) all funds otherwise payable to Borrower by Manager pursuant to the Management Agreement (or otherwise in connection with the Property) into the Clearing Account; (iii) there shall be no other accounts maintained by Borrower or any other Person into which revenues from the ownership and operation of the Property are directly deposited; and (iv) neither Borrower nor any other Person shall open any other such account with respect to the direct deposit of income in connection with the Property. From and after the first occurrence of a Clearing Account Trigger Event, until deposited into the Clearing Account, any Rents and other revenues from the Property held by Borrower shall be deemed to be collateral and shall be held in trust by it for the benefit, and as the property, of Lender pursuant to the Security Instrument and shall not be commingled with any other funds or property of Borrower. Borrower warrants and covenants that it shall not rescind, withdraw or change any notices or instructions required to be sent by it pursuant to this Section 8.2 without Lender's prior written consent. *[NOTE: credit card / tenant direction letters to be added]*

(b) [From and after the first occurrence of a Clearing Account Trigger Event], Borrower shall maintain the Clearing Account for the term of the Loan, which Clearing Account shall be under the sole dominion and control of Lender (subject to the terms hereof and of the Clearing Account Agreement). The Clearing Account shall have a title evidencing the foregoing in a manner reasonably acceptable to Lender. Borrower hereby grants to Lender 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 Lender a perfected first priority security interest in the Clearing Account. Borrower hereby authorizes Lender to file UCC Financing Statements and continuations thereof to perfect Lender's security interest in the Clearing Account and all deposits at any time contained therein and

the proceeds thereof. All costs and expenses for establishing and maintaining the Clearing Account (or any successor thereto) shall be paid by Borrower. All monies now or hereafter deposited into the Clearing Account shall be deemed additional security for the Debt. Borrower shall pay all sums due under and otherwise comply with the Clearing Account Agreement. Borrower shall not alter or modify either the Clearing Account or the Clearing Account Agreement, in each case without the prior written consent of Lender. The Clearing Account Agreement shall provide (and Borrower shall provide) Lender online access to bank and other financial statements relating to the Clearing Account (including, without limitation, a listing of the receipts being collected therein). Borrower shall not 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 any UCC Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. The Clearing Account (i) shall be an Eligible Account and (ii) shall not be commingled with other monies held by Borrower or Bank. Upon (A) Bank ceasing to be an Eligible Institution, (B) the Clearing Account ceasing to be an Eligible Account, (C) any resignation by Bank or termination of the Clearing Account Agreement by Bank or Lender and/or (D) the occurrence and continuance of an Event of Default, Borrower shall, within fifteen (15) days of Lender's request, (1) terminate the existing Clearing Account Agreement, (2) appoint a new Bank (which such 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), (3) cause such 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 (4) send any new notices required pursuant to the terms hereof relating to such new Clearing Account Agreement and Clearing Account. Borrower 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 under this Section 8.2 in the name of Borrower in the event Borrower fails to do the same. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(c) Subject to the terms and conditions of the Clearing Account Agreement, [during a Cash Sweep Period], all funds on deposit in the Clearing Account shall be transferred into the Cash Management Account and applied as set forth in Section 8.3 below.

**Section 8.3 Disbursements from the Cash Management Account.** On each Monthly Payment Date occurring after the date hereof, Lender shall allocate all funds, if any, on deposit in the Cash Management Account and disburse such funds in the following amounts and order of priority:

(a) First, funds sufficient to pay the Monthly Tax Deposit due for the then applicable Monthly Payment Date, if any, shall be deposited in the Tax Account;

(b) Then, funds sufficient to pay the Monthly Insurance Deposit due for the then applicable Monthly Payment Date, if any, shall be deposited in the Insurance Account;

(c) Then, funds sufficient to pay any interest accruing at the Default Rate and late payment charges, if any, shall be deposited into the Debt Service Account;

(d) Then, funds sufficient to pay the Debt Service due on the then applicable Monthly Payment Date shall be deposited in the Debt Service Account;

(e) [HOTEL LOANS W/FRANCHISE – Then, funds sufficient to pay any required deposit into the PIP Reserve Account for the then applicable Monthly Payment Date, if any, shall be deposited in the PIP Reserve Account;]

(f) Then, [\_\_\_\_\_];

(g) Then, funds sufficient to pay any other amounts due and owing to Lender pursuant to the terms hereof and/or of the other Loan Documents, if any, shall be deposited with or as directed by Lender;

(h) Then, funds sufficient to pay the Operating Expense Monthly Deposit for the then applicable Monthly Payment Date, if any, shall be deposited in the Operating Expense Account (less and except the aggregate amount of any Excess Operating Expense Disbursement(s) received by Borrower for any prior Monthly Payment Date(s) that have not already been deducted pursuant to this clause (h));

(i) [MEZZ LOAN AT CLOSING – Then, [SPRINGING CASH MANAGEMENT – to the extent that a Cash Sweep Period has occurred and is continuing,] funds sufficient to pay the amount of the Mezzanine Loan Monthly Debt Service that is then due and payable shall be, and Borrower hereby directs such funds to be, disbursed to or at the direction of Mezzanine Lender in accordance with disbursement instructions provided by Mezzanine Lender to Lender;] and

(j) [NO MEZZ LOAN AT CLOSING – Lastly, all amounts remaining in the Cash Management Account after deposits for items (a) through [( )] above (“Excess Cash Flow”) shall (i) to the extent that any Cash Sweep Period has occurred and is continuing, be deposited into the Excess Cash Flow Account or (ii) to the extent that no Cash Sweep Period exists, be disbursed to Borrower] [MEZZ LOAN AT CLOSING – Lastly, all amounts remaining in the Cash Management Account after deposits for items (a) through [( )] above (“Excess Cash Flow”) shall (i) to the extent that a Cash Sweep Period due solely to the occurrence of a Mezzanine Loan Event of Default has occurred and is continuing, be, and Borrower hereby directs such funds to be, disbursed to or at the direction of Mezzanine Lender in accordance with disbursement instructions provided by Mezzanine Lender to Lender, (ii) to the extent that any

Cash Sweep Period has occurred and is continuing, be deposited into the Excess Cash Flow Account] or [(iii)][(iv)] to the extent that no Cash Sweep Period exists, be disbursed to Borrower.]

**Section 8.4 Withdrawals from the Debt Service Account.** Prior to the occurrence and continuance of an Event of Default, funds on deposit in the Debt Service Account, if any, shall be used to pay Debt Service when due, together with any late payment charges or interest accruing at the Default Rate.

**Section 8.5 Reserved.**

**Section 8.6 [MEZZ LOAN AT CLOSING – Borrower Distributions; Acknowledgement.**

(a) Any transfer of Borrower’s funds from the Cash Management Account or other sources to or for the benefit of the Mezzanine Lender or the Mezzanine Borrower pursuant to this Agreement or any of the other Loan Documents, is intended by the parties to constitute, and shall constitute, a distribution from the Borrower to the Mezzanine Borrower and shall be treated as such on the books and records of each party. No provision of any Loan Document is intended to nor shall create a debtor-creditor relationship between Borrower and the Mezzanine Lender.

(b) In the event Lender waives the requirement for Borrower to maintain the Clearing Account, the Cash Management Account or any of the Reserve Accounts, Lender consents to Borrower permitting the Mezzanine Borrower to establish and maintain (as applicable) a lockbox account, cash management account and/or reserve accounts, as the case may be, that would operate as provided in herein. In connection with the foregoing, Borrower further consents to Lender transferring any available balances in the applicable Accounts to Mezzanine Lender. Borrower further (i) agrees that Lender shall be entitled to conclusively rely on Mezzanine Lender’s assertion that it is entitled to such available balances and (ii) hereby releases Lender and indemnifies Lender against any Losses that may be incurred by Lender as a result of any Person claiming that Lender improperly remitted such available balances to Mezzanine Lender.

(c) Borrower and Lender hereby agree and acknowledge that if (i) the Debt has been paid in full, (ii) there are funds remaining in the Accounts, and (iii) the Mezzanine Loan (or any portion thereof) is outstanding, then Lender will not pay (or direct to be paid) any such remaining funds to Borrower, but rather shall deliver such funds (or direct the same to be delivered, as applicable), and Borrower hereby directs Lender to so deliver or cause to be delivered such funds, as a distribution permitted in accordance with applicable law, within ten (10) Business Days after the Debt has been paid in full, to Mezzanine Lender to be held and/or applied in accordance with the terms of the Mezzanine Loan Documents.]

## ARTICLE 9

### RESERVED

## ARTICLE 10

### EVENTS OF DEFAULT; REMEDIES

**Section 10.1 Event of Default.**

The occurrence of any one or more of the following events shall constitute an “**Event of Default**”:

(a) if (i) any monthly Debt Service payment or the payment due on the Maturity Date is not paid when due, (ii) any deposit to any of the Accounts required hereunder or under the other Loan Documents is not paid when due, or (iii) any other portion of the Debt is not paid when due and (in the case of the this clause (iii) only), such non-payment continues for five (5) days following notice to Borrower that the same is due and payable;

(b) if any of the Taxes or Other Charges are not paid when the same are due and payable except to the extent either (A) the same are being contested pursuant to the terms and conditions of Section 4.6(b) hereof (but for no more than a period of ninety (90) days past the due date thereof) or (B) (i) sums sufficient to pay the Taxes or Other Charges in question had been reserved hereunder prior to the applicable due date for the Taxes or Other Charges in question for the express purpose of paying the Taxes or Other Charges in question and Lender failed to pay the Taxes or Other Charges in question when required hereunder, (ii) Lender’s access to such sums was not restricted or constrained in any manner and (iii) no Event of Default was continuing;

(c) if (i) the Policies are not kept in full force and effect, except to the extent (A) the failure to maintain such Policies resulted solely from failure to pay the applicable Insurance Premiums therefor, (B) sums sufficient to pay such Insurance Premiums had been reserved hereunder prior to the applicable due date for the express purpose of paying such Insurance Premiums and Lender failed to pay the same when required hereunder, (C) Lender’s access to such sums was not restricted or constrained in any manner and (D) no Event of Default was continuing, or (ii) evidence of the Policies being in full force and effect is not delivered to Lender as and when required in Section 5.1 hereof and either (A) such failure continues for two (2) Business Days following written notice thereof to Borrower or (B) such failure continues beyond the date that is two (2) Business Days prior to the scheduled expiration date of such Policies;

(d) if (i) any of the representations contained in Section 3.24 hereof are or become untrue, or (ii) any of the covenants contained in Section 4.22 hereof are breached or violated; provided, however, that such breach or violation shall not result in

an Event of Default hereunder if (A) such breach or violation was inadvertent, non-recurring and immaterial and (B) within twenty (20) days of the earlier to occur of notice from Lender or Borrower's knowledge of such breach or violation thereof, Borrower (x) cures such breach or violation, (y) provides Lender with written evidence of such cure and (z) if requested by Lender, delivers to Lender a non-consolidation opinion relating to such breach or violation), or (iii) any of the representations or covenants contained in Sections 3.32, 4.25, 4.29(b), 4.47 or Article 6 hereof are breached or violated;

(e) if any representation or warranty made herein, in the Guaranty or in the Environmental Indemnity or in any other guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender in connection with the Loan shall have been false or misleading;

(f) if (i) Borrower, Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor shall commence any case, proceeding or other action (A) under any Creditors Rights Laws seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, liquidation or dissolution, or (B) 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 Borrower or any managing member or general partner of Borrower, Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against Borrower or any managing member or general partner of Borrower, Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor any case, proceeding or other action of a nature referred to in clause (i) above (other than any case, action or proceeding already constituting an Event of Default by operation of the other provisions of this subsection) which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; (iii) there shall be commenced against Borrower, Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor 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 (other than any case, action or proceeding already constituting an Event of Default by operation of the other provisions of this subsection) which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (iv) Borrower, Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor shall take any action in furtherance of, in collusion with respect to, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; (v) Borrower, Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; (vi) any of Borrower, Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor is substantively consolidated with any other entity in connection with any proceeding under the Bankruptcy Code or any other Creditors Rights Laws involving Sponsor or its subsidiaries; or (vii) any other Bankruptcy Event occurs;

(g) if Borrower shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to the Security Instrument;

(h) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for any Taxes not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days (subject to Borrower's right to contest the same pursuant to the terms and conditions of Section 4.8(b) hereof, but for no more than a period of ninety (90) days past the filing date thereof);

(i) if any federal tax lien is filed against Borrower, any SPE Component Entity, Sponsor, Guarantor or the Property and same is not discharged of record (by payment, bonding or otherwise) within thirty (30) days after same is filed (which such period will be deemed extended for so long as such tax lien is being contested pursuant to the terms and conditions of Section 4.6(b) hereof, as if the same were a lien for Taxes, but for no more than a period of ninety (90) days past the filing date thereof);

(j) if any litigation or similar proceeding is filed against Borrower or the Property which claims an amount in excess of ten percent (10%) of the then outstanding principal balance of the Loan, and such litigation or proceeding is not (A) fully covered by the Policies or (B) dismissed (or otherwise addressed to Lender's satisfaction in Lender's sole discretion) within sixty (60) days after the same is filed;

(k) if Borrower shall fail to deliver to Lender any financial reporting item required by this Agreement (including without limitation any of the items required by Section 4.11 hereof), on the date the same is due, and such failure continues for ten (10) days after written notice thereof from Lender;

(l) if Borrower shall fail to comply with any of its obligations under Section 4.15 hereof;

(m) if any default occurs under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, if any;

(n) [intentionally omitted];

(o) if Borrower defaults under the Management Agreement or the Franchise Agreement beyond the expiration of applicable notice and grace periods, if any, thereunder or if the Management Agreement or the Franchise Agreement is canceled, terminated or surrendered, expires pursuant to its terms or otherwise ceased to be in full force and effect, unless, in each such case,

Borrower, contemporaneously with such cancellation, termination, surrender, expiration or cessation, enters into a Qualified Management Agreement with a Qualified Manager or a Replacement Franchise Agreement, as applicable, in accordance with the applicable terms and provisions hereof;

(p) if Borrower fails to appoint a replacement Manager upon the request of Lender and/or fails to comply with any limitations on instructing the Manager, each as required by and in accordance with, as applicable, the terms and provisions of, this Agreement, the Assignment of Management Agreement and the Security Instrument;

(q) if any representation and/or covenant herein relating to ERISA matters is breached;

(r) if (i) any Interest Rate Cap Agreement is terminated for any reason by Borrower or Counterparty or (ii) Borrower shall fail to observe, perform or discharge any of Borrower's obligations, covenants, conditions or agreements under the Interest Rate Cap Agreement and otherwise comply with the covenants set forth in Section 2.8 hereof;

(s) if, following Substantial Completion, (i) Borrower ceases to do business as a hotel at the Property or terminates such business for any reason whatsoever (other than temporary cessation in connection with any continuous and diligent renovation or restoration of the Property following a Casualty or Condemnation) or (ii) without Lender's prior written consent, any liquor, hotel and/or other material license relating to the Property (including, without limitation, the Franchise Agreement) ceases to be in full force and effect;

(t) if Borrower shall, without Lender's prior written consent, take any action that, in accordance with the terms of the Loan Documents, requires Lender's consent;

(u) there is any material deviation in the Construction from the Plans and Specifications, or from Legal Requirements, or the appearance or use of defective workmanship or materials in constructing the Improvements, and Borrower fails to remedy the same to comply with applicable Plans and Specifications or applicable Legal Requirements within thirty (30) days after Lender's written demand to do so;

(v) (i) Substantial Completion does not occur by the Substantial Completion Date; (ii) Final Completion does not occur by the Final Completion Date; (iii) the Construction in accordance with the Loan Documents is prohibited, enjoined or delayed for a continuous period of more than sixty (60) days, or (v) utilities or other public services necessary for the full occupancy and utilization of the Property and the Improvements thereon are curtailed for a continuous period of more than thirty (30) days;

(w) Borrower fails to achieve any of the Milestones by the applicable Milestone Date;

(x) if Borrower or Guarantor fails to cure any Balancing Event within ten (10) days following notice to Borrower;

(y) Any failure by any Borrower Party to perform within ten (10) days after Lender's notice of such failure to perform or, if such performance cannot reasonably be completed within ten (10) days, to diligently commence performance of any of their respective covenants or obligations under any of the Construction Contracts and/or Permits;

(z) if Borrower fails to terminate any Development Agreement if requested by Lender (when Lender has the right to so require a termination of the Development Agreement pursuant to this Agreement) within five (5) Business days' after Lender's request therefor;

(aa) with respect to any default or breach of any term, covenant or condition of this Agreement not specified in subsections (a) through [( )] above or not otherwise expressly specified as an Event of Default in this Agreement, if the same is not cured (i) within ten (10) days after the earlier of (1) Borrower's knowledge thereof or (2) notice from Lender (in the case of any default which can be cured by the payment of a sum of money) or (ii) for thirty (30) days after the earlier of (1) Borrower's knowledge thereof or (2) notice from Lender (in the case of any other default or breach); provided, that, with respect to any default or breach specified in subsection (ii), if the same cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure the same within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure the same, it being agreed that no such extension shall be for a period in excess of sixty (60) days.

## **Section 10.2 Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 10.1(f) above with respect to Borrower, Pledgor or any SPE Component Entity) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement, the Security Instrument, the Note and the other Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, 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 this Agreement, the Security Instrument, the Note and the other Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity. Upon any Event of Default described in Section 10.1(f) above with respect to Borrower, Pledgor or any SPE Component Entity, the Debt and all other obligations of Borrower under this Agreement, the Security Instrument, the Note and 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 the Security Instrument, the Note and the other Loan Documents to the contrary notwithstanding.

(b) Upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement, the Security Instrument, the Note or 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 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 this Agreement, the Security Instrument, the Note or the other Loan Documents with respect to the Property or the [Pledged Collateral] (as defined in the Accommodation Pledge). 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 applicable law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by applicable law, equity or contract or as set forth herein or in the Security Instrument, the Note or the other Loan Documents. 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.

(c) Upon the occurrence and during the continuance of an Event of Default, 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 sole discretion including, without limitation, 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.

(d) Notwithstanding anything to the contrary contained herein or in any other Loan Document, any amounts recovered from the Property or any other collateral for the Loan and/or paid to or received by Lender may, after an Event of Default, be applied by Lender toward the Debt in such order, priority and proportions as Lender in its sole discretion shall determine.

(e) In addition to all remedies conferred by law and by the terms of this Agreement and the other Loan Documents, Lender may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other, and with full rights to reimbursement from Borrower and any Guarantor: (i) take possession of the Property and complete any Construction at the Property, including the right to avail itself of and procure performance of existing contracts or let any contracts with the same contractors or others and to employ watchmen to protect the Property from injury (and without restricting the generality of the foregoing and for the purposes aforesaid to be exercised during the existence and continuance of an Event of Default, Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution to complete any Construction at the Property in the name of Borrower); (ii) discontinue at any time the Construction; (iii) use amounts in the Reserve Accounts to complete any construction work at the Property; (iv) make changes to the Plans and Specifications which shall be necessary or desirable to complete any construction work at the Property in substantially the manner contemplated by such Plans and Specifications; (v) retain or employ new general contractors, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which may be liens or security interests, or to avoid such bills and claims becoming liens against the Property, or as may be necessary or desirable for the completion of any construction work at the Property or for the clearance of title to the Property; (vi) execute all applications and certificates in the name of Borrower which may be required by any of the Construction Documents; (vii) prosecute and defend all actions or proceedings in connection with any construction work at the Property; and (viii) take any action and require such performance as it deems necessary to be furnished hereunder and to make settlements and compromises with the surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction.

(f) 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 or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. 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 for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by applicable law), with interest as provided in this Section, 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 action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred until 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 the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.



## ARTICLE 11

### INDEMNIFICATIONS

**Section 11.1 General 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 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) 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; (b) 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; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof (including, without limitation, the construction of the Improvements); (d) any failure of the Property to be in compliance with any applicable Legal Requirements; (e) 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, management agreement, or any Construction Document; (f) the payment of any commission, charge or brokerage fee to anyone (other than a broker or other agent retained by Lender) which may be payable in connection with the funding of the Loan; and/or (g) the holding or investing of the funds on deposit in the Accounts or the performance of any work or the disbursement of funds in each case in connection with the Accounts. Any amounts payable to Lender by reason of the application of this Section 11.1 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 11.2 Mortgage and Intangible Tax 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 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 and/or recording of the Security Instrument, the Note or any of the other Loan Documents.

**Section 11.3 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, without limitation, reasonable 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 sole discretion) that any Indemnified Party may incur, directly or indirectly, as a result of a default under Sections 3.15 or 4.21 of this Agreement.

**Section 11.4 Duty to Defend, Legal 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, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole 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.

**Section 11.5 Expenses; Indemnity.**

(a) Borrower shall pay or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender, for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to the Loan Documents and any other documents or matters requested by Borrower or any Guarantor; (ii) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred, in creating and perfecting the liens in favor of Lender pursuant to the Loan Documents; (iii) 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 Lender, Borrower, the Loan Documents, the Property or any other security given for the Loan; (iv) enforcing any obligations of, or collecting any payments due from, Borrower or any Guarantor under the Loan Documents or with respect to the Property; (v) any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work out" or of any proceeding under the Bankruptcy Code or any other Creditors Rights Laws; (vi) protecting Lender's interest in the Property or any other security given for the Loan; and (vii) Lender's participation (including, without limitation, responding to any service of process, subpoena, or other request) in any litigation or other proceeding involving or related to any Borrower Party, the Loan or the Loan Documents and/or Lender's response to any other service of process, subpoena, or other request from any Governmental Authority involving or related to any Borrower Party, the Loan or the Loan Documents (including, without limitation, in each case, any legal fees incurred in connection therewith); 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, as determined by a final non appealable judgment of a court of competent jurisdiction. Any costs due and payable to Lender may be paid, at Lender's election in its sole discretion, from any amounts in the Cash Management Account or the other Accounts.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for any Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnified Party shall be designated a party thereto, or any settlement in furtherance of any of the foregoing), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any default or breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, the Loan Documents; (ii) the use or intended use of the proceeds of the Loan; (iii) any materials or information provided by or on behalf of Borrower, or contained in any documentation approved by Borrower; (iv) ownership of the Security Instrument, the Property or any interest therein, or receipt of any Rents; (v) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof, or any liability asserted against such Indemnified Party with respect thereto; and (vi) the claims of any lessee of any portion of the Property or any Person acting through or under any lessee or otherwise arising under or as a consequence of any Lease (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to an 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, as determined by a final non appealable judgment of a court of competent jurisdiction. 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. The provisions of Section 11.5(a) and this Section 11.5(b) shall (A) survive any payment or prepayment of the Loan and any foreclosure or satisfaction of the Security Instrument and (B) apply equally in favor of the then-current Lender hereunder and any prior Lender hereunder.

**Section 11.6 Survival.** The obligations and liabilities of Borrower under this Article 11 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 or an assignment in lieu of foreclosure of the Accommodation Pledge.

## ARTICLE 12

### EXCULPATION

**Section 12.1 Exculpation.** The Loan is full recourse to Borrower.

## ARTICLE 13

### FURTHER ASSURANCES

**Section 13.1 Replacement Documents.** Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note, this Agreement or any of the other Loan Documents which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of the Note, this Agreement or such other Loan Document, Borrower will issue, in lieu thereof, a replacement thereof, dated the date of the Note, this Agreement or such other Loan Document, as applicable, in the same principal amount thereof and otherwise of like tenor.

**Section 13.2 Recording of Security Instrument, etc.** Borrower forthwith upon the execution and delivery of the Security Instrument and thereafter, from time to time, will cause the 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 will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Security Instrument, this Agreement, 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 the Security Instrument, any deed of trust or mortgage supplemental hereto, any 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 applicable law so to do.

**Section 13.3 Further Acts, etc.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every 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 Borrower, on demand, will 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.

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 without limitation, such rights and remedies available to Lender pursuant to this Section 13.3.

#### **Section 13.4 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Agreement which deducts the Debt from the value of the Property for the purpose of taxation and which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will 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 ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will 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 the Security Instrument or the Debt. If such claim, credit or deduction shall be required by applicable law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(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, the Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

### **ARTICLE 14**

#### **WAIVERS**

**Section 14.1 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, the Security Instrument, the Note 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 sole 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.

**Section 14.2 Modification, Waiver in Writing.** Except as otherwise expressly provided herein, no modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, the Security Instrument, the Note and the other Loan Documents, 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 14.3 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 under this Agreement, the Security Instrument, the Note or the other Loan Documents, 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 Security Instrument, the Note or the other Loan Documents, 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 Security Instrument, the Note and the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 14.4 Waiver of Trial by Jury.** BORROWER AND LENDER, BY ACCEPTANCE OF THIS AGREEMENT, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THIS AGREEMENT, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER.

**Section 14.5 Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Agreement specifically and expressly provides for the giving of notice by Lender to Borrower and (b) 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 Agreement does not specifically and expressly provide for the giving of notice by Lender to Borrower.

**Section 14.6 Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by applicable law or under this Agreement, the Security Instrument, the Note and 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. Lender agrees that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

**Section 14.7 Marshalling and Other Matters.** Borrower hereby waives, to the extent permitted by applicable Legal Requirements, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale under the Security Instrument 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 the 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 the Security Instrument and on behalf of all persons to the extent permitted by applicable Legal Requirements.

**Section 14.8 Waiver of Statute of Limitations.** To the extent permitted by applicable Legal Requirements, Borrower hereby expressly waives and releases to the fullest extent permitted by applicable Legal Requirements, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its obligations hereunder, under the Note, Security Instrument or other Loan Documents.

**Section 14.9 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 14.10 Sole Discretion of Lender.** Wherever pursuant to this Agreement (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender, except as may be otherwise expressly and specifically provided herein.

## ARTICLE 15

### MISCELLANEOUS

**Section 15.1 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 shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth in this Agreement, the Security Instrument, the Note or 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 15.2 Reserved.**

**Section 15.3 Brokers.** Borrower agrees (i) to pay any and all fees imposed or charged by all brokers, mortgage bankers and advisors (each a "**Broker**") hired or contracted by any Borrower Party or their Affiliates in connection with the transactions contemplated by this Agreement and (ii) to indemnify and hold Lender harmless from and against any and all claims, demands and liabilities for brokerage commissions, assignment fees, finder's fees or other compensation whatsoever arising from this Agreement or the making of the Loan which may be asserted against Lender by any Person. The foregoing indemnity shall survive the termination of this Agreement and the payment of the Debt. Borrower hereby represents and warrants that [the only Broker engaged by any Borrower Party in connection with the transactions contemplated by this Agreement is \_\_\_\_\_][no Broker has been engaged by any Borrower Party in connection with the transactions contemplated by this Agreement]. Lender hereby agrees to pay any and all fees imposed or charged by any Broker hired solely by Lender. Borrower acknowledges and agrees that (a) any Broker is not an agent of Lender and has no power or authority to bind Lender, (b) Lender is not responsible for any recommendations or advice given to any Borrower Party by any Broker, (c) Lender and the Borrower Parties have dealt at arms-length with each other in connection with the Loan, (d) no fiduciary or other special relationship exists or shall be deemed or construed to exist among Lender and the Borrower Parties and (e) none of the Borrower Parties shall be entitled to rely on any assurances or waivers given, or statements made or actions taken, by any Broker which purport to bind Lender or modify or otherwise affect this Agreement or the Loan, unless Lender has, in its sole discretion, agreed in writing with any such

Borrower Party to such assurances, waivers, statements, actions or modifications. Borrower acknowledges and agrees that Lender may, in its sole discretion, pay fees or compensation to any Broker in connection with or arising out of the closing and funding of the Loan. Such fees and compensation, if any, (i) shall be in addition to any fees which may be paid by any Borrower Party to such Broker and (ii) create a potential conflict of interest for Broker in its relationship with the Borrower Parties. Such fees and compensation, if applicable, may include a direct, one-time payment, servicing fees and/or incentive payments based on volume and size of financings involving Lender and such Broker.

**Section 15.4 Governing Law.** THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND DELIVERED TO LENDER BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, 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 CONFLICT OF LAWS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW) 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, COMMONWEALTH OR DISTRICT, AS APPLICABLE, IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, 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. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5 1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

**Section 15.5 Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person, (b) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: [ \_\_\_\_\_ ]

With a copy to: [ \_\_\_\_\_ ]

If to Lender: [ \_\_\_\_\_ ]

With a copy to: Reed Smith LLP  
599 Lexington Avenue  
New York, New York 10022  
Attention: Randy Eckers, Esq.

or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

**Section 15.6 Headings.** The Article and/or Section headings 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 15.7 Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Legal Requirements, but if any provision of this Agreement shall be prohibited by or invalid under applicable Legal Requirements, 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 15.8 Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations 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 Creditors Rights Laws, 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 15.9 Cost of Enforcement.** In the event (a) that the Security Instrument is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, or (c) Lender exercises any of its other remedies under this Agreement, the Security Instrument, the Note and the other Loan Documents, Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, 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.

**Section 15.10 Exhibits Incorporated.** The Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 15.11 Offsets, Counterclaims and Defenses.** Any assignee of Lender's interest in and to this Agreement, the Security Instrument, 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 15.12 No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Lender intend that the relationships created under this Agreement, the Security Instrument, the Note and 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, the Security Instrument, the Note and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement, the Security Instrument, the Note or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower 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) The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower 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. Furthermore, each Borrower Party has obtained advice of counsel, accountants, and other professionals sufficient, in the judgment of such Borrower Party, to approve the Loan, the Loan Documents, and any transaction related to the closing of the Loan (including, without limitation, allocations of funds and the organizational structure of Borrower as each of the same relate to tax matters affecting such Borrower Party and the constituent direct and indirect owners of Borrower), and no Borrower Party is relying on Lender or any counsel or other professionals engaged by Lender with respect thereto.

(d) Notwithstanding anything to the contrary contained herein, Lender is not undertaking the performance of (i) any obligations related to the Property (including, without limitation, under the Leases); or (ii) any obligations with respect to any

agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents to which any Borrower Party and/or the Property is subject.

(e) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Agreement, the Security Instrument, the Note or the other Loan Documents, including, without limitation, 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.

(f) Borrower recognizes and acknowledges that in accepting this Agreement, the Note, the Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the representations and warranties set forth in Article 3 of this 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 Agreement, the Note, the Security Instrument and the other Loan Documents in the absence of the warranties and representations as set forth in Article 3 of this Agreement.

### **Section 15.13 Disclosure.**

(a) Except as expressly set forth herein or otherwise expressly approved by Lender in writing (which approval shall not be unreasonably withheld, conditioned or delayed), Borrower shall not, and shall not permit any Borrower Party, or any of their respective Affiliates and/or agents to: (i) provide a copy of this Agreement or any of the other Loan Documents, or any portion of any of the foregoing, to any Unaffiliated Third Party; (ii) disclose any of the terms or provisions of this Agreement or any of the other Loan Documents to any Unaffiliated Third Party; or (iii) disclose any of the prospective parts of this Agreement or any of the other Loan Documents which were discussed in negotiations prior to the execution of this Agreement or such other Loan Documents to any Unaffiliated Third Party. In addition to all other rights and remedies available to Lender in accordance with applicable law, Lender shall be entitled to equitable and injunctive relief to prevent the unauthorized use or disclosure of the confidential information in violation of this Section 15.13.

(b) All news releases, publicity or advertising by any Borrower Party or any of their Affiliates and/or agents through any media intended to reach the general public which refers to this Agreement, the Note or the other Loan Documents or the financing evidenced by this Agreement or the other Loan Documents, to Lender or any of its Affiliates shall be subject to the prior written approval of Lender.

(c) Borrower agrees, on its behalf and on behalf of each Borrower Party and their respective Affiliates, that none of the foregoing shall publish, participate in the publication of, or direct others to make or publish, any statements, accounts or stories disparaging or denigrating the conduct or character of Lender. The foregoing includes, but is not limited to, a prohibition on posting or otherwise disclosing defamatory or disparaging statements about Lender on the internet or in any other paper or electronic media outlet, including but not limited to news organizations, blogs, websites, newspapers, external email or social media websites.

(d) The obligations and liabilities of each Borrower Party, their Affiliates, and agents under this Section 15.13 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.

**Section 15.14 Limitation of Liability.** No claim may be made by Borrower, or any other Person against Lender or its Affiliates, directors, officers, employees, attorneys or agents of any of such Persons for any special, indirect, consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any act, omission or event occurring in connection therewith; and Borrower hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

**Section 15.15 Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Agreement and the Security Instrument, the Note or 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 this Agreement, the Note, the Security Instrument and the other Loan Documents and this Agreement, the Note, the Security Instrument and the other 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 this Agreement, the Note, the Security Instrument and the other 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 15.16 Entire Agreement.** This Agreement, the Note, the Security Instrument 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, the Note, the Security Instrument and the other Loan Documents.

**Section 15.17 Liability.** If Borrower consists of more than one Person, the obligations and liabilities of each such Person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

**Section 15.18 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. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

**Section 15.19 Set-Off.** In addition to any rights and remedies of Lender provided by this Agreement and by law, Lender shall have the right in its sole discretion, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrower; provided, however, Lender may only exercise such right during the continuance of an Event of Default. Lender agrees promptly to notify Borrower after any such set-off and application made by Lender; provided, that, the failure to give such notice shall not affect the validity of such set-off and application.

#### **Section 15.20**

(a) **Registered Form.** At the request of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the “**Registrar**”) acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, a register (the “**Register**”) for the recordation of the names and addresses of Lender and any other lender, and the principal amounts (and stated interest) under the Loan Documents owing to Lender and each other lender pursuant to the terms of the Loan Documents from time to time, in a manner that shall cause the Loan to be considered to be in registered form for purposes of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRS Code. The entries in the Register shall be conclusive absent manifest error, and Borrower, Lender and other lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower, Lender and any other lender, at any reasonable time and from time to time upon reasonable prior notice. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and other Loan Documents. If the Registrar has not been appointed to maintain the Register, the transfer of the Note may be effected only by surrender of the Note and the reissuance by Borrower of the Note to the transferee.

(b) At the request of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the “**Registrar**”) acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, a register (the “**Register**”) for the recordation of the names and addresses of Lender and any other lender, and the principal amounts (and stated interest) under the Loan Documents owing to Lender and each other lender pursuant to the terms of the Loan Documents from time to time, in a manner that shall cause the Loan to be considered to be in registered form for purposes of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRS Code. The entries in the Register shall be conclusive absent manifest error, and Borrower, Lender and other lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower, Lender and any other lender, at any reasonable time and from time to time upon reasonable prior notice. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and other Loan Documents. If the Registrar has not been appointed to maintain the Register, the transfer of the Note may be effected only by surrender of the Note and the reissuance by Borrower of the Note to the transferee.

**Section 15.21 Servicer.** At the option of Lender, the Loan may be serviced by a servicer (any such servicer, 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 servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Borrower shall be responsible for payment of all fees, costs and expenses due to Servicer under the Servicing Agreement and for payment of any “special servicing”, “workout”, and “liquidation” fees incurred pursuant to the Servicing Agreement in connection with any default or workout of the Loan.



**Section 15.22 Time is of the Essence.** Time is of the essence of each provision of this Agreement and the other Loan Documents.

**Section 15.23 Secondary Market Provisions.**

(a) **Sale of Loan/Participation.** Lender may sell, transfer or assign all or any portion of its interest or one or more participation interests in the Loan, the Loan Documents, the Guaranty, if any, and the Environmental Indemnity at any time and from time to time, including, without limitation, its rights and obligations as servicer of the Loan. Lender may issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement, including depositing the Loan Documents, the Guaranty, if any, and the Environmental Indemnity with a trust that may issue securities (the “**Securities**”). Lender may forward to each purchaser, transferee, assignee, servicer, participant, or investor in the Loan or in the Securities (collectively, the “**Investor**”) or any prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Loan, Borrower, any Borrower Party and the Property, whether furnished by Borrower, any Borrower Party or otherwise, as Lender determines to be necessary or desirable. Borrower agrees to indemnify (i) Lender, any Investor, and their respective successors and/or assigns for any Losses that arise out of or are based upon the omission or alleged omission to state in the materials to be provided pursuant to this Section 15.23 (such materials, individually or collectively as the context shall require, the “**Disclosures**”) a material fact required to be stated in the Disclosures in order to make the statements in the Disclosures, in light of the circumstances under which they were made not misleading and (ii) reimburse Lender, any Investors, and/or their respective successors and/or assigns for any legal or other expenses reasonably incurred in connection with defending or investigating such Losses.

(b) **Splitting of Loan.** Lender, without in any way limiting Lender’s other rights hereunder, in its sole and absolute discretion, shall have the right to divide the Loan into two or more tranches which may be evidenced by two or more notes, which notes may be pari passu or senior/subordinate, provided that (i) the aggregate principal amount of the notes immediately following such division shall equal the outstanding principal balance of the Loan and (ii) the weighted average interest rate of the Loan immediately following such division shall equal the interest rate which was applicable to the Loan immediately prior to such division and such splitting shall not increase Borrower's liabilities or obligations under the Loan Documents or decrease Borrower's rights under the Loan Documents other than to a de-minimis extent. Borrower shall cooperate with reasonable requests of Lender in order to divide the Loan and shall execute and deliver such documents as shall reasonably be required by Lender in connection therewith, including, without limitation, new notes to replace the original Note, all in form and substance satisfactory to Lender, provided that such documents shall contain terms, provisions and clauses (x) no less favorable to Borrower than those contained herein and in the Note, and (y) which do not increase Borrower’s obligations hereunder or decrease Borrower’s rights under the Loan Documents. If Lender redefines the interest rate, the amount of interest payable under the modified notes, in the aggregate, shall at all times equal the amount of interest which would have been payable under the Note at the Interest Rate, provided, however, Borrower acknowledges that if Lender exercises its rights under this Section 15.23(b), the amount of interest payable may increase as a result of the application of funds paid to Lender after the occurrence of an Event of Default or any casualty or condemnation of all or any part of the Property.

(c) **Cooperation.** The transactions contemplated by this Section 15.23 shall be at Borrower’s sole cost and expense. Borrower will cooperate with Lender and prospective Investors in furnishing such information and providing such other assistance, reports and legal opinions as Lender may reasonably request in connection with any such transaction. In addition, Borrower acknowledges that Lender may release or disclose to prospective Investors originals or copies of the Loan Documents, the Guaranty, if any, the Environmental Indemnity, title information, engineering reports, financial statements, operating statements, appraisals, Leases, rent rolls, and all other materials, documents and information in Lender’s possession or which Lender is entitled to receive under the Loan Documents, the Guaranty, if any, and the Environmental Indemnity with respect to the Loan, Borrower, any Borrower Party or the Property. Borrower shall also furnish to prospective Investors any and all information concerning the Property, the Leases, the financial condition of Borrower or any Borrower Party as may be requested by Lender, any prospective Investor in connection with any sale, transfer or participation interest. Any non-public documents and information pertaining to the Loan, Borrower or Borrower Party that are clearly marked by Borrower or Borrower Party as “confidential” shall be handled by Lender in accordance with Lender’s then-current privacy and confidentiality policies and protocols. In the event Borrower fails to execute and deliver such documents to Lender within ten (10) days following such request by 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 such transactions, Borrower ratifying all that such attorney shall do by virtue thereof.

**ARTICLE 16**

**[MEZZ LOAN AT CLOSING – MEZZANINE LOAN.]**

**Section 16.1 Mezzanine Loan Notice.**

(a) Promptly after receipt (but no more than five (5) Business Days after receipt), Borrower will deliver (or cause Mezzanine Borrower to deliver) to Lender a true, correct and complete copy of all material notices (including, without limitation, any notice of a Mezzanine Loan Event of Default or any other default under the Mezzanine Loan Documents), demands, requests or material correspondence (including electronically transmitted items) received from Mezzanine Lender by Mezzanine Borrower or any guarantor under the Mezzanine Loan Documents.

(b) Unless otherwise delivered to Lender pursuant to the provisions of Section 4.11 hereof, Borrower will deliver (or cause Mezzanine Borrower to deliver) to Lender all of the financial statements and material reports, certificates and related items delivered or required to be delivered by Mezzanine Borrower to Mezzanine Lender under the Mezzanine Loan Documents as and when due under the Mezzanine Loan Documents.

**Section 16.2 Mezzanine Loan Estoppels.** After written request by Lender made no more than one time in any calendar year (unless and Event of Default is continuing), Borrower shall (or shall cause Mezzanine Borrower to) from time to time, obtain from Mezzanine Lender such estoppel certificates with respect to the status of the Mezzanine Loan and compliance by Mezzanine Borrower with the terms of the Mezzanine Loan Documents as may reasonably be requested by Lender.

**Section 16.3 Mezzanine Intercreditor.** Borrower hereby acknowledges and agrees that the Mezzanine Intercreditor is solely for the benefit of Lender and Mezzanine Lender, and that neither Borrower nor Mezzanine Borrower shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights thereunder, or be entitled to rely on any of the provisions contained therein. Lender and Mezzanine Lender have no obligation to disclose to Borrower or Mezzanine Borrower the contents of the Mezzanine Intercreditor. Borrower's obligations under the Loan Documents are and will be independent of the Mezzanine Intercreditor and shall remain unmodified by the terms and provisions thereof.

**Section 16.4 Direction of Mezzanine Borrower.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any other Loan Documents to the effect that (a) Borrower shall cause, direct, permit or allow Mezzanine Borrower to act or to refrain from acting in any manner or (b) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mezzanine Borrower, or (c) other similar effect, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, with respect to Borrower, and to the fullest extent permitted by applicable law, the power (whether direct or indirect) of Borrower to direct Mezzanine Borrower (through ownership of voting securities or partnership or limited liability company or other ownership interests), to bring about or effect a desired result. Lender hereby specifically acknowledges that Borrower does not, directly or indirectly, hold or own any voting securities or partnership or limited liability company or other ownership interest in Mezzanine Borrower, or have any other contractual relationship or agreement with Mezzanine Borrower, and therefore Borrower, cannot, through ownership of voting securities or partnership or limited liability company or other ownership interests, or other contract or agreement, direct Mezzanine Borrower to bring about or effect a desired result.

**Section 16.5 Notices from Mezzanine Lender.** Borrower and Lender hereby acknowledge and agree that Lender may conclusively rely on any notice delivered by Mezzanine Lender without any inquiry into the validity thereof, including, without limitation, a notice from Mezzanine Lender that a Mezzanine Loan Event of Default has occurred or is continuing.

**Section 16.6 No Modification or Acquisition of Mezzanine Loan.** None of Borrower, Mezzanine Borrower or Guarantor shall modify, amend, waive or terminate any of the Mezzanine Loan Documents, in each case, without obtaining the prior written consent of Lender. No Borrower Party shall acquire or agree to acquire the Mezzanine Loan or any portion thereof or interest therein, via purchase, transfer, exchange or otherwise, and any breach or attempted breach of this provision shall constitute an Event of Default.

**Section 16.7 Certain Payments From Mezzanine Lender.** Lender has advised Borrower that, pursuant to the Mezzanine Intercreditor Agreement, Mezzanine Lender may be required in certain circumstances to turn over to Lender certain payments received by Mezzanine Lender from Mezzanine Borrower or a Guarantor. If Mezzanine Lender turns over any such payments (or any portion thereof) to Lender, then Lender shall have the option to apply such amounts received from Mezzanine Lender to any amounts then due and payable to Lender pursuant to the Guaranty, this Agreement or the other Loan Documents, and any balance shall, at Lender's election in its sole discretion, continue to be held by Lender and thereafter applied to amounts that may thereafter become due and payable to Lender pursuant to any of the foregoing and/or thereafter returned by Lender to Mezzanine Lender.

**Section 16.8 Mezzanine Loan Separate.** Borrower acknowledges and agrees that the Mezzanine Loan is a separate and distinct financing from the Loan, and is made separately by Mezzanine Lender to Mezzanine Borrower, a separate legal entity, as the obligor thereunder. Borrower acknowledges and agrees that no exercise of any rights or remedies by Mezzanine Lender under the Mezzanine Loan shall give rise to any defense of Borrower to the rights and remedies of Lender under the Loan pursuant to the Loan Documents.]

[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:**

[Signature pages sent separately]

**LENDER:**

[Signature pages sent separately]

## EXHIBIT [ ]

### SPECIAL PURPOSE ENTITY REQUIREMENTS

Borrower covenants and agrees that:

(a) Borrower has not and will not:

(i) engage in any business or activity other than the ownership, operation, construction, management, operation and maintenance of the Property, and activities incidental thereto; Borrower will continue to engage in the businesses now conducted by it as and to the extent the same are necessary for the ownership, construction, maintenance, management and operation of the Property.

(ii) acquire or own any assets other than (A) the Property, and (B) such incidental Personal Property as may be necessary for the ownership, leasing, maintenance and operation of the Property;

(iii) incur any Indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) unsecured trade payables and operational debt not evidenced by a note and incurred in the ordinary course of business with trade creditors, provided any indebtedness incurred pursuant to subclause (B) shall be not more than sixty (60) days past due, and/or (C) Permitted Equipment Leases; provided, however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time (in the aggregate among all Borrowers, if more than one exist) two percent (2%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property;

(iv) commingle its funds or assets with the funds or assets of any other Person, or maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(v) use the stationery, invoices or checks of any other Person as its own or fail to allocate shared expenses (including, without limitation, shared office space);

(vi) fail to maintain a sufficient number of employees in light of its contemplated business operations or fail to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds (in each case to the extent there exists sufficient cash flow from the Property to do so, and provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower);

(vii) fail to (A) hold itself out to the public and identify itself, in each case, as a legal entity separate and distinct from any other Person and not as a division or part of any other Person, (B) correct any known misunderstanding regarding its separate identity or (C) hold its assets and conduct its business solely in its own name;

(viii) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents (provided, that, such organizational documents may be amended or modified to the extent that, in addition to the satisfaction of the requirements related thereto set forth therein, Lender's prior written consent);

(ix) merge into or consolidate with any Person, or divide, dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(x) have any obligation to indemnify any of its officers, directors, managers, members, shareholders or partners, as the case may be, unless such obligation is fully subordinated to the Debt and will not constitute a claim against Borrower if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(xi) own any subsidiary, or make any investment in, any Person (other than, with respect to any SPE Component Entity, in Borrower)

(xii) fail to file its own tax returns (to the extent Borrower is required to file any such tax returns pursuant to applicable Legal Requirements) or file a consolidated federal income tax return with any other Person;

(xiii) fail to maintain all of its books, records, financial statements and bank accounts separate from those of any other Person (including, without limitation, any Affiliates). Borrower's assets have not and will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower has maintained and will maintain its books, records, resolutions and agreements as official records;

(xiv) enter into any contract or agreement with any partner, member, shareholder, principal or Affiliate, except, in each case, upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(xv) assume or guaranty or otherwise become obligated for the debts of any other Person, hold itself out to be responsible for, or have its credit available to satisfy the debts or obligations of, any other Person, or otherwise pledge its assets for the benefit of any other Person;

(xvi) except as provided in the Loan Documents, have any of its obligations guaranteed by any Affiliate;

(xvii) make any loans or advances to any Person;

(xviii) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (to the extent there exists sufficient cash flow from the Property to do so, and provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower);

(xix) fail to consider the interests of Borrower's creditors in connection with all company actions;

(xx) without the prior unanimous written consent of all of its partners, shareholders or members, as applicable, and the prior unanimous written consent of its board of directors or managers, as applicable, and the prior written consent of each Independent Director (as defined below), regardless of whether such Independent Director is engaged at the Borrower or SPE Component Entity level, (A) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (B) seek or consent to the appointment of a receiver, liquidator or any similar official, (C) take any action that might cause such entity to become insolvent, (D) make an assignment for the benefit of creditors or (E) take any Material Action with respect to Borrower or any SPE Component Entity [(provided, that, none of any member, shareholder or partner (as applicable) of Borrower or any SPE Component Entity or any board of directors or managers (as applicable) of Borrower or any SPE Component Entity may vote on or otherwise authorize the taking of any of the foregoing actions unless, in each case, at least [one (1) / two (2)] Independent Director[s] [is/are] then serving in such capacity in accordance with the terms of the applicable organizational documents and [each of] such Independent Director[s] [has / have] consented to such foregoing action)];

(xxi) acquire obligations or securities of its partners, members, shareholders or other Affiliates, as applicable;

(xxii) permit any Affiliate or constituent party independent access to its bank accounts;

(xxiii) identify its partners, members, shareholders or other Affiliates, as applicable, as a division or part of it; or

(xxiv) conduct its business and activities in such a way as to cause any of the assumptions made with respect to Borrower and its principals in any Non-Consolidation Opinion or in any New Non-Consolidation Opinion to be violated.

(b) If Borrower is a partnership or limited liability company (other than a Springing Member LLC), each general partner (in the case of a partnership) and managing member (in the case of a limited liability company) of Borrower, as applicable, shall be a corporation or a Springing Member LLC (each an "**SPE Component Entity**") whose sole asset is its interest in Borrower. Each SPE Component Entity (i) will at all times comply with each of the covenants, terms and provisions contained in clauses (a)(iv) - (xxiv) of this Exhibit [ ] and, if such SPE Component Entity is a Springing Member LLC, clauses (c) and (d) of this Exhibit [ ], as if such representation, warranty or covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in Borrower; (iii) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (iv) will at all times continue to own no less than a 0.5% direct equity ownership interest in Borrower; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (vi) will cause Borrower to comply with the provisions of this Exhibit.

(c) In the event Borrower or the SPE Component Entity is a Springing Member LLC, the limited liability company agreement of Borrower or the SPE Component Entity (as applicable) (the "**LLC Agreement**") shall provide that (i) upon the occurrence of any event that causes the last remaining member of Borrower or the SPE Component Entity (as applicable) ("**Member**") to cease to be the member of Borrower or the SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or the SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or the SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), [any natural person duly designated under the applicable organizational documents][any person acting as Independent Director of Borrower or the SPE Component Entity (as applicable)] shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or the SPE Component Entity (as applicable) automatically be admitted to Borrower or the SPE Component Entity (as applicable) as a member with a 0% economic interest ("**Special Member**") and shall continue Borrower or the SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or the SPE Component Entity (as applicable) or transfer its rights as Special Member unless [(A)] a successor Special Member has been admitted to Borrower or the SPE Component Entity (as applicable) as a Special Member in accordance with requirements of

Delaware law [and (B) after giving effect to such resignation or transfer, there remains at least [one (1) / two (2)] Independent Director[s] of the SPE Component Entity or Borrower (as applicable) in accordance with clauses (e) and (f) below]. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or the SPE Component Entity (as applicable) upon the admission to Borrower or the SPE Component Entity (as applicable) of the first substitute member, (ii) Special Member shall be a member of Borrower or the SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or the SPE Component Entity (as applicable) and has no right to receive any distributions of the assets of Borrower or the SPE Component Entity (as applicable), (iii) pursuant to the applicable provisions of the limited liability company act of the State of Delaware (the “Act”), Special Member shall not be required to make any capital contributions to Borrower or the SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or the SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or the SPE Component Entity (as applicable) and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or the SPE Component Entity (as applicable) including, without limitation, the merger, division, consolidation or conversion of Borrower or the SPE Component Entity (as applicable)]; provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement]. In order to implement the admission to Borrower or the SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or the SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or the SPE Component Entity (as applicable)], but Special Member may serve as an Independent Director of Borrower or the SPE Component Entity (as applicable)].

(d) The LLC Agreement shall further provide that (i) upon the occurrence of any event that causes the Member to cease to be a member of Borrower or the SPE Component Entity (as applicable) to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or the SPE Component Entity (as applicable) agree in writing (A) to continue Borrower or the SPE Component Entity (as applicable) and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or the SPE Component Entity (as applicable) effective as of the occurrence of the event that terminated the continued membership of Member in Borrower or the SPE Component Entity (as applicable), (ii) any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower or the SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or the SPE Component Entity (as applicable) shall continue without dissolution and (iii) each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or the SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or the SPE Component Entity (as applicable).

(e) **[DELETE CLAUSE (E) IF NO I.D. IS REQUIRED:** The organizational documents of Borrower (to the extent Borrower is a corporation or a Springing Member LLC) or the SPE Component Entity, as applicable, shall provide that at all times there shall be at least [two / one] duly appointed independent director[s] or manager[s] of such entity (each, an “**Independent Director**”) who [each] shall (I) not have been at the time of each such individual’s initial appointment, and shall not have been at any time during the preceding five years, and shall not be at any time while serving as Independent Director, either (i) a shareholder (or other equity owner) of, or an officer, director (other than in its capacity as Independent Director), partner, member or employee of, Borrower or any of its respective shareholders, partners, members, subsidiaries or Affiliates, (ii) a customer of, or supplier to, or other Person who derives any of its purchases or revenues from its activities with, Borrower or any of its respective shareholders, partners, members, subsidiaries or Affiliates, (iii) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, member, employee supplier, customer or other Person, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person, (II) shall have, at the time of their appointment, had at least three (3) years’ experience in serving as an independent director and (III) be employed by, in good standing with and engaged by Borrower in connection with, in each case, an Acceptable ID Provider (defined below).]

(f) **[DELETE CLAUSE (F) IF NO I.D. IS REQUIRED:** The organizational documents of each Borrower and the SPE Component Entity shall further provide that (I) the board of directors or managers of Borrower and the SPE Component Entity and the constituent equity owners of such entities (constituent equity owners, the “**Constituent Members**”) shall not take any action set forth in clause (a)(xx) of this Exhibit [ ] or any other action which, under the terms of any organizational documents of Borrower or the SPE Component Entity, requires the vote of the Independent Director[s] unless, in each case, at the time of such action there shall be at least [one/two] Independent Director[s] engaged as provided by the terms hereof and [each] such Independent Director votes in favor of or otherwise consent to such action; (II) any resignation, removal or replacement of any Independent Director shall not be effective without (1) prior written notice to Lender (which such prior written notice must be given on the earlier of five (5) days or three (3) Business Days prior to the applicable resignation, removal or replacement) and (2) evidence that the replacement Independent Director satisfies the applicable terms and conditions hereof and of the applicable organizational documents (which such evidence must accompany the aforementioned notice); (III) to the fullest extent permitted by applicable law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Director[s] shall consider only the interests of the Constituent Members and Borrower and any SPE Component Entity (including Borrower’s and any SPE Component Entity’s respective creditors) in acting or otherwise voting on the matters provided for herein and in Borrower’s and SPE Component Entity’s organizational documents (which such fiduciary duties to the Constituent Members and Borrower and any SPE Component Entity (including

Borrower's and any SPE Component Entity's respective creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in Borrower or SPE Component Entity (as applicable) exclusive of (x) all other interests (including, without limitation, all other interests of the Constituent Members), (y) the interests of other Affiliates of the Constituent Members, Borrower and SPE Component Entity and (z) the interests of any group of Affiliates of which the Constituent Members, Borrower or SPE Component Entity is a part); (IV) other than as provided in subsection (III) above, the Independent Director[s] shall not have any fiduciary duties to any Constituent Members, any directors of Borrower or SPE Component Entity or any other Person; (V) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (VI) to the fullest extent permitted by applicable law, including Section 18 1101(e) of the Act, an Independent Director shall not be liable to Borrower, SPE Component Entity, any Constituent Member or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.]

(g) **[DELETE CLAUSE (G) IF NO I.D. IS REQUIRED OR IF NO MEZZ LOAN AT CLOSING:** Notwithstanding the foregoing, no Independent Director of Borrower or any SPE Component Entity may also serve as an independent director of Mezzanine Borrower or any special purpose component entity of Mezzanine Borrower.]

(h) **[USE IF SECOND-TIER SPE REQUIREMENT WAIVED:** Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, it is acknowledged and agreed that in connection with the closing of the Loan, Lender has waived the requirements set forth in Sections (b), (c) and (d) above of this Exhibit [ ], and that no SPE Component Entity exists hereunder

**["Acceptable ID Provider"** shall mean (i) any of the following: CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company and Lord Securities Corporation and (ii) any other national provider of Independent Directors that is approved in writing by Lender.]

**EXHIBIT [ ]**

**DESCRIPTION OF REA'S**

**[TBD]**



**EXHIBIT [ ]**

**CONSTRUCTION SCHEDULE**

**EXHIBIT [ ]**

**CONSTRUCTION BUDGET**

**EXHIBIT [ ]**  
**FORM OF BORROWER CERTIFICATE OF SUBSTANTIAL COMPLETION**

**BORROWER CERTIFICATE OF SUBSTANTIAL COMPLETION**

**PROJECT:**

**CONTRACT FOR CONSTRUCTION**

**CONTRACT DATE:**

**TO LENDER:**

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Capitalized terms used but not defined herein, shall have the meaning given to them in that certain Construction Loan Agreement, dated as of \_\_\_\_\_, 20\_\_, by and between [\_\_\_\_\_ LLC], as Lender (as defined therein) and [\_\_\_\_\_], (“Borrower”).

Borrower hereby certifies to Lender that: (i) the work performed under the Construction Contract has been reviewed by Borrower; (ii) the Contractor has achieved Substantial Completion in accordance with the Contract Documents; (iii) to the best knowledge of Borrower, after due and diligent inquiry, the work, as completed, is in compliance with all Legal Requirements; (iv) no notices from any Governmental Authority of any claimed violations of any Legal Requirements arising from the Construction, development, or operation of the Property were served upon Borrower, the Contractor or any contractor or subcontractor or their respective agents or representatives, which violations have not been cured; (v) Borrower is aware of no existing circumstances which could give rise to the issuance of any such notice of claimed violation and (vi) to the best knowledge of Borrower, after due and diligent inquiry, all items necessary to establish achievement of Substantial Completion under the Construction Contract have been completed.

The date of Substantial Completion is:

**[Insert Date of Substantial Completion]**

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has caused this Borrower Certificate of Substantial Completion to be duly executed as of the date first written above.

\_\_\_\_\_  
BORROWER

\_\_\_\_\_  
BY

\_\_\_\_\_  
DATE OF ISSUANCE

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT [ ]**  
**FORM OF ARCHITECT CERTIFICATE OF SUBSTANTIAL COMPLETION**

**ARCHITECT CERTIFICATE OF SUBSTANTIAL COMPLETION**

**ARCHITECT:**

**PROJECT:**

**CONTRACT FOR CONSTRUCTION  
CONTRACT DATE:**

**TO LENDER:**

**TO GENERAL CONTRACTOR:**

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Capitalized terms used but not defined herein, shall have the meaning given to them in that certain Construction Loan Agreement, dated as of \_\_\_\_\_, 20\_\_, by and between [\_\_\_\_\_ LLC], as Lender (as defined therein) and [\_\_\_\_\_], ("**Borrower**").

Architect hereby certifies to Lender, that: (i) the work performed under the Construction Contract has been reviewed by Architect; (ii) the Contractor has achieved Substantial Completion in accordance with the Contract Documents; (iii) the work, as completed, is in compliance with all applicable laws; and (iv) all items necessary to establish achievement of Substantial Completion under the Construction Contract have been submitted to Lender, or are otherwise attached to this Certificate of Substantial Completion.

The date of Substantial Completion is:

**[Insert Date of Substantial Completion]**

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has caused this Architect Certificate of Substantial Completion to be duly executed as of the date first written above.

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ARCHITECT

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BY

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DATE OF ISSUANCE

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT [ ]**  
**FORM OF ARCHITECT CERTIFICATE OF FINAL COMPLETION**

**ARCHITECT'S CERTIFICATE OF FINAL COMPLETION**

**ARCHITECT:**

**PROJECT:**

**CONTRACT FOR CONSTRUCTION**

**CONTRACT DATE:**

**TO LENDER:**

**TO GENERAL CONTRACTOR:**

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Capitalized terms used but not defined herein shall have the meaning given to them in that certain Construction Loan Agreement, dated as of \_\_\_\_\_, 20\_\_, by and between [\_\_\_\_\_ LLC], as Lender (as defined therein), and [\_\_\_\_\_], ("**Borrower**").

Architect hereby certifies to Lender that: (i) the work performed under the Construction Contract has been reviewed by Architect; (ii) the Contractor has achieved Final Completion in accordance with the Contract Documents; (iii) the work, as completed, is in compliance with all applicable laws; and (iv) all items necessary to establish achievement of Final Completion and for final payment for the work related to the Property under the Construction Contract have been submitted to Lender, or are otherwise attached to this Certificate of Project Final Completion.

Architect further certifies that it has confirmed that the following events and conditions precedent to Final Completion and final payment under the Construction Contract have occurred or have been performed:

1. The Contractor has delivered to Lender the following:

a. an affidavit that to the extent of prior payments by Lender, payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Borrower's property might be responsible or encumbered (less amounts withheld by Lender) have been paid or otherwise satisfied;

b. a certificate evidencing that insurance required by the Construction Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Lender;

c. a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, consent of surety, if any, to final payment;

d. all final unconditional lien waivers and releases from the Contractor and its subcontractors; and

e. all as-built plans, operating and maintenance manuals and warranties (assigned to Lender).

2. Borrower has accepted the Work; and

The date of Final Completion is:

**[Insert Date of Final Completion]**

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has caused this Architect Certificate of Substantial Completion to be duly executed as of the date first written above.

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ARCHITECT

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BY

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DATE OF ISSUANCE





Schedule 3.36

Trade Contracts

Schedule 4.29(b)

Milestones

Milestone	Milestone Date

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## DEBT SERVICE AND CARRY GUARANTY

This **DEBT SERVICE AND CARRY GUARANTY** (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Guaranty**") is executed as of [\_\_\_\_\_] , 2023 by [\_\_\_\_\_] , a [\_\_\_\_\_] , having an address at [\_\_\_\_\_] (together with its successors and permitted assigns, "**Guarantor**"), for the benefit of [SCULPTOR LENDER ENTITY], a [\_\_\_\_\_] , having an address at [\_\_\_\_\_] (together with its successors and assigns, "**Lender**").

### R E C I T A L S:

A. Pursuant to that certain Loan Agreement dated as of the date hereof (as the same may be amended, modified, supplemented, restated or replaced from time to time, the "**Loan Agreement**") between [\_\_\_\_\_] , a [\_\_\_\_\_] limited liability company ("**Borrower**") and Lender, Lender has agreed to make a loan (the "**Loan**") to Borrower in the maximum principal amount of \$[\_\_\_\_\_] , subject to the terms and conditions of the Loan Agreement;

B. As a condition to Lender's making the Loan, Lender is requiring that Guarantor execute and deliver to Lender this Guaranty; and

C. Guarantor hereby acknowledges that Guarantor owns direct or indirect ownership interests in Borrower and, accordingly, Guarantor will materially benefit from Lender's agreeing to make the Loan;

**NOW, THEREFORE**, in consideration of the premises set forth herein and as an inducement for and in consideration of the agreement of Lender to make the Loan pursuant to the Loan Agreement, Guarantor hereby agrees, covenants, represents and warrants to Lender as follows:

#### 1. **Definitions.**

(a) All capitalized terms used and not defined herein shall have the respective meanings given to such terms in the Loan Agreement.

(b) The term "**Guaranteed Obligations**" means the obligations of Borrower for payment to the appropriate parties (or the reimbursement to Lender) of each of the following:

(i) (A) the payment of all Carry Costs, in each case as and when due in accordance with the Loan Documents [and (B) the deposits into the [Interest and Operating Expense Reserve Account] as and when due and/or payable in accordance with the Loan Agreement (regardless of whether the Maturity Date has occurred or there has been an acceleration of the Loan)]; and

(ii) the payment, at or before the times required by the Loan Documents, of all debt service payable under the Loan ("**Debt Service**") (including interest accruing at the non-Default Rate and interest accruing at the Default Rate, interest accruing after maturity, and interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding) and any related fees, penalties and late charges.

#### 2. **Guaranty.**

(a) Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Lender (i) the full, prompt and complete payment when due of the Guaranteed Obligations and (ii) to the extent applicable pursuant to the terms of the Loan Documents, the full, prompt and complete performance when required of the Guaranteed Obligations.

(b) All sums payable to Lender under this Guaranty shall be payable on demand and without reduction for any offset, claim, counterclaim or defense.

(c) Guarantor hereby agrees to pay, protect, indemnify, defend and save harmless Lender from and against any and all fees, out-of-pocket costs, losses, liabilities, obligations, claims, causes of action, suits, demands, judgments, expenses and damages, including reasonable attorneys' fees and disbursements, of any nature or description which Lender may suffer or incur, or which otherwise may arise in connection with the enforcement by Lender of this Guaranty and/or by reason of Borrower's failure to pay or perform any of the Guaranteed Obligations when due, irrespective of whether such fees, costs, losses, liabilities, claims, causes of action, expenses or damages are incurred by Lender prior or subsequent to (i) Lender's declaring the Principal, interest and other sums evidenced or secured by the Loan Documents to be due and payable, (ii) the commencement or completion of a judicial or non-judicial foreclosure of the Security Instrument or (iii) the conveyance of all or any portion of the Property by deed-in-lieu of foreclosure.

(d) Guarantor agrees that no portion of any sums applied (other than sums received from Guarantor in full or partial satisfaction of its obligations hereunder), from time to time, in reduction of the Debt shall be deemed to have been applied in reduction of the Guaranteed Obligations until such time as the Debt has been indefeasibly paid in full, or Guarantor shall have made the full payment required hereunder, it being the intention hereof that the Guaranteed Obligations shall be the last portion of the Debt to be deemed satisfied.

(e) Intentionally Left Blank.

(f) The liabilities of Guarantor under this Section 2 shall not be limited by the amount of the Loan, but shall be determined, solely by the cost of the Guaranteed Obligations and any other amounts payable to Lender pursuant to this Guaranty.

(g) If any action shall be brought against Lender based upon any of the matters for which Lender is indemnified hereunder, Lender shall notify Guarantor in writing thereof and Guarantor shall promptly assume the defense thereof, including the employment of counsel reasonably acceptable to Lender and the negotiation of any settlement; provided, however, that any failure of Lender to notify Guarantor of such matter shall not impair or reduce the obligations of Guarantor hereunder. Lender shall have the right, at the expense of Guarantor (which expense shall be included in the Guaranteed Obligations), to employ separate counsel in any such action and to participate in the defense thereof. In the event Guarantor shall fail to discharge or undertake to defend Lender against any claim, loss or liability for which Lender is indemnified hereunder, Lender may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Guarantor to Lender hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the out-of-pocket costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Lender in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in the Guaranteed Obligations and Guarantor shall pay the same as hereinafter provided. Lender's good faith in any such settlement shall be conclusively established if the settlement is made on the advice of independent legal counsel for Lender. Guarantor shall not, without the prior written consent of Lender: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to Lender of a full and complete written release of Lender (in form, scope and substance satisfactory to Lender in its sole discretion) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect Lender or obligate Lender to pay any sum or perform any obligation as determined by Lender in its sole discretion.

3. **Representations and Warranties.** Guarantor hereby represents and warrants to Lender as follows (which representations and warranties shall be given as of the date hereof and shall survive the execution and delivery of this Guaranty):

(a) **Organization, Authority and Execution.** Guarantor is a [ ] duly organized, validly existing and in good standing under the laws of the State of [ ], and Guarantor has all necessary power and authority to own its properties and to conduct its business as presently conducted or proposed to be conducted and to enter into and perform this Guaranty and all other agreements and instruments to be executed by it in connection herewith. This Guaranty has been duly executed and delivered by Guarantor.

(b) **Enforceability.** This Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

(c) **No Violation.** The execution, delivery and performance by Guarantor of its obligations under this Guaranty has been duly authorized by all necessary action, and do not and will not violate any law, regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to Guarantor, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the assets of Guarantor pursuant to the terms of Guarantor's articles of organization, or any mortgage, indenture, agreement or instrument to which Guarantor is a party or by which it or any of its properties is bound. Guarantor is not in default under any other guaranty which it has provided to Lender.

(d) **No Litigation.** There are no actions, suits or proceedings at law or at equity, pending or, to Guarantor's knowledge, threatened against or affecting Guarantor or which involve or might involve the validity or enforceability of this Guaranty or which might materially adversely affect the financial condition of Guarantor or the ability of Guarantor to perform any of its obligations under this Guaranty. Guarantor is not in default beyond any applicable grace or cure period with respect to any order, writ, injunction, decree or demand of any Governmental Authority which might materially adversely affect the financial condition of Guarantor or the ability of Guarantor to perform any of its obligations under this Guaranty.

(e) **Consents.** All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, all Governmental Authorities (collectively, the "**Consents**") that are required in connection with the valid execution,

delivery and performance by Guarantor of this Guaranty have been obtained and Guarantor agrees that all Consents required in connection with the carrying out or performance of any of Guarantor's obligations under this Guaranty will be obtained when required.

(f) **Financial Statements and Other Information.** All financial statements of Guarantor heretofore delivered to Lender are true and correct in all material respects and fairly present the financial condition of Guarantor as of the respective dates thereof, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. None of the aforesaid financial statements or any certificate or statement furnished to Lender by or on behalf of Guarantor in connection with the transactions contemplated hereby, and none of the representations and warranties in this Guaranty contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading. Guarantor is not insolvent within the meaning of the United States Bankruptcy Code or any other applicable law, code or regulation and the execution, delivery and performance of this Guaranty will not render Guarantor insolvent.

(g) **Consideration.** Guarantor is the owner, directly or indirectly, of certain legal and beneficial equity interests in Borrower.

(h) **ERISA.** Guarantor does not (i) sponsor or maintain any Employee Benefit Plan or (ii) make any contributions to or have any liabilities or obligations (direct or contingent) with respect to any Employee Benefit Plan. Guarantor does not, and would not be deemed to, hold Plan Assets, and the consummation of the transactions contemplated by this Guaranty will not constitute or result in any non-exempt prohibited transaction under Section 406 of ERISA, Section 4975 of the Code or substantially similar provisions under any other federal, state or local laws, rules or regulations that could reasonably be expected to subject Lender to any tax or penalty on prohibited transactions imposed under Section 4975 of the Code, Section 501(i) of ERISA or substantially similar provisions under any other federal, state or local laws, rules or regulations.

(i) **No Misstatements or Omissions.** This Guaranty, when taken together with the other Loan Documents and the other documents, certificates and statements furnished to Lender by Guarantor pursuant thereto does not contain any untrue statement of material fact and does not omit any fact material to this Guaranty or any other Loan Document or otherwise necessary to make any such statements not misleading. Guarantor has no knowledge of any material fact concerning any Borrower Party, any other guarantor, or its or their business or financial condition which has not been previously disclosed in writing to Lender.

(j) **Incorporation and Reaffirmation.** The representations and warranties applicable to Guarantor which are set forth in the Loan Agreement and the other Loan Documents are hereby incorporated into this Guaranty as if such representations and warranties were set forth in full herein, and Guarantor hereby ratifies and confirms the truth and accuracy of each such representation or warranty to the extent applicable to Guarantor individually.

4. **Financial Statements.** Guarantor shall deliver to Lender:

(a) all public filings of Guarantor, if any, within two (2) Business Days of such filing;

(b) within one hundred twenty (120) days after the end of each fiscal year of Guarantor, (i) a complete copy of Guarantor's annual financial statements audited by a "big four" accounting firm or another independent certified public accountant reasonably acceptable to Lender, including statements of income and expense and a balance sheet for Guarantor and (ii) a certificate of the chief financial officer of Guarantor (y) setting forth in reasonable detail the Net Worth (as defined below) and Liquid Assets (as defined below) of Guarantor as of the end of such prior fiscal year in form, content, level of detail and scope reasonably acceptable to Lender and (z) certifying that such annual financial statements are true, correct, accurate and complete in all material respects and fairly present the financial condition of Guarantor;

(c) within thirty (30) days after the end of each fiscal quarter of Guarantor (each a "**Quarterly Reporting Date**"), (i) quarterly financial statements of Guarantor (including (1) a balance sheet as of the end of such fiscal quarter, (2) a statement of income and expense for such fiscal quarter, (3) a statement of cash flow for such fiscal quarter and (4) a statement of change in financial position) and (ii) a certificate of the chief financial officer of the Guarantor (y) setting forth in reasonable detail the Net Worth (as defined below) and Liquid Assets (as defined below) of Guarantor as of the end of such prior fiscal quarter in form, content, level of detail and scope reasonably acceptable to Lender which shall include a certification that Guarantor has at least, **[on a combined basis,]** \$[ ] of Liquid Assets as of the date of such certification together with evidence thereof reasonably satisfactory to Lender and (z) certifying that such quarterly financial statements are true, correct, accurate and complete in all material respects and fairly present the financial condition of Guarantor; and

(d) within thirty (30) days after request by Lender, such other financial information, report and/or statement with respect to Guarantor as Lender may reasonably request.

5. **Unconditional Character of Obligations of Guarantor.**

(a) The obligations of Guarantor hereunder shall be irrevocable, absolute and unconditional, irrespective of the validity, regularity or enforceability, in whole or in part, of the other Loan Documents or any provision thereof, or the absence of any action to enforce the same, any waiver or consent with respect to any provision thereof, the recovery of any judgment against Borrower, Guarantor or any other Person or any action to enforce the same, any failure or delay in the enforcement of the obligations of Borrower under the other Loan Documents or Guarantor under this Guaranty, or any setoff or counterclaim, and irrespective of any other circumstances which might otherwise limit recourse against Guarantor by Lender or constitute a legal or equitable discharge or defense of a guarantor or surety. Lender may enforce the obligations of Guarantor under this Guaranty by a proceeding at law, in equity or otherwise, independent of any loan foreclosure or similar proceeding or any deficiency action against Borrower or any other Person at any time, either before or after an action against the Property or any part thereof, Borrower or any other Person. **This Guaranty is a guaranty of payment and performance and not merely a guaranty of collection.** If the Guaranteed Obligations are partially paid or discharged by reason of the exercise of any of the remedies available to Lender, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Guaranteed Obligations, even though any rights which Guarantor may have against Borrower may be destroyed or diminished by the exercise of any such remedy; and if the Guaranteed Obligations are otherwise partially paid or discharged for any reason, including voluntary payment or prepayment, application of insurance proceeds or condemnation awards, additional financing or refinancing, or sale of any collateral for the Loan or a portion thereof, with or without the consent or cooperation of Lender, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Guaranteed Obligations.

(b) The obligations of Guarantor under this Guaranty, and the rights of Lender to enforce the same by proceedings, whether by action at law, suit in equity or otherwise, shall not be in any way affected by any of the following:

(i) any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Borrower, the Property or any part thereof, Guarantor or any other Person;

(ii) any failure by Lender or any other Person, whether or not without fault on its part, to perform or comply with any of the terms of the Loan Agreement, or any other Loan Documents, or any document or instrument relating thereto;

(iii) the sale, transfer or conveyance of the Property or any interest therein to any Person, whether now or hereafter having or acquiring an interest in the Property or any interest therein and whether or not pursuant to any foreclosure, trustee sale, collateral sale pursuant to the Uniform Commercial Code or similar proceeding against Borrower or the Property or any interest therein;

(iv) the conveyance to Lender, any Affiliate of Lender or Lender's nominee of the Property or any interest therein by a deed-in-lieu of foreclosure;

(v) the release of Borrower or any other Person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law or otherwise;

(vi) the release in whole or in part of any collateral for any or all Guaranteed Obligations or for the Loan or any portion thereof;

(vii) the rejection or disaffirmance in any such proceeding of any of the Guaranteed Obligations;

(viii) any disability or defense of Borrower [or Pledgor];

(ix) any disability or defense of any kind now existing of Guarantor with respect to any provision of this Guaranty;

(x) the cessation of the liability of Borrower [or Pledgor] for any cause whatsoever; or

(xi) any rights or defenses arising by reason of any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or if permitted by applicable law by exercise of a power of sale.

(c) Except as otherwise specifically provided in this Guaranty, and to the extent permitted by law, Guarantor hereby expressly and irrevocably waives and agrees not to assert or take advantage of (as a defense or otherwise):

- (i) Any defense based upon diligence, notice of acceptance of this Guaranty, filing of claims with any court, or any proceeding to enforce any provision of any other Loan Document, against Guarantor, Borrower or any other Person;
- (ii) All defenses in an action brought by Lender to enforce this Guaranty based on claims of waiver, release, surrender, alteration or compromise and all setoffs, reductions, or impairments, whether arising hereunder or otherwise;
- (iii) Any right to require Lender to proceed against Borrower or any other Person or to proceed against or exhaust any security (including the Property) held by Lender at any time or to pursue any other remedy in Lender's power or under any other agreement before proceeding against Guarantor hereunder;
- (iv) The defense of the statute of limitations in any action hereunder;
- (v) Any defense that may arise by reason of the incapacity, lack of authority, death, dissolution or disability of any other Person or Persons or entity or the failure of Lender to file or enforce a claim against the estate (including in any Bankruptcy Proceeding) of any other Person or Persons;
- (vi) Any failure on the part of Lender to ascertain the extent or nature of any property (whether real or personal), rights, estates and interests now or at any time hereafter securing the payment of the Note and/or the other obligations of Borrower under the Loan Documents whether held by Lender or by any Person or entity on Lender's behalf or for Lender's account (the "**Secured Collateral**") or any insurance or other rights with respect thereto, or the liability of any party liable for the Loan Documents or the obligations evidenced or secured thereby;
- (vii) Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Lender, any endorser or creditor of Borrower or of Guarantor or on the part of any other Person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Lender;
- (viii) Any defense based upon an election of remedies by Lender;
- (ix) Any right or claim of right to cause a marshalling of the assets of Guarantor;
- (x) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty;
- (xi) Any duty on the part of Lender to disclose to Guarantor any facts Lender may now or hereafter know about Borrower or the Property, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or have reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower, of the condition of the Property and of any and all circumstances bearing on the risk that liability may be incurred by Guarantor hereunder;
- (xii) Any lack of notice of disposition or of manner of disposition of any Secured Collateral;
- (xiii) Failure to properly record any document or any other lack of due diligence by Lender in creating or perfecting a security interest in or collection, protection or realization upon any Secured Collateral or in obtaining reimbursement or performance from any Person or entity now or hereafter liable for the Loan Documents or any obligation secured thereby;
- (xiv) The inaccuracy of any representation or other provision contained in any Loan Document;
- (xv) Any sale or assignment of the Loan Documents, or any interest therein;
- (xvi) Any sale or assignment by Borrower of any Secured Collateral, or any portion thereof or interest therein, whether or not consented to by Lender;
- (xvii) Any lack of commercial reasonableness in dealing with any Secured Collateral;



(xviii) Any deficiencies in any Secured Collateral or any deficiency in the ability of Lender to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereby guaranteed;

(xix) An assertion or claim that the automatic stay provided by 11 U.S.C. § 362 (arising upon a Bankruptcy Proceeding of Borrower) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any of its rights, whether now or hereafter acquired, which Lender may have against Guarantor or any Secured Collateral;

(xx) Any modifications of the Loan Documents or any obligation of Borrower relating to the Loan by operation of law or by action of any court, whether pursuant to any Bankruptcy Proceeding, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise;

(xxi) Any change in the composition of Borrower, including the withdrawal or removal of Guarantor from any current or future position of ownership, management or control of Borrower; and

(xxii) Any action, occurrence, event or matter consented to by Guarantor under any other provision hereof, or otherwise.

(d) Lender may deal with Borrower and Affiliates of Borrower in the same manner and as freely as if this Guaranty did not exist and shall be entitled, among other things, to grant Borrower or any other Person such extension or extensions of time to perform any act or acts as may be deemed advisable by Lender, at any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of Guarantor hereunder.

(e) No compromise, alteration, amendment, modification, extension, renewal, release or other change of, or waiver, consent, delay, omission, failure to act or other action with respect to, any liability or obligation under or with respect to, or of any of the terms, covenants or conditions of, the Loan Documents shall in any way alter, impair or affect any of the obligations of Guarantor hereunder, and Guarantor agrees that if any Loan Document is modified with Lender's consent, the Guaranteed Obligations shall automatically be deemed modified to include such modifications.

(f) Lender may proceed to protect and enforce any or all of its rights, powers, and remedies under this Guaranty by suit in equity or action at law (including foreclosure of all or any portion of the collateral for the Loan), whether for the specific performance of any covenants or agreements contained in this Guaranty or otherwise, or to take any action authorized or permitted under applicable law (in any order), and shall be entitled to require and enforce the performance of all acts and things required to be performed hereunder by Guarantor. Each and every remedy of Lender shall, to the extent permitted by law, be non-exclusive and cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

(g) No waiver shall be deemed to have been made by Lender of any rights hereunder unless the same shall be in writing and signed by Lender, and any such waiver shall be a waiver only with respect to the specific matter involved and shall in no way impair the rights of Lender or the obligations of Guarantor to Lender in any other respect or at any other time.

(h) At the option of Lender, Guarantor may be joined in any action or proceeding commenced by Lender against Borrower in connection with or based upon any other Loan Documents and recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor to the extent of Guarantor's liability hereunder, without any requirement that Lender first assert, prosecute or exhaust any remedy or claim against Borrower or any other Person, or any security for the obligations of Borrower or any other Person.

(i) Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment is made by Borrower or Guarantor to Lender and such payment is rescinded or otherwise returned by Lender (as determined by Lender in its sole and absolute discretion) in connection with any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Borrower or Guarantor, all as though such payment had not been made.

(j) In the event that Guarantor shall advance or become obligated to pay any sums under this Guaranty or in connection with the Guaranteed Obligations or in the event that for any reason whatsoever Borrower or any subsequent owner of the Property or any part thereof is now, or shall hereafter become, indebted to Guarantor, Guarantor agrees that (i) the amount of such sums and of such indebtedness and all interest thereon shall at all times be subordinate as to lien, the time of payment and in all other respects to all sums, including Principal and interest and other amounts, at any time owed to Lender under the Loan Documents, and (ii) Guarantor shall not be entitled to enforce or receive payment thereof until all Principal, interest and other sums due pursuant to the

Loan Documents have been indefeasibly paid in full. Nothing herein contained is intended or shall be construed to give Guarantor any rights of subrogation in or under the Loan Documents or any right to participate in any way therein, or in the right, title or interest of Lender in or to any collateral for the Loan, notwithstanding any payments made by Guarantor under this Guaranty, until the expiration of ninety-one (91) days following the actual and irrevocable receipt by Lender of indefeasible payment in full of all Principal, interest and other sums due with respect to the Loan or otherwise payable under the Loan Documents. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when any such sums due and owing to Lender shall not have been fully and indefeasibly paid, such amount shall be paid by Guarantor to Lender for credit and application against such sums due and owing to Lender. In connection with the foregoing, Guarantor expressly waives, until the expiration of ninety-one (91) days following such indefeasible payment, any and all rights of subrogation to Lender against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Lender may have against Borrower and any right to participate in any Secured Collateral.

(k) Guarantor's obligations hereunder shall survive a foreclosure, deed-in-lieu of foreclosure or similar proceeding involving the Property and the exercise by Lender of any or all of its remedies pursuant to the Loan Documents.

(l) Guarantor shall not have any right of recourse against Lender by reason of any action Lender may take or omit to take under the provisions of this Guaranty or under the provisions of any of the Loan Documents.

## 6. Covenants.

(a) As used in this Section 6, the following terms shall have the respective meanings set forth below:

(i) "**GAAP**" shall mean generally accepted accounting principles, consistently applied.

(ii) "**Liquid Assets**" shall mean any of the following: assets in the form of cash, cash equivalents, obligations of (or fully guaranteed as to principal and interest by) the United States or any agency or instrumentality thereof (provided the full faith and credit of the United States supports such obligation or guarantee), certificates of deposit issued by a commercial bank having net assets of not less than \$500 million, securities listed and traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations, or liquid debt instruments that have a readily ascertainable value and are regularly traded in a recognized financial market.

(iii) "**Net Worth**" shall mean, as of a given date, (x) Guarantor's total assets owned individually (exclusive of any interest in the Property, receivables from affiliates, cryptocurrencies and related investments, patent rights, trademarks, trade names, franchises, copyrights, licenses, goodwill and other intangible assets and deferred and prepaid expenses) less (y) Guarantor's total liabilities as of such date, determined in accordance with GAAP.

(b) Until all of the Guaranteed Obligations have been paid in full, Guarantor (i) shall collectively maintain (A) a Net Worth in excess of [\$ \_\_\_\_\_] (the "**Net Worth Threshold**") and (B) Liquid Assets having a market value of at least [\$ \_\_\_\_\_] (the "**Liquid Assets Threshold**"), and (ii) shall not sell, pledge, mortgage or otherwise transfer any of its assets, or any interest therein, which would cause Guarantor's Net Worth to fall below the Net Worth Threshold or Guarantor's Liquid Assets to fall below the Liquid Assets Threshold.

(c) Guarantor shall not, at any time while a default in the payment or performance of the Guaranteed Obligations has occurred and is continuing, either (i) enter into or effectuate any transaction with any Affiliate which would reduce the Net Worth of Guarantor (including the payment of any dividend or distribution to a shareholder, or the redemption, retirement, purchase or other acquisition for consideration of any stock or interest in Guarantor) or (ii) sell, pledge, mortgage or otherwise transfer to any Person any of Guarantor's assets, or any interest therein.

(d) Guarantor shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and all rights, licenses, permits, franchises and all applicable governmental authorizations necessary for the operation of its business and comply with all Legal Requirements applicable to it and its assets. Guarantor shall not engage in any dissolution, liquidation or consolidation or merger with or into any other business entity without obtaining the prior consent of Lender. Guarantor shall not change its name, identity (including its trade name or names) or Guarantor'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.

(e) Guarantor shall give prompt notice to Lender of any litigation or governmental proceedings pending or threatened against Guarantor which might materially adversely affect Guarantor's condition (financial or otherwise) or business (including Guarantor's ability to perform the Guaranteed Obligations hereunder or under the other Loan Documents to which it is a party).

(f) Guarantor will comply with the Patriot Act and use its good faith and commercially reasonable efforts to comply with all other applicable requirements of Governmental Authorities having jurisdiction over Guarantor, including those relating to money laundering and terrorism.

(g) Guarantor shall, at Guarantor's sole cost and expense:

(i) cure any defects in the execution and delivery of the Loan Documents to which Guarantor is a party and 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 correct any omissions in the Loan Documents to which Guarantor is a party, as Lender may reasonably require; and

(ii) 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 Guaranty and the other Loan Documents to which Guarantor is a party, as Lender may reasonably require from time to time.

7. **Entire Agreement/Amendments.** This instrument represents the entire agreement between the parties with respect to the subject matter hereof. The terms of this Guaranty shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by Lender and Guarantor.

8. **Successors and Assigns.** This Guaranty shall be binding upon Guarantor, and Guarantor's estate, heirs, personal representatives, successors and assigns, may not be assigned or delegated by Guarantor and shall inure to the benefit of Lender and its successors and assigns.

9. **Governing Law.**

(a) THIS GUARANTY WAS NEGOTIATED IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT TO THE LOAN AGREEMENT WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS GUARANTY AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, GUARANTOR AND LENDER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS GUARANTY AND THE NOTE, AND THIS GUARANTY AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 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 SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK COUNTY, NEW YORK AND GUARANTOR AND LENDER EACH WAIVE ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR AND LENDER EACH HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GUARANTOR AGREES THAT SERVICE OF PROCESS UPON GUARANTOR AT THE ADDRESS FOR GUARANTOR SET FORTH HEREIN 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 (UNLESS LOCAL LAW REQUIRES ANOTHER METHOD OF SERVICE) IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. GUARANTOR (i) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGE IN THE ADDRESS FOR GUARANTOR SET FORTH HEREIN, (ii) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE AN AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (iii) SHALL PROMPTLY DESIGNATE AN AUTHORIZED AGENT IF GUARANTOR CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK. NOTWITHSTANDING THE FOREGOING, LENDER SHALL HAVE THE RIGHT TO INSTITUTE ANY LEGAL SUIT, ACTION OR PROCEEDING FOR THE ENFORCEMENT OR FORECLOSURE OF ANY LIEN ON ANY SECURED COLLATERAL FOR THE LOAN IN ANY FEDERAL OR STATE COURT IN ANY JURISDICTION(S) THAT LENDER MAY ELECT IN ITS SOLE AND ABSOLUTE DISCRETION, AND GUARANTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR AND LENDER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

10. **Section Headings.** The headings of the sections and paragraphs of this Guaranty have been inserted for convenience of reference only and shall in no way define, modify, limit or amplify any of the terms or provisions hereof.

11. **Severability.** Any provision of this Guaranty which may be determined by any competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Guarantor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

12. **WAIVER OF TRIAL BY JURY.** GUARANTOR AND LENDER EACH HEREBY WAIVE THE RIGHT OF TRIAL BY JURY IN ANY LITIGATION, ACTION OR PROCEEDING ARISING HEREUNDER OR IN CONNECTION THEREWITH.

13. **WAIVER OF SPECIAL DAMAGES.** Guarantor agrees that Lender shall have no liability to Guarantor (whether sounding in tort, contract or otherwise) for losses suffered by Guarantor in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless such losses result from the gross negligence or willful misconduct of the party from which recovery is sought or from a breach of any Loan Document by such party. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, NO GUARANTOR SHALL ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS GUARANTY OR ANY OTHER LOAN DOCUMENT, THE OBLIGATIONS OR THE USE OF THE PROCEEDS THEREOF.

14. **Other Guaranties.** The obligations of Guarantor hereunder are separate and distinct from, and in addition to (and shall not be limited by), the obligations of Guarantor now or hereafter arising under any other guaranties, including the Guaranty of Recourse Obligations and the Guaranty of Completion (collectively, the “*Other Guaranties*”), indemnification agreements or other agreements to which Guarantor is now or hereafter becomes a party. Lender’s enforcement hereof, and receipt of any amounts hereunder with respect to the Guaranteed Obligations, shall not be limited by (a) any recovery of Lender under any of the Other Guaranties, (b) the receipt by Lender of any amounts paid by Borrower or any other Person (other than a payment by Guarantor of a claim expressly made by Lender pursuant to this Guaranty) to Lender with respect to the Debt, or (c) any recovery of Lender under any of the other Loan Documents or any realization by Lender on any collateral for the Loan, provided that, notwithstanding anything to the contrary contained herein, if there are any “Guaranteed Obligations” hereunder that are also “Guaranteed Obligations” under any of the Other Guaranties, Lender may only collect such “Guaranteed Obligations” once, although Lender may elect in its sole discretion whether to collect such “Guaranteed Obligations” under this Guaranty or under such Other Guaranty.

15. **Notices.** All notices, consents, approvals and requests required or permitted hereunder (a “*Notice*”) shall be given in writing and shall be effective for all purposes if (a) (i) hand delivered with receipt acknowledged, (ii) sent by nationally recognized overnight delivery service (such as Federal Express), or (iii) sent by certified or registered United States mail, return receipt requested, postage prepaid, and (b) sent by electronic mail (with a copy delivered by one of the other methods provided for in this Section 15), in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party):

If to Lender: [\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
E-Mail: [\_\_\_\_\_]

With a copy to: Reed Smith LLP
599 Lexington Avenue
New York, New York 10022
Attn: Randy Eckers, Esq.
Email: reckers@reedsmith.com

If to Guarantor: [\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
E-Mail: [\_\_\_\_\_]

with a copy to:

[ ]  
[ ]  
[ ]  
Attention: [ ]  
E-Mail: [ ]

Provided Notice was given in accordance with the requirements set forth above, a Notice shall be deemed to have been given: (A) in the case of hand delivery, at the time of delivery; (B) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (C) in the case of overnight delivery, upon the first attempted delivery on a Business Day; or (D) in the case of electronic mail, upon the date of receipt.

16. **Guarantor's Receipt of Loan Documents.** Guarantor by its execution hereof acknowledges receipt of true copies of all of the Loan Documents, the terms and conditions of which are hereby incorporated herein by reference.

17. **Interest; Expenses.**

(a) If Guarantor fails to pay all or any sums due hereunder within ten (10) Business Days following written demand by Lender, the amount of such sums payable by Guarantor to Lender shall bear interest from the date of demand until paid at the Default Rate in effect from time to time.

(b) Guarantor hereby agrees to pay all out-of-pocket costs, charges and expenses, including reasonable attorneys' fees and disbursements, that may be incurred by Lender in enforcing the covenants, agreements, obligations and liabilities of Guarantor under this Guaranty.

18. **Intentionally Left Blank.**

19. **Intentionally Left Blank.**

20. **Gender; Number; General Definitions.** All references to sections and schedules are to sections and schedules in or to this Guaranty unless otherwise specified. All uses of the word "including" or "include" or similar words shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty. 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. The phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable 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 and/or in enforcing its rights hereunder.

21. **Intentionally Left Blank.**

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

23. **CPLR Section 3213.** Guarantor acknowledges and agrees that this Guaranty is, and is intended to be, an instrument for the payment of money only, as such phrase is used in Section 3213 of the New York Civil Practice Law and Rules, and Guarantor has been fully advised by its counsel of Lender's rights and remedies pursuant to said Section 3213.

24. **Assignment by Lender.** Lender may from time to time, without notice to Guarantor, assign, participate, syndicate or transfer any interest in Guarantor's Guaranteed Obligations by loan participation or otherwise, in whole or in part, and notwithstanding such assignment or transfer, Guarantor's Liabilities shall remain Guaranteed Obligations for purposes of this Guaranty. In such event, each assignee, transferee, or holder of all or any part of the Loan may enforce this Guaranty, but Lender shall have an unimpaired right to enforce this Guaranty for its benefit as to any portion of the Loan that Lender retains. If Lender pledges or assigns the Note to any creditor as security for an obligation of Lender, such creditor may enforce this Guaranty to the same extent as would have been enforceable by Lender but for such pledge or assignment; provided, however, that unless Lender otherwise consents in writing, Lender shall have an unimpaired right, prior and superior to that of its creditor, to enforce this Guaranty for Lender's benefit to the extent any portion of the indebtedness or any interest therein is not pledged or assigned. Guarantor shall cooperate with Lender in effectuating any secondary market transactions.



25. **Payments Held in Trust.** In the event that, notwithstanding anything to the contrary in this Guaranty, Guarantor should receive any funds, payment, claim or distribution which by this Guaranty is required to be paid to Lender, Guarantor agrees to hold in trust for Lender an amount equal to the amount of all funds, payments, claims or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions so received except to pay them promptly to Lender, and Guarantor covenants promptly to pay the same to Lender.

26. **Certain Permitted Actions of Lender.** Lender may from time to time, in its sole discretion and without notice to Guarantor, take any of the following actions without in any way affecting the obligations of Guarantor hereunder or under any other Loan Document to which Guarantor is a party: (a) obtain a security interest in any property of Borrower [or Pledgor] to secure any of the Guaranteed Obligations or any other obligation hereunder, if any; (b) obtain the primary or secondary obligation of any additional obligor or obligors with respect to any of the Guaranteed Obligations; (c) extend, modify, subordinate, exchange or release any of the Guaranteed Obligations; (d) modify, subordinate, exchange or release its security interest in any part of property of Borrower [or Pledgor], if any, securing any of the Guaranteed Obligations or any other obligation hereunder, or extend, modify, subordinate, exchange or release any obligations of any obligor with respect to any such property; (e) alter the manner or place of payment of the Guaranteed Obligations; (f) enforce this Guaranty against Guarantor for payment or performance of any of the Guaranteed Obligations, whether or not Lender shall have (A) proceeded against Borrower or any other party primarily or secondarily obligated with respect to any of the Guaranteed Obligations or (B) resorted to or exhausted any other remedy or any other security or collateral; and (g) foreclose on, take possession of or sell any of the collateral or security for the Guaranteed Obligations or enforce any other rights under any other Loan Document.

27. **Lender's Option to Release any Obligor.** Lender may from time to time in its sole discretion release Borrower, Guarantor or any other obligor from any of the Guaranteed Obligations without notice to any other party and without in any way releasing or affecting the liability of any remaining Guarantor hereunder.

28. **Application of Payments.** Lender may apply any payment made on account of the Guaranteed Obligations toward Guaranteed Obligations, and in such order, as Lender may from time to time elect in its sole discretion.

29. **Joint and Several Obligations; Successors and Assigns.** All obligations under this Guaranty are joint and several to each Guarantor (if more than one) and any other party which hereafter guarantees any portion of the Guaranteed Obligations, and shall be binding upon each of them and their respective heirs, legal representatives, successors and assigns.

30. **Multiple Guarantors.** If (i) this Guaranty is executed by more than one party constituting Guarantor, it is specifically agreed that Lender may enforce the provisions hereof with respect to one or more of such parties constituting Guarantor without seeking to enforce the same as to all or any such parties; or (ii) one or more additional guaranty agreements ("Other Guaranties") are executed by one or more additional guarantors ("Other Guarantors"), which guaranty, in whole or in part, any of the indebtedness or obligations evidenced by the Loan Documents, it is specifically agreed that Lender may enforce the provisions of this Guaranty and/or of the Other Guaranties with respect to one or more of the parties constituting Guarantor and/or one or more of the Other Guarantors under the Other Guaranties without seeking to enforce the provisions of this Guaranty or the Other Guaranties as to all or any of the parties constituting Guarantor or the Other Guarantors. Each of the parties constituting Guarantor hereby waives any requirement of joinder (and shall not seek joinder) of all or any other of the parties constituting Guarantor or all or any of the Other Guarantors in any suit or proceeding to enforce the provisions of this Guaranty or of the Other Guaranties. The liability hereunder of all parties constituting Guarantor shall be joint and several. Until all obligations of Guarantors under this Guaranty have been performed and paid in full, each Guarantor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under the federal Bankruptcy Code or any successor statute, that such Guarantor may now or hereafter have against any Other Guarantor. Each Guarantor hereby waives any election of remedies by Lender that impairs any subrogation or other right of such Guarantor to proceed against any Other Guarantor.

31. **Time of Essence.** Time is of the essence in connection with all obligations of Guarantor under this Guaranty.

32. **Independent Obligations.** The obligations of Guarantor hereunder are independent of the obligations of Borrower. In the event of any default hereunder, Lender may institute a separate action against any Guarantor with or without joining or instituting a separate action against Borrower or any other obligor.

33. **State-Specific Provision.** In the event of any inconsistencies between the terms and conditions of this Section 33 and the other terms and conditions of this Guaranty, the terms and conditions of this Section 33 shall control and be binding. [NTD: Local Counsel to advise.]

**[NO FURTHER TEXT ON THIS PAGE]**

**IN WITNESS WHEREOF**, Guarantor has executed this Guaranty as of the date first above written.

**GUARANTOR:**

[Signature pages sent separately]



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## GUARANTY OF COMPLETION

This **GUARANTY OF COMPLETION** (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Guaranty**"), dated as of [\_\_\_\_\_] , 2023, made by [\_\_\_\_\_] , a [\_\_\_\_\_] , having an address at [\_\_\_\_\_] ("**Guarantor**"), in favor of [SCULPTOR LENDER ENTITY], a [\_\_\_\_\_] , having an address [\_\_\_\_\_] (together with its successors and assigns, "**Lender**").

### R E C I T A L S:

A. Pursuant to that certain Loan Agreement dated as of the date hereof (as the same may be amended, modified, supplemented, restated or replaced from time to time, the "**Loan Agreement**") between [\_\_\_\_\_] , a [\_\_\_\_\_] limited liability company ("**Borrower**") and Lender, Lender has agreed to make a loan (the "**Loan**") to Borrower in the [maximum] principal amount of \$[\_\_\_\_\_] , subject to the terms and conditions of the Loan Agreement;

B. As a condition to Lender making the Loan, Lender is requiring that Guarantor execute and deliver to Lender this Guaranty; and

C. Guarantor hereby acknowledges that Guarantor owns direct or indirect ownership interests in Borrower and, accordingly, Guarantor will materially benefit from Lender agreeing to make the Loan;

**NOW, THEREFORE**, in consideration of the premises set forth herein and as an inducement for and in consideration of the agreement of Lender to make the Loan pursuant to the Loan Agreement, Guarantor hereby agrees, covenants, represents and warrants to Lender as follows:

### **1. Definitions.**

(a) All capitalized terms used and not defined herein shall have the respective meanings given to such terms in the Loan Agreement.

(b) The term "**Guaranteed Obligations**" means the obligations of Borrower:

(i) To cause the full, complete and punctual observance, performance, satisfaction of all of the obligations, duties, covenants and agreements of Borrower under the Loan Documents with respect to Construction Completion and any other Capital Expenditures, alterations or renovation work initiated at the Property.

(ii) To cause the Lien-Free Construction Completion in accordance with (1) the Plans and Specifications for the Improvements approved by Lender pursuant to the Loan Documents, (2) all Legal Requirements, (3) the time periods and other requirements, terms and provisions of the Loan Documents.

(iii) To cause any Liens (including, without limitation, any mechanics' or materialmen's liens) entered or filed against the Property, or any portion of the Property, in connection with the Project to be removed or bonded on or before the date Borrower is required to do so pursuant to the Loan Documents.

(iv) With respect to any Lien entered or filed against the Property, or any portion of the Property, in connection with the Project and not timely removed or bonded to the extent required pursuant to clause (ii) above, to fully reimburse Lender, within five (5) Business Days after written demand by Lender, for any and all sums expended or incurred by Lender to pay or discharge any such Liens, including any and all actual out-of-pocket costs, interest, damages, expenses and reasonable attorneys' fees that Lender Servicer actually incurs by reason thereof, and procure an endorsement(s) to the title policy insuring Lender against the consequences of the foreclosure or enforcement of such Lien(s), all within the time period required pursuant to the Loan Agreement.

(v) To pay all cost overruns and other sums incurred in completing the Work pursuant to the Lender approved Plans and Specifications therefor and the other requirements set forth in the Loan Documents, or otherwise in excess of the amount available for such purposes set forth in the applicable Work line item in the Construction Budget.

(vi) To pay the premiums for all policies of insurance required pursuant to the Loan Agreement during the performance of the Work.

(vii) To deposit the required [\_\_\_\_\_] Balancing Payment] amounts within the time period set forth in Section [\_\_\_\_\_] of the Loan Agreement.

(viii) If an Event of Default occurs prior to Lien-Free Construction Completion, to pay to Lender, within five (5) Business Days of demand by Lender, an amount (determined as of any date selected by Lender in its sole discretion, which shall be no earlier than the date of such Event of Default) equal to the amount by which, as of the date in question (such amount being referred to herein as the “*Liquidated Overrun Amount*”):

(A) the aggregate amount of all (1) Hard Costs, Soft Costs, Carry Costs and debt service payable under the Loan (“*Debt Service*”) that would be reasonably required as of such date to be paid in order to achieve Lien-Free Construction Completion plus (2) as to any portion of the Property subject to one or more Leases, all costs of all tenant improvement work or tenant improvement allowances and leasing commission costs (“*TI/LC Costs*”) associated with Leases at the Property that pursuant to the terms of such Lease(s) would be reasonably required as of such date to be paid in order to achieve Lien-Free Construction Completion (in each case as determined by Lender in consultation with Construction Consultant), including, in each case, those Hard Costs, Soft Costs, Carry Costs and Debt Service occasioned by, or arising as a result of, any Event of Default (even if any such items of Hard Costs, Soft Costs, Carry Costs and Debt Service are not included in the Approved Outstanding Construction Expense Budget); exceeds

(B) the sum of an amount equal to the undisbursed Loan proceeds and reserves allocated to the Outstanding Construction Expenses Subaccount, Carry Costs and Debt Service as of such date of determination.

For purposes of the preceding clause (viii)(A), (x) Hard Costs and Soft Costs shall be equal to the amount of such Hard Costs and Soft Costs as estimated by Lender (or its Construction Consultant) in its good faith discretion and approved by Lender and any such amount estimated by Construction Consultant shall, in the absence of manifest error, be conclusive and binding on Guarantor for purposes of determining Guarantor’s liability under this clause (viii) and (y) Carry Costs and Debt Service shall be determined in good faith by Lender based on the period of time that Construction Consultant estimates it would take for Lender with the exercise of reasonable diligence to achieve Lien-Free Construction Completion given all relevant factors (and assuming for such purpose that Lender were to seek to undertake same, regardless of whether Lender actually intends to undertake same), and any such amounts so determined by Lender shall, in the absence of manifest error, be conclusive and binding on Guarantor.

Guarantor agrees that the following provisions shall in all events govern Guarantor’s obligations under this clause (viii):

(I) Guarantor shall be liable to pay to Lender the Liquidated Overrun Amount regardless of whether or not Lender or its affiliate intends to complete the Project and whether or not Lender or its affiliate actually completes the Project;

(II) Subject to clause (IV) below, Guarantor’s liability to pay to Lender the Liquidated Overrun Amount shall survive (and shall not be released, reduced or otherwise impaired by reason of) any conveyance of the Property to Lender or to any other Person (whether or not such other Person is affiliated with Lender) pursuant to any foreclosure of the Property or deed-in-lieu thereof or otherwise or any discharge of Borrower in a Bankruptcy Proceeding;

(III) Guarantor’s liability to pay to Lender the Liquidated Overrun Amount shall not be released, reduced or otherwise impaired by reason of the fact that completion of the Project (were it to be completed) would increase the value of the Property by less than the Liquidated Overrun Amount or not at all, it being agreed that the amount to be paid by Guarantor pursuant to this clause (viii) is intended to constitute *liquidated damages* for Borrower’s failure to complete the Project as required under the Loan Documents;

(IV) If the Property is sold to a third party unaffiliated with Lender pursuant to a sale of the Property by reason of foreclosure of the Security Instrument or conveyance in-lieu thereof (including in a Bankruptcy Proceeding), then Guarantor’s liability under this clause (viii) shall not exceed Lender’s deficiency resulting from such foreclosure (such deficiency to be calculated without regard to any modification of the Loan Documents entered into without the consent of Lender in connection with any Bankruptcy Proceeding) together with, without duplication, any other unreimbursed amounts due to the Lender hereunder or under any of the other Loan Documents; and

(V) If Lender or its affiliate acquires title to the Property by reason of the exercise of remedies, including any foreclosure of the Property or deed-in-lieu thereof (including in a Bankruptcy Proceeding), then, to the maximum extent permitted by law, Guarantor’s liability under this clause (viii) shall not be released, reduced or otherwise impaired by reason of any determination that the deficiency resulting from any such foreclosure is less than the Liquidated Overrun Amount, it being agreed that the amount to be paid by Guarantor pursuant to this clause (viii) is intended to constitute *liquidated damages* for Borrower’s failure

to complete the Project as required under the Loan Documents (it being agreed that Lender's ultimate loss by reason of Borrower's failure to complete the Project in the circumstance described in this clause (V) is not possible to ascertain with certainty at the time of such acquisition of title to the Property or to the Collateral, and Guarantor and Lender have agreed that the Liquidated Overrun Amount is fair and reasonable compensation to Lender under such circumstances regardless of the amount or how such amount relates to the amount of any deficiency).

(ix) To reimburse Lender, within five (5) Business Days of demand by Lender, for (a) any Hard Costs, Softs Costs, Carry Costs or other payments made by Lender toward completing the Project and (b) any TI/LC Costs or other payments made by lender toward completion of any tenant improvement work, provided that Guarantor shall not be obligated to pay any of the foregoing amounts to Lender if and to the extent Guarantor has then already paid the Liquidated Overrun Amount to Lender and such foregoing amounts described in this clause (ix) were taken into account in calculating the amount described in Section 1(b)(viii)(A) hereof.

(x) To fully indemnify, defend and hold harmless Lender and its Construction Consultant from and against any and all actual out-of-pocket costs, claims, actions, causes of action, losses, liabilities or expenses, including reasonable attorneys' fees and court costs and damages arising out of any claim made against Lender by any Person that directly or indirectly relates to or results or arises from the construction of the Project, except to the extent arising solely from the gross negligence or willful misconduct of Lender, Servicer or a Person acting at the direction of Lender.

## **2. Guarantor's Agreement.**

(a) Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Lender (i) the full, prompt and complete payment when due of the Guaranteed Obligations and (ii) to the extent applicable pursuant to the terms of the Loan Documents, the full, prompt and complete performance when required of the Guaranteed Obligations, in each case, at Guarantor's sole cost and expense.

(b) All sums payable to Lender under this Guaranty shall be payable on demand and without reduction for any offset, claim, counterclaim or defense.

(c) Guarantor hereby agrees to pay, protect, indemnify, defend and save harmless Lender from and against any and all fees, out-of-pocket costs, losses, liabilities, obligations, claims, causes of action, suits, demands, judgments, expenses and damages, including reasonable attorneys' fees and disbursements, of any nature or description which Lender may suffer or incur, or which otherwise may arise in connection with the enforcement by Lender of this Guaranty and/or by reason of Borrower's failure to pay or perform any of the Guaranteed Obligations when due, irrespective of whether such fees, costs, losses, liabilities, claims, causes of action, expenses or damages are incurred by Lender prior or subsequent to (i) Lender's declaring the Principal, interest and other sums evidenced or secured by the Loan Documents to be due and payable, (ii) the commencement or completion of a judicial or non-judicial foreclosure of the Security Instrument or (iii) the conveyance of all or any portion of the Property by deed-in-lieu of foreclosure.

(d) Guarantor agrees that no portion of any sums applied (other than sums received from Guarantor in full or partial satisfaction of its obligations hereunder), from time to time, in reduction of the Debt shall be deemed to have been applied in reduction of the Guaranteed Obligations until such time as the Debt has been indefeasibly paid in full, or Guarantor shall have made the full payment required hereunder, it being the intention hereof that the Guaranteed Obligations shall be the last portion of the Debt to be deemed satisfied.

(e) Intentionally Left Blank.

(f) The liabilities of Guarantor under this Section 2 shall not be limited by the amount of the Loan, but shall be determined, solely by the cost of the Guaranteed Obligations and any other amounts payable to Lender pursuant to this Guaranty.

(g) If any action shall be brought against Lender based upon any of the matters for which Lender is indemnified hereunder, Lender shall notify Guarantor in writing thereof and Guarantor shall promptly assume the defense thereof, including the employment of counsel reasonably acceptable to Lender and the negotiation of any settlement; provided, however, that any failure of Lender to notify Guarantor of such matter shall not impair or reduce the obligations of Guarantor hereunder. Lender shall have the right, at the expense of Guarantor (which expense shall be included in the Guaranteed Obligations), to employ separate counsel in any such action and to participate in the defense thereof. In the event Guarantor shall fail to discharge or undertake to defend Lender against any claim, loss or liability for which Lender is indemnified hereunder, Lender may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Guarantor to Lender hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the out-of-pocket costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Lender in effecting such settlement. In

such event, such settlement consideration, costs and expenses shall be included in the Guaranteed Obligations and Guarantor shall pay the same as hereinafter provided. Lender's good faith in any such settlement shall be conclusively established if the settlement is made on the advice of independent legal counsel for Lender. Guarantor shall not, without the prior written consent of Lender: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to Lender of a full and complete written release of Lender (in form, scope and substance satisfactory to Lender in its sole discretion) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect Lender or obligate Lender to pay any sum or perform any obligation as determined by Lender in its sole discretion.

(h) It is hereby expressly understood, acknowledged and agreed by Guarantor that (i) Lender shall not have any obligation whatsoever to commence, continue or complete the Project, (ii) all amounts payable under this Guaranty on account of the Guaranteed Obligations shall be payable whether or not Lender so commences, continues or completes the Project, (iii) Lender shall not have any obligation to protect or insure any collateral for the Loan, nor shall Lender have any obligation to perfect its security interest in any collateral for the Loan and (iv) Guarantor's obligations hereunder in connection with the Project shall not be affected by any errors or omissions of any contractor, architect, consultant of Lender or otherwise, or any subcontractor or agent or employee of any of the foregoing, in the design, supervision, and performance of the Project; it being understood that such risk is assumed by Guarantor and Lender shall not be liable for any such error or omission. Neither the completion of the Project nor failure of said party to complete the Project nor any changes to the Plans and Specifications for the Project shall relieve Guarantor of any liabilities hereunder; rather, such liability shall be continuing and may be enforced by Lender, without loss, cost, expense, injury or liability of any kind to Lender.

**3. Representations and Warranties.** Guarantor hereby represents and warrants to Lender as follows (which representations and warranties shall be given as of the date hereof and shall survive the execution and delivery of this Guaranty):

(a) **Organization, Authority and Execution.** Guarantor is a [\_\_\_\_\_] duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_] and Guarantor has all necessary power and authority to own its properties and to conduct its business as presently conducted or proposed to be conducted and to enter into and perform this Guaranty and all other agreements and instruments to be executed by it in connection herewith. This Guaranty has been duly executed and delivered by Guarantor.

(b) **Enforceability.** This Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

(c) **No Violation.** The execution, delivery and performance by Guarantor of its obligations under this Guaranty has been duly authorized by all necessary action, and do not and will not violate any law, regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to Guarantor, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the assets of Guarantor pursuant to the terms of Guarantor's articles of organization, or any mortgage, indenture, agreement or instrument to which Guarantor is a party or by which it or any of its properties is bound. Guarantor is not in default under any other guaranty which it has provided to Lender.

(d) **No Litigation.** There are no actions, suits or proceedings at law or at equity, pending or, to Guarantor's knowledge, threatened against or affecting Guarantor or which involve or might involve the validity or enforceability of this Guaranty or which might materially adversely affect the financial condition of Guarantor or the ability of Guarantor to perform any of its obligations under this Guaranty. Guarantor is not in default beyond any applicable grace or cure period with respect to any order, writ, injunction, decree or demand of any Governmental Authority which might materially adversely affect the financial condition of Guarantor or the ability of Guarantor to perform any of its obligations under this Guaranty.

(e) **Consents.** All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, all Governmental Authorities (collectively, the "**Consents**") that are required in connection with the valid execution, delivery and performance by Guarantor of this Guaranty have been obtained and Guarantor agrees that all Consents required in connection with the carrying out or performance of any of Guarantor's obligations under this Guaranty will be obtained when required.

(f) **Financial Statements and Other Information.** All financial statements of Guarantor heretofore delivered to Lender are true and correct in all material respects and fairly present the financial condition of Guarantor as of the respective dates thereof, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. None of the aforesaid financial statements or any certificate or statement furnished to Lender by or on behalf of Guarantor in connection with the transactions contemplated hereby, and none of the representations and warranties in this Guaranty contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein

not misleading. Guarantor is not insolvent within the meaning of the United States Bankruptcy Code or any other applicable law, code or regulation and the execution, delivery and performance of this Guaranty will not render Guarantor insolvent.

(g) **Consideration.** Guarantor is the owner, directly or indirectly, of certain legal and beneficial equity interests in Borrower.

(h) **ERISA.** Guarantor does not (i) sponsor or maintain any Employee Benefit Plan or (ii) make any contributions to or have any liabilities or obligations (direct or contingent) with respect to any Employee Benefit Plan. Guarantor does not, and would not be deemed to, hold Plan Assets, and the consummation of the transactions contemplated by this Guaranty will not constitute or result in any non-exempt prohibited transaction under Section 406 of ERISA, Section 4975 of the Code or substantially similar provisions under any other federal, state or local laws, rules or regulations that could reasonably be expected to subject Lender to any tax or penalty on prohibited transactions imposed under Section 4975 of the Code, Section 501(i) of ERISA or substantially similar provisions under any other federal, state or local laws, rules or regulations.

(i) **No Misstatements or Omissions.** This Guaranty, when taken together with the other Loan Documents and the other documents, certificates and statements furnished to Lender by Guarantor pursuant thereto does not contain any untrue statement of material fact and does not omit any fact material to this Guaranty or any other Loan Document or otherwise necessary to make any such statements not misleading. Guarantor has no knowledge of any material fact concerning any Borrower Party, any other guarantor, or its or their business or financial condition which has not been previously disclosed in writing to Lender.

(j) **Incorporation and Reaffirmation.** The representations and warranties applicable to Guarantor which are set forth in the Loan Agreement and the other Loan Documents are hereby incorporated into this Guaranty as if such representations and warranties were set forth in full herein, and Guarantor hereby ratifies and confirms the truth and accuracy of each such representation or warranty to the extent applicable to Guarantor individually.

**4. Financial Statements.** Guarantor shall deliver to Lender:

(a) all public filings of Guarantor, if any, within two (2) Business Days of such filing;

(b) within one hundred twenty (120) days after the end of each fiscal year of Guarantor, (i) a complete copy of Guarantor's annual financial statements audited by a "big four" accounting firm or another independent certified public accountant reasonably acceptable to Lender, including statements of income and expense and a balance sheet for Guarantor and (ii) a certificate of the chief financial officer of Guarantor (y) setting forth in reasonable detail the Net Worth (as defined below) and Liquid Assets (as defined below) of Guarantor as of the end of such prior fiscal year in form, content, level of detail and scope reasonably acceptable to Lender and (z) certifying that such annual financial statements are true, correct, accurate and complete in all material respects and fairly present the financial condition of Guarantor;

(c) within thirty (30) days after the end of each fiscal quarter of Guarantor (each a "**Quarterly Reporting Date**"), (i) quarterly financial statements of Guarantor (including (1) a balance sheet as of the end of such fiscal quarter, (2) a statement of income and expense for such fiscal quarter, (3) a statement of cash flow for such fiscal quarter and (4) a statement of change in financial position) and (ii) a certificate of the chief financial officer of the Guarantor (y) setting forth in reasonable detail the Net Worth (as defined below) and Liquid Assets (as defined below) of Guarantor as of the end of such prior fiscal quarter in form, content, level of detail and scope reasonably acceptable to Lender which shall include a certification that Guarantor has at least, [on a combined basis], \$[ ] of Liquid Assets as of the date of such certification together with evidence thereof reasonably satisfactory to Lender and (z) certifying that such quarterly financial statements are true, correct, accurate and complete in all material respects and fairly present the financial condition of Guarantor; and

(d) within thirty (30) days after request by Lender, such other financial information, report and/or statement with respect to Guarantor as Lender may reasonably request.

**5. Unconditional Character of Obligations of Guarantor.**

(a) The obligations of Guarantor hereunder shall be irrevocable, absolute and unconditional, irrespective of the validity, regularity or enforceability, in whole or in part, of the other Loan Documents or any provision thereof, or the absence of any action to enforce the same, any waiver or consent with respect to any provision thereof, the recovery of any judgment against Borrower, Guarantor or any other Person or any action to enforce the same, any failure or delay in the enforcement of the obligations of Borrower under the other Loan Documents or Guarantor under this Guaranty, or any setoff or counterclaim, and irrespective of any other circumstances which might otherwise limit recourse against Guarantor by Lender or constitute a legal or equitable discharge or defense of a guarantor or surety. Lender may enforce the obligations of Guarantor under this Guaranty by a proceeding at law, in equity or otherwise, independent of any loan foreclosure or similar proceeding or any deficiency action against

Borrower or any other Person at any time, either before or after an action against the Property or any part thereof, Borrower or any other Person. **This Guaranty is a guaranty of payment and performance and not merely a guaranty of collection.** If the Guaranteed Obligations are partially paid or discharged by reason of the exercise of any of the remedies available to Lender, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Guaranteed Obligations, even though any rights which Guarantor may have against Borrower may be destroyed or diminished by the exercise of any such remedy; and if the Guaranteed Obligations are otherwise partially paid or discharged for any reason, including voluntary payment or prepayment, application of insurance proceeds or condemnation awards, additional financing or refinancing, or sale of any collateral for the Loan or a portion thereof, with or without the consent or cooperation of Lender, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Guaranteed Obligations.

(b) The obligations of Guarantor under this Guaranty, and the rights of Lender to enforce the same by proceedings, whether by action at law, suit in equity or otherwise, shall not be in any way affected by any of the following:

(i) any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Borrower, the Property or any part thereof, Guarantor or any other Person;

(ii) any failure by Lender or any other Person, whether or not without fault on its part, to perform or comply with any of the terms of the Loan Agreement, or any other Loan Documents, or any document or instrument relating thereto;

(iii) the sale, transfer or conveyance of the Property or any interest therein to any Person, whether now or hereafter having or acquiring an interest in the Property or any interest therein and whether or not pursuant to any foreclosure, trustee sale, collateral sale pursuant to the Uniform Commercial Code or similar proceeding against Borrower or the Property or any interest therein;

(iv) the conveyance to Lender, any Affiliate of Lender or Lender's nominee of the Property or any interest therein by a deed-in-lieu of foreclosure;

(v) the release of Borrower or any other Person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law or otherwise;

(vi) the release in whole or in part of any collateral for any or all Guaranteed Obligations or for the Loan or any portion thereof;

(vii) the rejection or disaffirmance in any such proceeding of any of the Guaranteed Obligations;

(viii) any disability or defense of Borrower [or Pledgor];

(ix) any disability or defense of any kind now existing of Guarantor with respect to any provision of this Guaranty;

(x) the cessation of the liability of Borrower [or Pledgor] for any cause whatsoever; or

(xi) any rights or defenses arising by reason of any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or if permitted by applicable law by exercise of a power of sale.

(c) Except as otherwise specifically provided in this Guaranty, and to the extent permitted by law, Guarantor hereby expressly and irrevocably waives and agrees not to assert or take advantage of (as a defense or otherwise):

(i) Any defense based upon diligence, notice of acceptance of this Guaranty, filing of claims with any court, or any proceeding to enforce any provision of any other Loan Document, against Guarantor, Borrower or any other Person;

(ii) All defenses in an action brought by Lender to enforce this Guaranty based on claims of waiver, release, surrender, alteration or compromise and all setoffs, reductions, or impairments, whether arising hereunder or otherwise;

- (iii) Any right to require Lender to proceed against Borrower or any other Person or to proceed against or exhaust any security (including the Property) held by Lender at any time or to pursue any other remedy in Lender's power or under any other agreement before proceeding against Guarantor hereunder;
- (iv) The defense of the statute of limitations in any action hereunder;
- (v) Any defense that may arise by reason of the incapacity, lack of authority, death, dissolution or disability of any other Person or Persons or entity or the failure of Lender to file or enforce a claim against the estate (including in any Bankruptcy Proceeding) of any other Person or Persons;
- (vi) Any failure on the part of Lender to ascertain the extent or nature of any property (whether real or personal), rights, estates and interests now or at any time hereafter securing the payment of the Note and/or the other obligations of Borrower under the Loan Documents whether held by Lender or by any Person or entity on Lender's behalf or for Lender's account (the "**Secured Collateral**") or any insurance or other rights with respect thereto, or the liability of any party liable for the Loan Documents or the obligations evidenced or secured thereby;
- (vii) Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Lender, any endorser or creditor of Borrower or of Guarantor or on the part of any other Person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Lender;
- (viii) Any defense based upon an election of remedies by Lender;
- (ix) Any right or claim of right to cause a marshalling of the assets of Guarantor;
- (x) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty;
- (xi) Any duty on the part of Lender to disclose to Guarantor any facts Lender may now or hereafter know about Borrower or the Property, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or have reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower, of the condition of the Property and of any and all circumstances bearing on the risk that liability may be incurred by Guarantor hereunder;
- (xii) Any lack of notice of disposition or of manner of disposition of any Secured Collateral;
- (xiii) Failure to properly record any document or any other lack of due diligence by Lender in creating or perfecting a security interest in or collection, protection or realization upon any Secured Collateral or in obtaining reimbursement or performance from any Person or entity now or hereafter liable for the Loan Documents or any obligation secured thereby;
- (xiv) The inaccuracy of any representation or other provision contained in any Loan Document;
- (xv) Any sale or assignment of the Loan Documents, or any interest therein;
- (xvi) Any sale or assignment by Borrower of any Secured Collateral, or any portion thereof or interest therein, whether or not consented to by Lender;
- (xvii) Any lack of commercial reasonableness in dealing with any Secured Collateral;
- (xviii) Any deficiencies in any Secured Collateral or any deficiency in the ability of Lender to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereby guaranteed;
- (xix) An assertion or claim that the automatic stay provided by 11 U.S.C. § 362 (arising upon a Bankruptcy Proceeding of Borrower) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable,



shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any of its rights, whether now or hereafter acquired, which Lender may have against Guarantor or any Secured Collateral;

(xx) Any modifications of the Loan Documents or any obligation of Borrower relating to the Loan by operation of law or by action of any court, whether pursuant to any Bankruptcy Proceeding, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise;

(xxi) Any change in the composition of Borrower, including the withdrawal or removal of Guarantor from any current or future position of ownership, management or control of Borrower; and

(xxii) Any action, occurrence, event or matter consented to by Guarantor under any other provision hereof, or otherwise.

(d) Lender may deal with Borrower and Affiliates of Borrower in the same manner and as freely as if this Guaranty did not exist and shall be entitled, among other things, to grant Borrower or any other Person such extension or extensions of time to perform any act or acts as may be deemed advisable by Lender, at any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of Guarantor hereunder.

(e) No compromise, alteration, amendment, modification, extension, renewal, release or other change of, or waiver, consent, delay, omission, failure to act or other action with respect to, any liability or obligation under or with respect to, or of any of the terms, covenants or conditions of, the Loan Documents shall in any way alter, impair or affect any of the obligations of Guarantor hereunder, and Guarantor agrees that if any Loan Document is modified with Lender's consent, the Guaranteed Obligations shall automatically be deemed modified to include such modifications.

(f) Lender may proceed to protect and enforce any or all of its rights, powers, and remedies under this Guaranty by suit in equity or action at law (including foreclosure of all or any portion of the collateral for the Loan), whether for the specific performance of any covenants or agreements contained in this Guaranty or otherwise, or to take any action authorized or permitted under applicable law (in any order), and shall be entitled to require and enforce the performance of all acts and things required to be performed hereunder by Guarantor. Each and every remedy of Lender shall, to the extent permitted by law, be non-exclusive and cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

(g) No waiver shall be deemed to have been made by Lender of any rights hereunder unless the same shall be in writing and signed by Lender, and any such waiver shall be a waiver only with respect to the specific matter involved and shall in no way impair the rights of Lender or the obligations of Guarantor to Lender in any other respect or at any other time.

(h) At the option of Lender, Guarantor may be joined in any action or proceeding commenced by Lender against Borrower in connection with or based upon any other Loan Documents and recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor to the extent of Guarantor's liability hereunder, without any requirement that Lender first assert, prosecute or exhaust any remedy or claim against Borrower or any other Person, or any security for the obligations of Borrower or any other Person.

(i) Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment is made by Borrower or Guarantor to Lender and such payment is rescinded or otherwise returned by Lender (as determined by Lender in its sole and absolute discretion) in connection with any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Borrower or Guarantor, all as though such payment had not been made.

(j) In the event that Guarantor shall advance or become obligated to pay any sums under this Guaranty or in connection with the Guaranteed Obligations or in the event that for any reason whatsoever Borrower or any subsequent owner of the Property or any part thereof is now, or shall hereafter become, indebted to Guarantor, Guarantor agrees that (i) the amount of such sums and of such indebtedness and all interest thereon shall at all times be subordinate as to lien, the time of payment and in all other respects to all sums, including Principal and interest and other amounts, at any time owed to Lender under the Loan Documents, and (ii) Guarantor shall not be entitled to enforce or receive payment thereof until all Principal, interest and other sums due pursuant to the Loan Documents have been indefeasibly paid in full. Nothing herein contained is intended or shall be construed to give Guarantor any rights of subrogation in or under the Loan Documents or any right to participate in any way therein, or in the right, title or interest of Lender in or to any collateral for the Loan, notwithstanding any payments made by Guarantor under this Guaranty, until the expiration of ninety-one (91) days following the actual and irrevocable receipt by Lender of indefeasible payment in full of all Principal, interest and other sums due with respect to the Loan or otherwise payable under the Loan Documents. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when any such sums due and owing to Lender shall not have been fully and indefeasibly

paid, such amount shall be paid by Guarantor to Lender for credit and application against such sums due and owing to Lender. In connection with the foregoing, Guarantor expressly waives, until the expiration of ninety-one (91) days following such indefeasible payment, any and all rights of subrogation to Lender against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Lender may have against Borrower and any right to participate in any Secured Collateral.

(k) Guarantor's obligations hereunder shall survive a foreclosure, deed-in-lieu of foreclosure or similar proceeding involving the Property and the exercise by Lender of any or all of its remedies pursuant to the Loan Documents.

(l) Guarantor shall not have any right of recourse against Lender by reason of any action Lender may take or omit to take under the provisions of this Guaranty or under the provisions of any of the Loan Documents.

## 6. Covenants.

(a) As used in this Section 6, the following terms shall have the respective meanings set forth below:

(i) "**GAAP**" shall mean generally accepted accounting principles, consistently applied.

(ii) "**Liquid Assets**" shall mean any of the following: assets in the form of cash, cash equivalents, obligations of (or fully guaranteed as to principal and interest by) the United States or any agency or instrumentality thereof (provided the full faith and credit of the United States supports such obligation or guarantee), certificates of deposit issued by a commercial bank having net assets of not less than \$500 million, securities listed and traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations, or liquid debt instruments that have a readily ascertainable value and are regularly traded in a recognized financial market.

(iii) "**Net Worth**" shall mean, as of a given date, (x) Guarantor's total assets owned individually (exclusive of any interest in the Property, receivables from affiliates, cryptocurrencies and related investments, patent rights, trademarks, trade names, franchises, copyrights, licenses, goodwill and other intangible assets and deferred and prepaid expenses) less (y) Guarantor's total liabilities as of such date, determined in accordance with GAAP.

(b) Until all of the Guaranteed Obligations have been paid in full, Guarantor (i) shall collectively maintain (A) a Net Worth in excess of \$[ ] (the "**Net Worth Threshold**") and (B) Liquid Assets having a market value of at least \$[ ] (the "**Liquid Assets Threshold**"), and (ii) shall not sell, pledge, mortgage or otherwise transfer any of its assets, or any interest therein, which would cause Guarantor's Net Worth to fall below the Net Worth Threshold or Guarantor's Liquid Assets to fall below the Liquid Assets Threshold.

(c) Guarantor shall not, at any time while a default in the payment or performance of the Guaranteed Obligations has occurred and is continuing, either (i) enter into or effectuate any transaction with any Affiliate which would reduce the Net Worth of Guarantor (including the payment of any dividend or distribution to a shareholder, or the redemption, retirement, purchase or other acquisition for consideration of any stock or interest in Guarantor) or (ii) sell, pledge, mortgage or otherwise transfer to any Person any of Guarantor's assets, or any interest therein.

(d) Guarantor shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and all rights, licenses, permits, franchises and all applicable governmental authorizations necessary for the operation of its business and comply with all Legal Requirements applicable to it and its assets. Guarantor shall not engage in any dissolution, liquidation or consolidation or merger with or into any other business entity without obtaining the prior consent of Lender. Guarantor shall not change its name, identity (including its trade name or names) or Guarantor'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.

(e) Guarantor shall give prompt notice to Lender of any litigation or governmental proceedings pending or threatened against Guarantor which might materially adversely affect Guarantor's condition (financial or otherwise) or business (including Guarantor's ability to perform the Guaranteed Obligations hereunder or under the other Loan Documents to which it is a party).

(f) Guarantor will comply with the Patriot Act and use its good faith and commercially reasonable efforts to comply with all other applicable requirements of Governmental Authorities having jurisdiction over Guarantor, including those relating to money laundering and terrorism.

(g) Guarantor shall, at Guarantor's sole cost and expense:

(i) cure any defects in the execution and delivery of the Loan Documents to which Guarantor is a party and 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 correct any omissions in the Loan Documents to which Guarantor is a party, as Lender may reasonably require; and

(ii) 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 Guaranty and the other Loan Documents to which Guarantor is a party, as Lender may reasonably require from time to time.

**7. Entire Agreement/Amendments.** This instrument represents the entire agreement between the parties with respect to the subject matter hereof. The terms of this Guaranty shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by Lender and Guarantor.

**8. Successors and Assigns.** This Guaranty shall be binding upon Guarantor, and Guarantor's estate, heirs, personal representatives, successors and assigns, may not be assigned or delegated by Guarantor and shall inure to the benefit of Lender and its successors and assigns.

**9. Governing Law.**

(a) THIS GUARANTY WAS NEGOTIATED IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT TO THE LOAN AGREEMENT WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS GUARANTY AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, GUARANTOR AND LENDER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS GUARANTY AND THE NOTE, AND THIS GUARANTY AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 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 SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK COUNTY, NEW YORK AND GUARANTOR AND LENDER EACH WAIVE ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR AND LENDER EACH HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GUARANTOR AGREES THAT SERVICE OF PROCESS UPON GUARANTOR AT THE ADDRESS FOR GUARANTOR SET FORTH HEREIN 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 (UNLESS LOCAL LAW REQUIRES ANOTHER METHOD OF SERVICE) IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. GUARANTOR (i) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGE IN THE ADDRESS FOR GUARANTOR SET FORTH HEREIN, (ii) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE AN AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (iii) SHALL PROMPTLY DESIGNATE AN AUTHORIZED AGENT IF GUARANTOR CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK. NOTWITHSTANDING THE FOREGOING, LENDER SHALL HAVE THE RIGHT TO INSTITUTE ANY LEGAL SUIT, ACTION OR PROCEEDING FOR THE ENFORCEMENT OR FORECLOSURE OF ANY LIEN ON ANY SECURED COLLATERAL FOR THE LOAN IN ANY FEDERAL OR STATE COURT IN ANY JURISDICTION(S) THAT LENDER MAY ELECT IN ITS SOLE AND ABSOLUTE DISCRETION, AND GUARANTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR AND LENDER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

**10. Section Headings.** The headings of the sections and paragraphs of this Guaranty have been inserted for convenience of reference only and shall in no way define, modify, limit or amplify any of the terms or provisions hereof.

**11. Severability.** Any provision of this Guaranty which may be determined by any competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction

shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Guarantor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

**12. WAIVER OF TRIAL BY JURY.** GUARANTOR AND LENDER EACH HEREBY WAIVE THE RIGHT OF TRIAL BY JURY IN ANY LITIGATION, ACTION OR PROCEEDING ARISING HEREUNDER OR IN CONNECTION THEREWITH.

**13. WAIVER OF SPECIAL DAMAGES.** Guarantor agrees that Lender shall have no liability to Guarantor (whether sounding in tort, contract or otherwise) for losses suffered by Guarantor in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless such losses result from the gross negligence or willful misconduct of the party from which recovery is sought or from a breach of any Loan Document by such party. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, NO GUARANTOR SHALL ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS GUARANTY OR ANY OTHER LOAN DOCUMENT, THE OBLIGATIONS OR THE USE OF THE PROCEEDS THEREOF.

**14. Other Guaranties.** The obligations of Guarantor hereunder are separate and distinct from, and in addition to (and shall not be limited by), the obligations of Guarantor now or hereafter arising under any other guaranties, including the Guaranty of Debt Service and Carry and Guaranty of Recourse Obligations (collectively, the “*Other Guaranties*”), indemnification agreements or other agreements to which Guarantor is now or hereafter becomes a party. Lender’s enforcement hereof, and receipt of any amounts hereunder with respect to the Guaranteed Obligations, shall not be limited by (a) any recovery of Lender under any of the Other Guaranties, (b) the receipt by Lender of any amounts paid by Borrower or any other Person (other than a payment by Guarantor of a claim expressly made by Lender pursuant to this Guaranty) to Lender with respect to the Debt, or (c) any recovery of Lender under any of the other Loan Documents or any realization by Lender on any collateral for the Loan, provided that, notwithstanding anything to the contrary contained herein, if there are any “Guaranteed Obligations” hereunder that are also “Guaranteed Obligations” under any of the Other Guaranties, Lender may only collect such “Guaranteed Obligations” once, although Lender may elect in its sole discretion whether to collect such “Guaranteed Obligations” under this Guaranty or under such Other Guaranty.

**15. Notices.** All notices, consents, approvals and requests required or permitted hereunder (a “*Notice*”) shall be given in writing and shall be effective for all purposes if (a) (i) hand delivered with receipt acknowledged, (ii) sent by nationally recognized overnight delivery service (such as Federal Express), or (iii) sent by certified or registered United States mail, return receipt requested, postage prepaid, and (b) sent by electronic mail (with a copy delivered by one of the other methods provided for in this Section 15), in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party):

If to Lender: [ ]  
[ ]  
[ ]  
[ ]  
Attention:  
Email:

With a copy to: Reed Smith LLP  
599 Lexington Avenue, 22<sup>nd</sup> Floor  
New York, New York 10022  
Attn: Randy Eckers, Esq.  
Email: reckers@reedsmith.com

If to Guarantor: [ ]  
[ ]  
[ ]  
Attention:  
Email:

with a copy to: [ ]  
[ ]  
[ ]  
Attention:  
Email:

Provided Notice was given in accordance with the requirements set forth above, a Notice shall be deemed to have been given: (A) in the case of hand delivery, at the time of delivery; (B) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (C) in the case of overnight delivery, upon the first attempted delivery on a Business Day; or (D) in the case of electronic mail, upon the date of receipt.

**16. Guarantor's Receipt of Loan Documents.** Guarantor by its execution hereof acknowledges receipt of true copies of all of the Loan Documents, the terms and conditions of which are hereby incorporated herein by reference.

**17. Interest; Expenses.**

(a) If Guarantor fails to pay all or any sums due hereunder within ten (10) Business Days following written demand by Lender, the amount of such sums payable by Guarantor to Lender shall bear interest from the date of demand until paid at the Default Rate in effect from time to time.

(b) Guarantor hereby agrees to pay all out-of-pocket costs, charges and expenses, including reasonable attorneys' fees and disbursements, that may be incurred by Lender in enforcing the covenants, agreements, obligations and liabilities of Guarantor under this Guaranty.

**18. Intentionally Left Blank.**

**19. Intentionally Left Blank.**

**20. Gender; Number; General Definitions.** All references to sections and schedules are to sections and schedules in or to this Guaranty unless otherwise specified. All uses of the word "including" or "include" or similar words shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty. 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. The phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable 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 and/or in enforcing its rights hereunder.

**21. Intentionally Left Blank.**

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

**23. CPLR Section 3213.** Guarantor acknowledges and agrees that this Guaranty is, and is intended to be, an instrument for the payment of money only, as such phrase is used in Section 3213 of the New York Civil Practice Law and Rules, and Guarantor has been fully advised by its counsel of Lender's rights and remedies pursuant to said Section 3213.

**24. Assignment by Lender.** Lender may from time to time, without notice to Guarantor, assign, participate, syndicate or transfer any interest in Guarantor's Guaranteed Obligations by loan participation or otherwise, in whole or in part, and notwithstanding such assignment or transfer, Guarantor's Liabilities shall remain Guaranteed Obligations for purposes of this Guaranty. In such event, each assignee, transferee, or holder of all or any part of the Loan may enforce this Guaranty, but Lender shall have an unimpaired right to enforce this Guaranty for its benefit as to any portion of the Loan that Lender retains. If Lender pledges or assigns the Note to any creditor as security for an obligation of Lender, such creditor may enforce this Guaranty to the same extent as would have been enforceable by Lender but for such pledge or assignment; provided, however, that unless Lender otherwise consents in writing, Lender shall have an unimpaired right, prior and superior to that of its creditor, to enforce this Guaranty for Lender's benefit to the extent any portion of the indebtedness or any interest therein is not pledged or assigned. Guarantor shall cooperate with Lender in effectuating any secondary market transactions.

**25. Payments Held in Trust.** In the event that, notwithstanding anything to the contrary in this Guaranty, Guarantor should receive any funds, payment, claim or distribution which by this Guaranty is required to be paid to Lender, Guarantor agrees to hold in trust for Lender an amount equal to the amount of all funds, payments, claims or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions so received except to pay them promptly to Lender, and Guarantor covenants promptly to pay the same to Lender.

**26. Certain Permitted Actions of Lender.** Lender may from time to time, in its sole discretion and without notice to Guarantor, take any of the following actions without in any way affecting the obligations of Guarantor hereunder or under any

other Loan Document to which Guarantor is a party: (a) obtain a security interest in any property of Borrower [or Pledgor] to secure any of the Guaranteed Obligations or any other obligation hereunder, if any; (b) obtain the primary or secondary obligation of any additional obligor or obligors with respect to any of the Guaranteed Obligations; (c) extend, modify, subordinate, exchange or release any of the Guaranteed Obligations; (d) modify, subordinate, exchange or release its security interest in any part of property of Borrower [or Pledgor], if any, securing any of the Guaranteed Obligations or any other obligation hereunder, or extend, modify, subordinate, exchange or release any obligations of any obligor with respect to any such property; (e) alter the manner or place of payment of the Guaranteed Obligations; (f) enforce this Guaranty against Guarantor for payment or performance of any of the Guaranteed Obligations, whether or not Lender shall have (A) proceeded against Borrower or any other party primarily or secondarily obligated with respect to any of the Guaranteed Obligations or (B) resorted to or exhausted any other remedy or any other security or collateral; and (g) foreclose on, take possession of or sell any of the collateral or security for the Guaranteed Obligations or enforce any other rights under any other Loan Document.

**27. Lender's Option to Release any Obligor.** Lender may from time to time in its sole discretion release Borrower, Guarantor or any other obligor from any of the Guaranteed Obligations without notice to any other party and without in any way releasing or affecting the liability of any remaining Guarantor hereunder.

**28. Application of Payments.** Lender may apply any payment made on account of the Guaranteed Obligations toward Guaranteed Obligations, and in such order, as Lender may from time to time elect in its sole discretion.

**29. Joint and Several Obligations; Successors and Assigns.** All obligations under this Guaranty are joint and several to each Guarantor (if more than one) and any other party which hereafter guarantees any portion of the Guaranteed Obligations, and shall be binding upon each of them and their respective heirs, legal representatives, successors and assigns.

**30. Multiple Guarantors.** If (i) this Guaranty is executed by more than one party constituting Guarantor, it is specifically agreed that Lender may enforce the provisions hereof with respect to one or more of such parties constituting Guarantor without seeking to enforce the same as to all or any such parties; or (ii) one or more additional guaranty agreements ("Other Guaranties") are executed by one or more additional guarantors ("Other Guarantors"), which guaranty, in whole or in part, any of the indebtedness or obligations evidenced by the Loan Documents, it is specifically agreed that Lender may enforce the provisions of this Guaranty and/or of the Other Guaranties with respect to one or more of the parties constituting Guarantor and/or one or more of the Other Guarantors under the Other Guaranties without seeking to enforce the provisions of this Guaranty or the Other Guaranties as to all or any of the parties constituting Guarantor or the Other Guarantors. Each of the parties constituting Guarantor hereby waives any requirement of joinder (and shall not seek joinder) of all or any other of the parties constituting Guarantor or all or any of the Other Guarantors in any suit or proceeding to enforce the provisions of this Guaranty or of the Other Guaranties. The liability hereunder of all parties constituting Guarantor shall be joint and several. Until all obligations of Guarantors under this Guaranty have been performed and paid in full, each Guarantor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under the federal Bankruptcy Code or any successor statute, that such Guarantor may now or hereafter have against any Other Guarantor. Each Guarantor hereby waives any election of remedies by Lender that impairs any subrogation or other right of such Guarantor to proceed against any Other Guarantor.

**31. Time of Essence.** Time is of the essence in connection with all obligations of Guarantor under this Guaranty.

**32. Independent Obligations.** The obligations of Guarantor hereunder are independent of the obligations of Borrower. In the event of any default hereunder, Lender may institute a separate action against any Guarantor with or without joining or instituting a separate action against Borrower or any other obligor.

**33. State-Specific Provision.** In the event of any inconsistencies between the terms and conditions of this Section 33 and the other terms and conditions of this Guaranty, the terms and conditions of this Section 33 shall control and be binding.

[NO FURTHER TEXT ON THIS PAGE]

**IN WITNESS WHEREOF**, Guarantor has executed this Guaranty as of the date first above written.

**GUARANTOR:**

[ \_\_\_\_\_ ],  
a [ \_\_\_\_\_ ] limited liability company

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

[Page Intentionally Left Blank]



## GUARANTY OF RECOURSE OBLIGATIONS

This **GUARANTY OF RECOURSE OBLIGATIONS** (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Guaranty**”) is executed as of [\_\_\_\_\_] , 2023 by [\_\_\_\_\_] , an individual having an address at [\_\_\_\_\_] (together with his successors and permitted assigns, “**Guarantor**”), for the benefit of [SCULPTOR LENDER ENTITY], a [\_\_\_\_\_] , having an address at [\_\_\_\_\_] (together with its successors and assigns, “**Lender**”).  
**[Spousal Joinder to be required if Guarantor resides in a Community Property State.]**

### R E C I T A L S :

A. Pursuant to that certain Loan Agreement dated as of the date hereof (as the same may be amended, modified, supplemented, restated or replaced from time to time, the “**Loan Agreement**”) between [\_\_\_\_\_] , a [\_\_\_\_\_] limited liability company (“**Borrower**”) and Lender, Lender has agreed to make a loan (the “**Loan**”) to Borrower in the [maximum] principal amount of \$[\_\_\_\_\_] , subject to the terms and conditions of the Loan Agreement. All capitalized terms used and not defined herein shall have the respective meanings given to such terms in the Loan Agreement;

B. As a condition to Lender making the Loan, Lender is requiring that Guarantor execute and deliver to Lender this Guaranty; and

C. Guarantor hereby acknowledges that Guarantor owns direct or indirect ownership interests in Borrower and, accordingly, Guarantor will materially benefit from Lender agreeing to make the Loan;

**NOW, THEREFORE**, in consideration of the premises set forth herein and as an inducement for and in consideration of the agreement of Lender to make the Loan pursuant to the Loan Agreement, Guarantor hereby agrees, covenants, represents and warrants to Lender as follows:

#### 1. **Indemnity and Guarantee.**

(a) Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Lender (i) the full, prompt and complete payment when due of the Guaranteed Obligations and (ii) to the extent applicable pursuant to the terms of the Loan Documents, the full, prompt and complete performance when required of the Guaranteed Obligations. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as primary obligors and shall indemnify, defend, protect and hold Lender harmless from each of the Guaranteed Obligations.

(b) As used herein, the term “Guaranteed Obligations” means, collectively:

(i) any actual loss, damage, liability, cost or expense suffered or incurred by Lender (any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender, including reasonable attorneys’ fees and costs actually incurred) arising out of or in connection with any one or more of the following:

(A) willful misrepresentation or intentional failure to disclose a material fact by Borrower, Guarantor or any of their respective Affiliates, as applicable, in connection with the Loan or the Property;

(B) the gross negligence, illegal acts or willful misconduct of Borrower, Guarantor or any of their respective Affiliates, as applicable;

(C) any litigation or other legal proceeding related to the Loan filed by, at the direction of, or on the behalf of, Borrower, Guarantor or any of their respective Affiliates, as applicable, or any other action of, at the direction of, or the behalf of Borrower, Guarantor or any of their respective Affiliates, as applicable, that delays, opposes, impedes, obstructs, hinders, enjoins or otherwise interferes with or frustrates the efforts of Lender to exercise any rights and remedies available to Lender as provided herein and in the other Loan Documents unless a court of competent jurisdiction finds that such action is not frivolous, not brought in bad faith, not wholly without merit, and not wholly without basis in fact or law;

(D) material physical waste to the Property caused by the intentional acts or intentional omissions of Borrower, Guarantor or any of their respective Affiliates, as applicable, and/or the removal or disposal of any portion of the Property after an Event of Default;

(E) the misapplication, misappropriation or conversion by, at the direction of, or on the behalf of Borrower, Guarantor or any of their respective Affiliates, as applicable, (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property (or any portion thereof), (B) any Award or other amounts received in connection with the Condemnation of all or a portion of the Property, (C) any Rents, (D) any Tenant security deposits or Rents collected in advance, (E) any Loan proceeds, [(F) any Mezzanine Loan proceeds], (G) any other monetary collateral for the Loan (including, without limitation, any Reserve Funds and/or any portion thereof disbursed to (or at the direction of) Borrower), (H) any other sums or payments attributable to the Property, including, without limitation, revenues, rents, profits, issues, products and income of any portion of the Property, or any other funds received by Borrower or Guarantor and required to be paid to Lender under the Loan Documents;

(F) failure to pay Taxes, assessments, municipal or governmental rates, charges, impositions, water and sewer rents or any part thereof, charges for labor or materials or other charges that can create liens on any portion of the Property (except, in the case of Taxes, to the extent that amounts sufficient to pay such Taxes have been deposited with Lender hereunder in the Tax Account (or held by Lender in the Tax Holdback) and Lender does not apply the same in payment thereof in violation of the terms and conditions of the Loan Documents);

(G) suffering or permitting any involuntary Lien (it being acknowledged and agreed that mechanics' liens shall be deemed involuntary, except to the extent such mechanics' liens arise by reason of Borrower's failure to apply the proceeds of any advance for the purposes and to the payees for which it was disbursed) to exist on the Property in violation of the terms and conditions of the Loan Documents;

(H) failure to (a) pay Insurance Premiums (except to the extent that amounts sufficient to pay such Insurance Premiums have been deposited with Lender hereunder in the Insurance Account (or held by Lender in the Insurance Holdback) and Lender does not apply the same in payment thereof in violation of the terms and conditions of the Loan Documents), or (b) to maintain the Policies in full force and effect and/or to provide Lender evidence of the same, in each case, as expressly provided herein;

(I) 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;

(J) any tax, assessment or other charge on the making and/or recording of the Security Instrument, the Note or any of the other Loan Documents or any transfer or similar taxes, assessments or other charges (whether due upon the making of the same or upon Lender's exercise of its remedies under the Loan Documents), but excluding any income, franchise or other similar taxes;

(K) any forfeiture or seizure of the Property (or any portion thereof and/or interest therein) resulting from a violation or breach of any applicable law;

(L) any violation or breach of any representation, warranty or covenant contained in Sections 3.24 or 4.23 hereof or Exhibit [ ] of the Loan Agreement **[NTD: REFERENCE SPE EXHIBIT FROM LOAN AGREEMENT]**;

(M) [any violation or breach by Borrower, Guarantor, or any of the respective Affiliates of any exclusivity (or similar) provision in any Major Lease that permits or could permit the Tenant thereunder the right to terminate such Major Lease or abate rent thereunder];

(N) **[IF RATE CAP APPLICABLE** – the failure to purchase or replace (as applicable) any Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement (as applicable), in each case, as and when required by the terms hereof;];

(O) [any amendment, modification, termination, cancellation, or acceptance of a surrender of, or the waiver of any of the terms or provisions of, any Major Lease, in each case in violation of the terms and conditions of this Agreement;]

(P) in the event the Property (or any portion thereof) suffers a Casualty, the failure of Borrower to then maintain Policies with coverage in an amount equal to the original principal amount of the Note;

(Q) Borrower's failure to return or to reimburse Lender for all Personal Property taken from the Property by or on behalf of Borrower and not replaced with Personal Property of the same utility and of the same or greater value;

(R) any fees or commissions paid by Borrower to an Affiliate of Borrower or Guarantor in violation of the terms of the Loan Documents;

(S) the removal or disposal of any portion of the Property after an Event of Default;

(T) Borrower's failure to cooperate in transferring any Permits (including, without limitation, any liquor licenses), Construction Documents or Pledged Collateral (as defined in the Accommodation Pledge) requested by Lender in connection with any foreclosure of the Property, assignment in lieu of foreclosure, deed in lieu or other transfer of the Property to Lender or Lender's designee;

(U) any obligation of Lender to indemnify, defend or hold harmless Franchisor, or to pay any damages, costs, fees or expenses pursuant to any term or condition contained in the Franchise Agreement or comfort letter related thereto;

(V) any modification or termination of any of the Construction Documents in violation of the terms and provisions of this Agreement;

(W) any modification or termination of any of the Management Agreements in violation of the terms and provisions of this Agreement;

(X) (1) any unamortized “Key Money” required to be repaid under the Management Agreements or Franchise Agreement or (2) any termination payment, liquidated damages, or other fees or charges payable pursuant to the Management Agreements in the event that Lender elects to terminate or causes Borrower to terminate any Management Agreement pursuant to the Loan Documents;

(Y) the incurrence by Borrower [or Pledgor] of any indebtedness not otherwise covered in this Section 1 that is not expressly permitted pursuant to the Loan Documents;

(Z) (A) any obligation of Borrower or Pledgor to indemnify or otherwise pay any amounts to any Person that, immediately prior to any acquisition of title to the Pledged Collateral pursuant to a Uniform Commercial Code (the “UCC”) foreclosure sale, a UCC strict foreclosure, an assignment in lieu of foreclosure or other enforcement action under the Loan Documents (collectively, an “**Equity Collateral Enforcement Action**”; and the date on which an Equity Collateral Enforcement Action is consummated, an “**Equity Collateral Transfer Date**”), was an affiliate of any Borrower Party, to the extent such obligation continues to be the obligation of the transferee at such Equity Collateral Enforcement Action and is not expressly waived in writing by the Persons covered by such indemnification obligation and (B) any obligation of Borrower or Pledgor accruing prior to, on or after the Equity Collateral Transfer Date to pay (1) legal fees to legal counsel engaged by Borrower or Pledgor prior to the Equity Collateral Transfer Date, (2) amounts due under any contract between Borrower or Pledgor, on the one hand, and any Affiliate of any Borrower Party, on the other hand (unless such contract is assumed in writing by the Person acquiring the Pledged Collateral on or after the Equity Collateral Transfer Date), (3) amounts due under any contract between Borrower or Pledgor, on the one hand, and any Person not Affiliated with any Borrower Party, on the other hand, that was entered into without the prior written approval of Lender to the extent such prior written approval was required under the Loan Documents (unless such contract was assumed in writing by the Person acquiring the Pledged Collateral on or after the Equity Collateral Transfer Date) and (4) any income tax or indemnity liability of Borrower or Pledgor that accrued prior to the Equity Collateral Transfer Date; and/or

(AA) any violation or breach by Borrower, Guarantor, or any of their respective Affiliates, as applicable, of the requirements of Section 4.11 of the Loan Agreement, and/or Sections 3 or 5 hereof.

(ii) The entire amount of the Loan (including, without limitation, all principal, interest, fees, advances and charges) upon the occurrence of any of the following:

(A) the first Monthly Debt Service Payment is not paid when due;

(B) any representation, warranty or covenant contained in Sections 3.24 or 4.22 of the Loan Agreement hereof or Exhibit [ ] attached to the Loan Agreement is violated or breached [**NTD: REFERENCE SPE EXHIBIT FROM LOAN AGREEMENT**], and (a) a court of competent jurisdiction orders a substantive consolidation of Borrower based, in whole or in part, on such violation or breach or (b) the Property or any portion thereof or interest therein becomes an asset in a bankruptcy or insolvency proceeding of a Person other than Borrower as a result of (in whole or in part) or due to (in whole or in part) such violation or breach;

(C) representation, warranty or covenant contained in Article 6 of the Loan Agreement is violated or breached;

(D) a Bankruptcy Event occurs;

(E) **[TIC LOANS ONLY** – (vi) any of the provisions of the TIC Agreement are amended, modified, cancelled, terminated, surrendered, withdrawn or waived without Lender’s prior written consent; or (vii) any Borrower or any of their members, partners, principals or agents files or commences any action or proceeding to partition the Property or any portion thereof or any action to compel the sale thereof]

(F) (viii)(a) the Franchise Agreement (or any replacement thereto) is modified, terminated or cancelled without the prior written consent of Lender, or the Franchise Agreement otherwise expires for any reason during the term of the Loan (including, without limitation, upon its scheduled expiration date) or (b) Borrower accepts a surrender or modification of the Franchise Agreement (or any replacement thereto) without the prior written consent of Lender;

(G) Borrower, Guarantor or any of their respective Affiliates, as applicable, fails to cooperate with Lender or Bank as necessary to establish the Clearing Account, finalize the Clearing Account Agreement and distribute any required notices, all as required by Section 8.1 of the Loan Agreement;

(H) fraud by Borrower, Guarantor or any of their respective Affiliates, as applicable in connection with the Loan;

(I) if Borrower shall opt out of Article 8 of the UCC, or if Borrower or a Controlling Party (as defined below) causes Borrower to amend or otherwise modify its organizational documents in order to amend or repeal its election to be governed by Article 8 of the UCC, or Borrower or any Controlling Party causes any termination or cancellation of the limited liability company membership certificate evidencing [\_\_\_\_\_], a [\_\_\_\_\_]'s one hundred percent (100%) ownership interest in [\_\_\_\_\_], as delivered to Lender on the date hereof in connection with the Accommodation Pledge. As used herein, “**Controlling Party**” means a direct or indirect officer, shareholder, member, manager, director or any Affiliate of a Borrower Party which (directly or indirectly) controls, is controlled by or is under common control with Borrower or any Guarantor; and/or

(J) **[IF APPLICABLE FOR PARTICULARLY SENSITIVE PROPERTY DOCUMENTS** – ; any of the provisions of the [\_\_\_\_\_] are amended, modified, cancelled, terminated, surrendered, withdrawn or waived without Lender’s prior written consent.]

(iii) **[INTEREST AND OPERATING EXPENSE RESERVE** –any and all amounts required to be deposited (i) into the Interest Reserve Account pursuant to Section 7.6 of the Loan Agreement, as and when the same are due and (ii) into the Construction Reserve or other applicable as a result of a Balancing Event or otherwise pursuant to Section 4.39 of the Loan Agreement.]

(iv) [an amount equal to [the sum of] **[RATE CAP AT CLOSING AND FULL RECOURSE TRIGGER NEGOTIATED OUT WITH CONSENT OF SCULPTOR** – the aggregate amount of all payments and other consideration received by or on behalf of Borrower from any sale, assignment, or other transfer of any Interest Rate Cap Agreement that occurs without Lender’s prior written consent] **[MEZZ LOAN AT CLOSING** – an amount equal to the aggregate of all amounts by which the Mezzanine Loan is repaid or prepaid in violation of Section 2.7 of the Loan Agreement]**[FOR INSURANCE SHORTFALL, WHERE APPLICABLE** – the difference, if any, obtained by subtracting

(i) the sum of (A) the aggregate amount of coverage of all Policies and (B) proceeds received by Lender from the sale of the Land and Improvements pursuant to a foreclosure, from (ii) the outstanding amount of the Debt prior to the application of any Net Proceeds in prepayment thereof].]

(v) an amount equal to [ ] percent ([ ]%) of the Obligations plus all outstanding and accrued interest, and all other amounts due and payable under the Loan (collectively, the “Limited Payment Guaranty”) as and when the same may be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. It is specifically agreed and understood that Guarantor’s obligations for the payment of the Limited Payment Guaranty is a “last dollar” guaranty for the last remaining [ ] percent ([ ]%) of the Obligations and that any other payments received by Lender in respect of the Obligations from any source shall not reduce Guarantor’s obligations for the payment of the Limited Payment Guaranty, except and only to the extent that the Obligations shall have been repaid from other sources to an amount less than the Limited Payment Guaranty (for example, if the Obligations were equal to \$[ ] and the Limited Payment Guaranty under this Guaranty was equal to \$[ ], payment of the Obligations shall not reduce Guarantor’s obligations for the payment of the Limited Payment Guaranty unless and until such repayment reduces the Obligations to an amount less than \$[ ], and then, and solely for the purposes of this example, only to the extent, dollar for dollar, that the Obligations have been reduced below \$[ ]).

(c) All sums payable to Lender under this Guaranty shall be payable on demand and without reduction for any offset, claim, counterclaim or defense.

(d) Guarantor hereby agrees to pay, protect, indemnify, defend and save harmless Lender from and against any and all fees, out-of-pocket costs, losses, liabilities, obligations, claims, causes of action, suits, demands, judgments, expenses and damages, including reasonable attorneys’ fees and disbursements, of any nature or description which Lender may suffer or incur, or which otherwise may arise in connection with the enforcement by Lender of this Guaranty and/or by reason of Borrower’s failure to pay or perform any of the Guaranteed Obligations when due, irrespective of whether such fees, costs, losses, liabilities, claims, causes of action, expenses or damages are incurred by Lender prior or subsequent to (i) Lender’s declaring the Principal, interest and other sums evidenced or secured by the Loan Documents to be due and payable, (ii) the commencement or completion of a judicial or non-judicial foreclosure of the Security Instrument or (iii) the conveyance of all or any portion of the Property by deed-in-lieu of foreclosure.

(e) Guarantor agrees that no portion of any sums applied (other than sums received from Guarantor in full or partial satisfaction of its obligations hereunder), from time to time, in reduction of the Debt shall be deemed to have been applied in reduction of the Guaranteed Obligations until such time as the Debt has been indefeasibly paid in full, or Guarantor shall have made the full payment required hereunder, it being the intention hereof that the Guaranteed Obligations shall be the last portion of the Debt to be deemed satisfied.

(f) Notwithstanding anything to the contrary in this Guaranty or in any of the other Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Security Instrument or to require that all collateral shall continue to secure all of the Obligations in accordance with the Loan Documents. Guarantor expressly waives any defense or benefits arising out of any voluntary or involuntary filing by or on behalf of Borrower for protection under any federal or state bankruptcy, insolvency, or debtor relief laws, including without limitation under Sections 364 or 1111(b)(2) of the Bankruptcy Code.

(g) Guarantor acknowledges and agrees that the unpaid amount of the Guaranteed Obligations as described in this Guaranty, if not paid when due pursuant to this Guaranty and the other Loan Documents, shall, at Lender’s election in its sole and absolute discretion, be deemed to be added to and form a part of the Debt

for all purposes under the Loan Documents. Guarantor acknowledges and agrees that its obligations under this Guaranty to pay to Lender the unpaid amount of the Guaranteed Obligations as described in this Guaranty are separate and distinct from any obligation of Borrower to repay the Debt, and that such obligation does not constitute a guaranty of the Loan or of any of Borrower's obligations with respect to the Loan except to the extent that such unpaid amount of the Guaranteed Obligations as described in this Guaranty are actually added to and form a part of the Debt as provided above.

(h) The liabilities of Guarantor under this Section 1 shall not be limited by the amount of the Loan, but shall be determined, solely by the cost of the Guaranteed Obligations and any other amounts payable to Lender pursuant to this Guaranty.

(i) If any action shall be brought against Lender based upon any of the matters for which Lender is indemnified hereunder, Lender shall notify Guarantor in writing thereof and Guarantor shall promptly assume the defense thereof, including the employment of counsel reasonably acceptable to Lender and the negotiation of any settlement; provided, however, that any failure of Lender to notify Guarantor of such matter shall not impair or reduce the obligations of Guarantor hereunder. Lender shall have the right, at the expense of Guarantor (which expense shall be included in the Guaranteed Obligations), to employ separate counsel in any such action and to participate in the defense thereof. In the event Guarantor shall fail to discharge or undertake to defend Lender against any claim, loss or liability for which Lender is indemnified hereunder, Lender may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Guarantor to Lender hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the out-of-pocket costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Lender in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in the Guaranteed Obligations and Guarantor shall pay the same as hereinafter provided. Lender's good faith in any such settlement shall be conclusively established if the settlement is made on the advice of independent legal counsel for Lender. Guarantor shall not, without the prior written consent of Lender: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to Lender of a full and complete written release of Lender (in form, scope and substance satisfactory to Lender in its sole discretion) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect Lender or obligate Lender to pay any sum or perform any obligation as determined by Lender in its sole discretion.

2. **Representations and Warranties.** Guarantor hereby represents and warrants to Lender as follows (which representations and warranties shall be given as of the date hereof and shall survive the execution and delivery of this Guaranty):

(a) **Organization, Authority and Execution.** Guarantor is a [\_\_\_\_\_] duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_] and Guarantor has all necessary power and authority to own its properties and to conduct its business as presently conducted or proposed to be conducted and to enter into and perform this Guaranty and all other agreements and instruments to be executed by it in connection herewith. This Guaranty has been duly executed and delivered by Guarantor.

(b) **Enforceability.** This Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

(c) **No Violation.** The execution, delivery and performance by Guarantor of its obligations under this Guaranty has been duly authorized by all necessary action, and do not and will not violate any law,



regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to Guarantor, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the assets of Guarantor pursuant to the terms of Guarantor's articles of organization, or any mortgage, indenture, agreement or instrument to which Guarantor is a party or by which it or any of its properties is bound. Guarantor is not in default under any other guaranty which it has provided to Lender.

(d) **No Litigation.** There are no actions, suits or proceedings at law or at equity, pending or, to Guarantor's knowledge, threatened against or affecting Guarantor or which involve or might involve the validity or enforceability of this Guaranty or which might materially adversely affect the financial condition of Guarantor or the ability of Guarantor to perform any of its obligations under this Guaranty. Guarantor is not in default beyond any applicable grace or cure period with respect to any order, writ, injunction, decree or demand of any Governmental Authority which might materially adversely affect the financial condition of Guarantor or the ability of Guarantor to perform any of its obligations under this Guaranty.

(e) **Consents.** All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, all Governmental Authorities (collectively, the "**Consents**") that are required in connection with the valid execution, delivery and performance by Guarantor of this Guaranty have been obtained and Guarantor agrees that all Consents required in connection with the carrying out or performance of any of Guarantor's obligations under this Guaranty will be obtained when required.

(f) **Financial Statements and Other Information.** All financial statements of Guarantor heretofore delivered to Lender are true and correct in all material respects and fairly present the financial condition of Guarantor as of the respective dates thereof, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. None of the aforesaid financial statements or any certificate or statement furnished to Lender by or on behalf of a Guarantor in connection with the transactions contemplated hereby, and none of the representations and warranties in this Guaranty contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading. Guarantor is not insolvent within the meaning of the United States Bankruptcy Code or any other applicable law, code or regulation and the execution, delivery and performance of this Guaranty will not render Guarantor insolvent.

(g) **Consideration.** Guarantor is the owner, directly or indirectly, of certain legal and beneficial equity interests in Borrower.

(h) **ERISA.** Guarantor does not (i) sponsor or maintain any Employee Benefit Plan or (ii) make any contributions to or have any liabilities or obligations (direct or contingent) with respect to any Employee Benefit Plan. Guarantor does not, and would not be deemed to, hold Plan Assets, and the consummation of the transactions contemplated by this Guaranty will not constitute or result in any non-exempt prohibited transaction under Section 406 of ERISA, Section 4975 of the Code or substantially similar provisions under any other federal, state or local laws, rules or regulations that could reasonably be expected to subject Lender to any tax or penalty on prohibited transactions imposed under Section 4975 of the Code, Section 501(i) of ERISA or substantially similar provisions under any other federal, state or local laws, rules or regulations.

(i) **No Misstatements or Omissions.** This Guaranty, when taken together with the other Loan Documents and the other documents, certificates and statements furnished to Lender by Guarantor pursuant thereto does not contain any untrue statement of material fact and does not omit any fact material to this Guaranty or any other Loan Document or otherwise necessary to make any such statements not misleading. Guarantor has no knowledge of any material fact concerning any Borrower Party, any other guarantor, or its or their business or financial condition which has not been previously disclosed in writing to Lender.



(j) **Incorporation and Reaffirmation.** The representations and warranties applicable to Guarantor which are set forth in the Loan Agreement and the other Loan Documents are hereby incorporated into this Guaranty as if such representations and warranties were set forth in full herein, and Guarantor hereby ratifies and confirms the truth and accuracy of each such representation or warranty to the extent applicable to Guarantor individually.

3. **Financial Statements.** Guarantor shall deliver to Lender:

(a) within one hundred twenty (120) days after the end of each fiscal year of Guarantor, (i) a complete copy of Guarantor's annual financial statements prepared and certified by independent certified public accountant reasonably acceptable to Lender, including statements of income and expense and a balance sheet for Guarantor and (ii) a certificate of the chief financial officer of Guarantor (y) setting forth in reasonable detail the Net Worth (as defined below) and Liquid Assets (as defined below) of Guarantor as of the end of such prior fiscal year in form, content, level of detail and scope reasonably acceptable to Lender and (z) certifying that such annual financial statements are true, correct, accurate and complete in all material respects and fairly present the financial condition of Guarantor;

(b) within thirty (30) days after the end of each fiscal quarter of Guarantor (each a "**Quarterly Reporting Date**"), (i) quarterly financial statements of Guarantor (including (1) a balance sheet as of the end of such fiscal quarter, (2) a statement of income and expense for such fiscal quarter, (3) a statement of cash flow for such fiscal quarter and (4) a statement of change in financial position) and (ii) a certificate of the chief financial officer of the Guarantor (y) setting forth in reasonable detail the Net Worth (as defined below) and Liquid Assets (as defined below) of Guarantor as of the end of such prior fiscal quarter in form, content, level of detail and scope reasonably acceptable to Lender which shall include a certification that Guarantor has at least, [on a combined basis], \$[ ] of Liquid Assets as of the date of such certification together with evidence thereof reasonably satisfactory to Lender and (z) certifying that such quarterly financial statements are true, correct, accurate and complete in all material respects and fairly present the financial condition of Guarantor; and

(c) within thirty (30) days after request by Lender, such other financial information, report and/or statement with respect to Guarantor as Lender may reasonably request.

4. **Unconditional Character of Obligations of Guarantor.**

(a) The obligations of Guarantor hereunder shall be irrevocable, absolute and unconditional, irrespective of the validity, regularity or enforceability, in whole or in part, of the other Loan Documents or any provision thereof, or the absence of any action to enforce the same, any waiver or consent with respect to any provision thereof, the recovery of any judgment against Borrower, Guarantor or any other Person or any action to enforce the same, any failure or delay in the enforcement of the obligations of Borrower under the other Loan Documents or Guarantor under this Guaranty, or any setoff or counterclaim, and irrespective of any other circumstances which might otherwise limit recourse against a Guarantor by Lender or constitute a legal or equitable discharge or defense of a guarantor or surety. Lender may enforce the obligations of Guarantor under this Guaranty by a proceeding at law, in equity or otherwise, independent of any loan foreclosure or similar proceeding or any deficiency action against Borrower or any other Person at any time, either before or after an action against the Property or any part thereof, Borrower or any other Person. **This Guaranty is a guaranty of payment and performance and not merely a guaranty of collection.** If the Guaranteed Obligations are partially paid or discharged by reason of the exercise of any of the remedies available to Lender, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Guaranteed Obligations, even though any rights which Guarantor may have against Borrower may be destroyed or diminished by the exercise of any such remedy; and if the Guaranteed Obligations are otherwise partially paid or discharged for any reason, including voluntary payment or prepayment, application of insurance proceeds or condemnation awards, additional financing or refinancing, or sale of any collateral for the Loan or a portion thereof, with or

without the consent or cooperation of Lender, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining Guaranteed Obligations.

(b) The obligations of Guarantor under this Guaranty, and the rights of Lender to enforce the same by proceedings, whether by action at law, suit in equity or otherwise, shall not be in any way affected by any of the following:

(i) any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Borrower, the Property or any part thereof, Guarantor or any other Person;

(ii) any failure by Lender or any other Person, whether or not without fault on its part, to perform or comply with any of the terms of the Loan Agreement, or any other Loan Documents, or any document or instrument relating thereto;

(iii) the sale, transfer or conveyance of the Property or any interest therein to any Person, whether now or hereafter having or acquiring an interest in the Property or any interest therein and whether or not pursuant to any foreclosure, trustee sale, collateral sale pursuant to the UCC or similar proceeding against Borrower or the Property or any interest therein;

(iv) the conveyance to Lender, any Affiliate of Lender or Lender's nominee of the Property or any interest therein by a deed-in-lieu of foreclosure;

(v) the release of Borrower or any other Person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law or otherwise;

(vi) the release in whole or in part of any collateral for any or all Guaranteed Obligations or for the Loan or any portion thereof;

(vii) the rejection or disaffirmance in any such proceeding of any of the Guaranteed Obligations;

(viii) any disability or defense of Borrower [or Pledgor];

(ix) any disability or defense of any kind now existing of Guarantor with respect to any provision of this Guaranty;

(x) the cessation of the liability of Borrower [or Pledgor] for any cause whatsoever; or

(xi) any rights or defenses arising by reason of any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or if permitted by applicable law by exercise of a power of sale.

(c) Except as otherwise specifically provided in this Guaranty, and to the extent permitted by law, Guarantor hereby expressly and irrevocably waives and agrees not to assert or take advantage of (as a defense or otherwise):

(i) Any defense based upon diligence, notice of acceptance of this Guaranty, filing of claims with any court, or any proceeding to enforce any provision of any other Loan Document, against Guarantor, Borrower or any other Person;

- (ii) All defenses in an action brought by Lender to enforce this Guaranty based on claims of waiver, release, surrender, alteration or compromise and all setoffs, reductions, or impairments, whether arising hereunder or otherwise;
- (iii) Any right to require Lender to proceed against Borrower or any other Person or to proceed against or exhaust any security (including the Property) held by Lender at any time or to pursue any other remedy in Lender's power or under any other agreement before proceeding against Guarantor hereunder;
- (iv) The defense of the statute of limitations in any action hereunder;
- (v) Any defense that may arise by reason of the incapacity, lack of authority, death, dissolution or disability of any other Person or Persons or the failure of Lender to file or enforce a claim against the estate (including in any Bankruptcy Proceeding) of any other Person or Persons;
- (vi) Any failure on the part of Lender to ascertain the extent or nature of any property (whether real or personal), rights, estates and interests now or at any time hereafter securing the payment of the Note and/or the other obligations of Borrower under the Loan Documents whether held by Lender or by any Person or entity on Lender's behalf or for Lender's account (the "**Secured Collateral**") or any insurance or other rights with respect thereto, or the liability of any party liable for the Loan Documents or the obligations evidenced or secured thereby;
- (vii) Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Lender, any endorser or creditor of Borrower or of Guarantor or on the part of any other Person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Lender;
- (viii) Any defense based upon an election of remedies by Lender;
- (ix) Any right or claim of right to cause a marshalling of the assets of Guarantor;
- (x) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty;
- (xi) Any duty on the part of Lender to disclose to Guarantor any facts Lender may now or hereafter know about Borrower or the Property, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or have reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower, of the condition of the Property and of any and all circumstances bearing on the risk that liability may be incurred by Guarantor hereunder;
- (xii) Any lack of notice of disposition or of manner of disposition of any Pledged Collateral;
- (xiii) Failure to properly record any document or any other lack of due diligence by Lender in creating or perfecting a security interest in or collection, protection or realization upon any Pledged Collateral or in obtaining reimbursement or performance from any Person or entity now or hereafter liable for the Loan Documents or any obligation secured thereby;

(xiv) The inaccuracy of any representation or other provision contained in any Loan Document;

(xv) Any sale or assignment of the Loan Documents, or any interest therein;

(xvi) Any sale or assignment by Borrower of any Pledged Collateral, or any portion thereof or interest therein, whether or not consented to by Lender;

(xvii) Any lack of commercial reasonableness in dealing with any Pledged Collateral;

(xviii) Any deficiencies in any Pledged Collateral or any deficiency in the ability of Lender to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereby guaranteed;

(xix) An assertion or claim that the automatic stay provided by 11 U.S.C. § 362 (arising upon a Bankruptcy Proceeding of Borrower) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any of its rights, whether now or hereafter acquired, which Lender may have against Guarantor or any Pledged Collateral;

(xx) Any modifications of the Loan Documents or any obligation of Borrower relating to the Loan by operation of law or by action of any court, whether pursuant to any Bankruptcy Proceeding, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise;

(xxi) Any change in the composition of Borrower, including the withdrawal or removal of Guarantor from any current or future position of ownership, management or control of Borrower; and

(xxii) Any action, occurrence, event or matter consented to by Guarantor under any other provision hereof, or otherwise.

(d) Lender may deal with Borrower and Affiliates of Borrower in the same manner and as freely as if this Guaranty did not exist and shall be entitled, among other things, to grant Borrower or any other Person such extension or extensions of time to perform any act or acts as may be deemed advisable by Lender, at any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of Guarantor hereunder.

(e) No compromise, alteration, amendment, modification, extension, renewal, release or other change of, or waiver, consent, delay, omission, failure to act or other action with respect to, any liability or obligation under or with respect to, or of any of the terms, covenants or conditions of, the Loan Documents shall in any way alter, impair or affect any of the obligations of Guarantor hereunder, and Guarantor agrees that if any Loan Document is modified with Lender's consent, the Guaranteed Obligations shall automatically be deemed modified to include such modifications.

(f) Lender may proceed to protect and enforce any or all of its rights, powers, and remedies under this Guaranty by suit in equity or action at law (including foreclosure of all or any portion of the collateral for the Loan), whether for the specific performance of any covenants or agreements contained in this Guaranty or otherwise, or to take any action authorized or permitted under applicable law (in any order), and shall be entitled to require and enforce the performance of all acts and things required to be performed hereunder by Guarantor. Each and every remedy of Lender shall, to the extent permitted by law, be non-exclusive and cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

(g) No waiver shall be deemed to have been made by Lender of any rights hereunder unless the same shall be in writing and signed by Lender, and any such waiver shall be a waiver only with respect to the specific matter involved and shall in no way impair the rights of Lender or the obligations of Guarantor to Lender in any other respect or at any other time.

(h) At the option of Lender, Guarantor may be joined in any action or proceeding commenced by Lender against Borrower in connection with or based upon any other Loan Documents and recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor to the extent of Guarantor's liability hereunder, without any requirement that Lender first assert, prosecute or exhaust any remedy or claim against Borrower or any other Person, or any security for the obligations of Borrower or any other Person.

(i) Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment is made by Borrower or Guarantor to Lender and such payment is rescinded or otherwise returned by Lender (as determined by Lender in its sole and absolute discretion) in connection with any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Borrower or Guarantor, all as though such payment had not been made.

(j) In the event that Guarantor shall advance or become obligated to pay any sums under this Guaranty or in connection with the Guaranteed Obligations or in the event that for any reason whatsoever Borrower or any subsequent owner of the Property or any part thereof is now, or shall hereafter become, indebted to Guarantor, Guarantor agrees that (i) the amount of such sums and of such indebtedness and all interest thereon shall at all times be subordinate as to lien, the time of payment and in all other respects to all sums, including Principal and interest and other amounts, at any time owed to Lender under the Loan Documents, and (ii) Guarantor shall not be entitled to enforce or receive payment thereof until all Principal, interest and other sums due pursuant to the Loan Documents have been indefeasibly paid in full. Nothing herein contained is intended or shall be construed to give Guarantor any rights of subrogation in or under the Loan Documents or any right to participate in any way therein, or in the right, title or interest of Lender in or to any collateral for the Loan, notwithstanding any payments made by Guarantor under this Guaranty, until the expiration of ninety-one (91) days following the actual and irrevocable receipt by Lender of indefeasible payment in full of all Principal, interest and other sums due with respect to the Loan or otherwise payable under the Loan Documents. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when any such sums due and owing to Lender shall not have been fully and indefeasibly paid, such amount shall be paid by Guarantor to Lender for credit and application against such sums due and owing to Lender. In connection with the foregoing, Guarantor expressly waives, until the expiration of ninety-one (91) days following such indefeasible payment, any and all rights of subrogation to Lender against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Lender may have against Borrower and any right to participate in any Pledged Collateral.

(k) Guarantor's obligations hereunder shall survive a foreclosure, deed-in-lieu of foreclosure or similar proceeding involving the Property and the exercise by Lender of any or all of its remedies pursuant to the Loan Documents.

(l) Guarantor shall not have any right of recourse against Lender by reason of any action Lender may take or omit to take under the provisions of this Guaranty or under the provisions of any of the Loan Documents.

## 5. **Covenants.**

(a) As used in this Section 5, the following terms shall have the respective meanings set forth below:



(i) “**GAAP**” shall mean generally accepted accounting principles, consistently applied.

(ii) “**Liquid Assets**” shall mean any of the following: assets in the form of cash, cash equivalents, obligations of (or fully guaranteed as to principal and interest by) the United States or any agency or instrumentality thereof (provided the full faith and credit of the United States supports such obligation or guarantee), certificates of deposit issued by a commercial bank having net assets of not less than \$500 million, securities listed and traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations, or liquid debt instruments that have a readily ascertainable value and are regularly traded in a recognized financial market.

(iii) “**Net Worth**” shall mean, as of a given date, (x) Guarantor’s total assets owned individually (exclusive of any interest in the Property, receivables from affiliates, cryptocurrencies and related investments, patent rights, trademarks, trade names, franchises, copyrights, licenses, goodwill and other intangible assets and deferred and prepaid expenses) less (y) Guarantor’s total liabilities as of such date, determined in accordance with GAAP.

(b) Until all of the Obligations have been paid in full, Guarantor (i) shall maintain, [on a combined basis], (A) a Net Worth of at least \$[ ] (the “**Net Worth Threshold**”) and (B) Liquid Assets having a market value of at least \$[ ] (the “**Liquid Assets Threshold**”), and (ii) shall not sell, pledge, mortgage or otherwise transfer any of its assets, or any interest therein, which would cause Guarantor’s Net Worth to fall below the Net Worth Threshold or Guarantor’s Liquid Assets to fall below the Liquid Assets Threshold.

(c) Guarantor shall not, at any time while a default in the payment or performance of the Guaranteed Obligations has occurred and is continuing, either (i) enter into or effectuate any transaction with any Affiliate which would reduce the Net Worth of Guarantor (including the payment of any dividend or distribution to a shareholder, or the redemption, retirement, purchase or other acquisition for consideration of any stock or interest in Guarantor) or (ii) sell, pledge, mortgage or otherwise transfer to any Person any of Guarantor’s assets, or any interest therein.

(d) Guarantor shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and all rights, licenses, permits, franchises and all applicable governmental authorizations necessary for the operation of its business and comply with all Legal Requirements applicable to it and its assets. Guarantor shall not engage in any dissolution, liquidation or consolidation or merger with or into any other business entity without obtaining the prior consent of Lender. Guarantor shall not change its name, identity (including its trade name or names) or Guarantor’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.

(e) Guarantor shall give prompt notice to Lender of any litigation or governmental proceedings pending or threatened against Guarantor which might materially adversely affect Guarantor’s condition (financial or otherwise) or business (including Guarantor’s ability to perform the Guaranteed Obligations hereunder or under the other Loan Documents to which it is a party).

(f) Guarantor will comply with the Patriot Act and use its good faith and commercially reasonable efforts to comply with all other applicable requirements of Governmental Authorities having jurisdiction over Guarantor, including those relating to money laundering and terrorism.

(g) Guarantor shall, at Guarantor’s sole cost and expense:

(i) cure any defects in the execution and delivery of the Loan Documents to which Guarantor is a party and 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 correct any omissions in the Loan Documents to which Guarantor is a party, as Lender may reasonably require; and

(ii) 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 Guaranty and the other Loan Documents to which Guarantor is a party, as Lender may reasonably require from time to time.

6. **Entire Agreement/Amendments.** This instrument represents the entire agreement between the parties with respect to the subject matter hereof. The terms of this Guaranty shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by Lender and Guarantor.

7. **Successors and Assigns.** This Guaranty shall be binding upon Guarantor, and Guarantor's estate, heirs, personal representatives, successors and assigns, may not be assigned or delegated by Guarantor and shall inure to the benefit of Lender and its successors and assigns.

8. **Governing Law.**

(a) THIS GUARANTY WAS NEGOTIATED IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT TO THE LOAN AGREEMENT WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS GUARANTY AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, GUARANTOR AND LENDER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS GUARANTY AND THE NOTE, AND THIS GUARANTY AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 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 SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK COUNTY, NEW YORK AND GUARANTOR AND LENDER EACH WAIVE ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR AND LENDER EACH HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GUARANTOR AGREES THAT SERVICE OF PROCESS UPON GUARANTOR AT THE ADDRESS FOR GUARANTOR SET FORTH HEREIN 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 (UNLESS LOCAL LAW REQUIRES ANOTHER METHOD OF SERVICE) IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. GUARANTOR (i) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGE IN THE ADDRESS FOR GUARANTOR SET FORTH HEREIN, (ii) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE AN AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (iii) SHALL PROMPTLY DESIGNATE AN AUTHORIZED AGENT IF GUARANTOR CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK.

NOTWITHSTANDING THE FOREGOING, LENDER SHALL HAVE THE RIGHT TO INSTITUTE ANY LEGAL SUIT, ACTION OR PROCEEDING FOR THE ENFORCEMENT OR FORECLOSURE OF ANY LIEN ON ANY PLEDGED COLLATERAL FOR THE LOAN IN ANY FEDERAL OR STATE COURT IN ANY JURISDICTION(S) THAT LENDER MAY ELECT IN ITS SOLE AND ABSOLUTE DISCRETION, AND GUARANTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR AND LENDER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

9. **Section Headings.** The headings of the sections and paragraphs of this Guaranty have been inserted for convenience of reference only and shall in no way define, modify, limit or amplify any of the terms or provisions hereof.

10. **Severability.** Any provision of this Guaranty which may be determined by any competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Guarantor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

11. **WAIVER OF TRIAL BY JURY.** GUARANTOR AND LENDER EACH HEREBY WAIVE THE RIGHT OF TRIAL BY JURY IN ANY LITIGATION, ACTION OR PROCEEDING ARISING HEREUNDER OR IN CONNECTION THEREWITH.

12. **WAIVER OF SPECIAL DAMAGES.** Guarantor agrees that Lender shall have no liability to Guarantor (whether sounding in tort, contract or otherwise) for losses suffered by Guarantor in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless such losses result from the gross negligence or willful misconduct of the party from which recovery is sought or from a breach of any Loan Document by such party. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, NO GUARANTOR SHALL ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS GUARANTY OR ANY OTHER LOAN DOCUMENT, THE OBLIGATIONS OR THE USE OF THE PROCEEDS THEREOF.

13. **Other Guaranties.** The obligations of Guarantor hereunder are separate and distinct from, and in addition to (and shall not be limited by), the obligations of the Guarantor now or hereafter arising under any other guaranties, including the Guaranty of Completion and Guaranty of Debt Service (collectively, the “**Other Guaranties**”), indemnification agreements or other agreements to which Guarantor is now or hereafter becomes a party. Lender’s enforcement hereof, and receipt of any amounts hereunder with respect to the Guaranteed Obligations, shall not be limited by (a) any recovery of Lender under any of the Other Guaranties, (b) the receipt by Lender of any amounts paid by Borrower or any other Person (other than a payment by a Guarantor of a claim expressly made by Lender pursuant to this Guaranty) to Lender with respect to the Debt, or (c) any recovery of Lender under any of the other Loan Documents or any realization by Lender on any collateral for the Loan, provided that, notwithstanding anything to the contrary contained herein, if there are any “Guaranteed Obligations” hereunder that are also “Guaranteed Obligations” under any of the Other Guaranties, Lender may only collect such “Guaranteed Obligations” once, although Lender may elect in its sole discretion whether to collect such “Guaranteed Obligations” under this Guaranty or under such Other Guaranty.



14. **Notices.** All notices, consents, approvals and requests required or permitted hereunder (a “**Notice**”) shall be given in writing and shall be effective for all purposes if (a) (i) hand delivered with receipt acknowledged, (ii) sent by nationally recognized overnight delivery service (such as Federal Express), or (iii) sent by certified or registered United States mail, return receipt requested, postage prepaid, and (b) sent by electronic mail (with a copy delivered by one of the other methods provided for in this Section 14), in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party):

If to Lender: [ ]  
[ ]  
[ ]  
Attention: [ ]  
E-Mail: [ ]

With a copy to: Reed Smith LLP  
599 Lexington Avenue  
New York, New York 10022  
Attn: Randy Eckers, Esq.  
Email: reckers@reedsmith.com

If to Guarantor: [ ]  
[ ]  
[ ]  
Attention: [ ]  
E-Mail: [ ]

with a copy to: [ ]  
[ ]  
[ ]  
Attention: [ ]  
E-Mail: [ ]

Provided Notice was given in accordance with the requirements set forth above, a Notice shall be deemed to have been given: (A) in the case of hand delivery, at the time of delivery; (B) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (C) in the case of overnight delivery, upon the first attempted delivery on a Business Day; or (D) in the case of electronic mail, upon the date of receipt.

15. **Guarantor’s Receipt of Loan Documents.** Guarantor by its execution hereof acknowledges receipt of true copies of all of the Loan Documents, the terms and conditions of which are hereby incorporated herein by reference.

16. **Interest; Expenses.**

(a) If Guarantor fails to pay all or any sums due hereunder within ten (10) Business Days following written demand by Lender, the amount of such sums payable by Guarantor to Lender shall bear interest from the date of demand until paid at the Default Rate in effect from time to time.

(b) Guarantor hereby agrees to pay all out-of-pocket costs, charges and expenses, including reasonable attorneys' fees and disbursements, that may be incurred by Lender in enforcing the covenants, agreements, obligations and liabilities of Guarantor under this Guaranty.

17. **Gender; Number; General Definitions.** All references to sections and schedules are to sections and schedules in or to this Guaranty unless otherwise specified. All uses of the word "including" or "include" or similar words shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty. 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. The phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable 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 and/or in enforcing its rights hereunder.

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

19. **CPLR Section 3213.** Guarantor acknowledges and agrees that this Guaranty is, and is intended to be, an instrument for the payment of money only, as such phrase is used in Section 3213 of the New York Civil Practice Law and Rules, and Guarantor has been fully advised by its counsel of Lender's rights and remedies pursuant to said Section 3213.

20. **Assignment by Lender.** Lender may from time to time, without notice to Guarantor, assign, participate, syndicate or transfer any interest in Guarantor's Guaranteed Obligations by loan participation or otherwise, in whole or in part, and notwithstanding such assignment or transfer, Guarantor's Liabilities shall remain Guaranteed Obligations for purposes of this Guaranty. In such event, each assignee, transferee, or holder of all or any part of the Loan may enforce this Guaranty, but Lender shall have an unimpaired right to enforce this Guaranty for its benefit as to any portion of the Loan that Lender retains. If Lender pledges or assigns the Note to any creditor as security for an obligation of Lender, such creditor may enforce this Guaranty to the same extent as would have been enforceable by Lender but for such pledge or assignment; provided, however, that unless Lender otherwise consents in writing, Lender shall have an unimpaired right, prior and superior to that of its creditor, to enforce this Guaranty for Lender's benefit to the extent any portion of the indebtedness or any interest therein is not pledged or assigned. Guarantor shall cooperate with Lender in effectuating any secondary market transactions.

21. **Payments Held in Trust.** In the event that, notwithstanding anything to the contrary in this Guaranty, Guarantor should receive any funds, payment, claim or distribution which by this Guaranty is required to be paid to Lender, Guarantor agrees to hold in trust for Lender an amount equal to the amount of all funds, payments, claims or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions so received except to pay them promptly to Lender, and Guarantor covenants promptly to pay the same to Lender.

22. **Certain Permitted Actions of Lender.** Lender may from time to time, in its sole discretion and without notice to Guarantor, take any of the following actions without in any way affecting the obligations of Guarantor hereunder or under any other Loan Document to which Guarantor is a party: (a) obtain a security interest in any property of Borrower [or Pledgor] to secure any of the Guaranteed Obligations or any other obligation hereunder, if any; (b) obtain the primary or secondary obligation of any additional obligor or obligors with respect to any of the Guaranteed Obligations; (c) extend, modify, subordinate, exchange or release any of the Guaranteed Obligations; (d) modify, subordinate, exchange or release its security interest in any part of

property of Borrower [or Pledgor], if any, securing any of the Guaranteed Obligations or any other obligation hereunder, or extend, modify, subordinate, exchange or release any obligations of any obligor with respect to any such property; (e) alter the manner or place of payment of the Guaranteed Obligations; (f) enforce this Guaranty against Guarantor for payment or performance of any of the Guaranteed Obligations, whether or not Lender shall have (A) proceeded against Borrower or any other party primarily or secondarily obligated with respect to any of the Guaranteed Obligations or (B) resorted to or exhausted any other remedy or any other security or collateral; and (g) foreclose on, take possession of or sell any of the collateral or security for the Guaranteed Obligations or enforce any other rights under any other Loan Document.

23. **Lender's Option to Release any Obligor.** Lender may from time to time in its sole discretion release Borrower, Guarantor or any other obligor from any of the Guaranteed Obligations without notice to any other party and without in any way releasing or affecting the liability of any remaining Guarantor hereunder.

24. **Application of Payments.** Lender may apply any payment made on account of the Guaranteed Obligations toward Guaranteed Obligations, and in such order, as Lender may from time to time elect in its sole discretion.

25. **Joint and Several Obligations; Successors and Assigns.** All obligations under this Guaranty are joint and several to each Guarantor (if more than one) and any other party which hereafter guarantees any portion of the Guaranteed Obligations, and shall be binding upon each of them and their respective heirs, legal representatives, successors and assigns.

26. **Multiple Guarantors.** If (i) this Guaranty is executed by more than one party constituting Guarantor, it is specifically agreed that Lender may enforce the provisions hereof with respect to one or more of such parties constituting Guarantor without seeking to enforce the same as to all or any such parties; or (ii) one or more additional guaranty agreements ("**Other Guaranties**") are executed by one or more additional guarantors ("**Other Guarantors**"), which guaranty, in whole or in part, any of the indebtedness or obligations evidenced by the Loan Documents, it is specifically agreed that Lender may enforce the provisions of this Guaranty and/or of the Other Guaranties with respect to one or more of the parties constituting Guarantor and/or one or more of the Other Guarantors under the Other Guaranties without seeking to enforce the provisions of this Guaranty or the Other Guaranties as to all or any of the parties constituting Guarantor or the Other Guarantors. Each of the parties constituting Guarantor hereby waives any requirement of joinder (and shall not seek joinder) of all or any other of the parties constituting Guarantor or all or any of the Other Guarantors in any suit or proceeding to enforce the provisions of this Guaranty or of the Other Guaranties. The liability hereunder of all parties constituting Guarantor shall be joint and several. Until all obligations of Guarantors under this Guaranty have been performed and paid in full, each Guarantor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under the federal Bankruptcy Code or any successor statute, that such Guarantor may now or hereafter have against any Other Guarantor. Each Guarantor hereby waives any election of remedies by Lender that impairs any subrogation or other right of such Guarantor to proceed against any Other Guarantor.

27. **Time of Essence.** Time is of the essence in connection with all obligations of Guarantor under this Guaranty.

28. **Independent Obligations.** The obligations of Guarantor hereunder are independent of the obligations of Borrower. In the event of any default hereunder, Lender may institute a separate action against any Guarantor with or without joining or instituting a separate action against Borrower or any other obligor.

29. **State-Specific Provision.** In the event of any inconsistencies between the terms and conditions of this Section 29 and the other terms and conditions of this Guaranty, the terms and conditions of this Section 29 shall control and be binding.

**IN WITNESS WHEREOF**, Guarantor has executed this Guaranty as of the date first above written.

**GUARANTOR:**

[Signature pages sent separately]

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**MEZZANINE LOAN AGREEMENT**

dated as of [\_\_\_\_], 20[\_\_]

between

[\_\_\_\_\_],

as Borrower

and

[\_\_\_\_\_],

as Lender

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## MEZZANINE LOAN AGREEMENT

**THIS MEZZANINE LOAN AGREEMENT**, dated as of [\_\_\_\_], 20[\_\_\_] (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between [\_\_\_\_], a [\_\_\_\_] limited liability company, having an address at [\_\_\_\_] (together with its successors and/or assigns, “**Lender**”) and [\_\_\_\_], a [\_\_\_\_] having its principal place of business at [\_\_\_\_] [**ADD ADDITIONAL BORROWERS AS NECESSARY**] ([hereinafter individually and collectively,] “**Borrower**”).

### RECITALS:

**WHEREAS**, Borrower desires to obtain the Loan (defined below) from Lender; and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of the Loan Documents (defined below).

**NOW, THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

[**FOR FIXED RATE LOANS MAKE ALL NECESSARY CHANGES FROM THE FORM MORTGAGE LOAN AGREEMENT.**]

### ARTICLE 1

#### 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:

“**Accommodation Pledgor**” shall mean [\_\_\_\_]. [**TO BE COMPLETED WITH NAME OF SOLE MEMBER OF MORTGAGE BORROWER**]

“**Account Collateral**” shall mean (i) the Accounts, and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Accounts from time to time; (ii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing; and (iii) to the extent not covered by clauses (i) - (ii) above, all “proceeds” (as defined under the UCC as in effect in the State in which the Accounts are located) of any or all of the foregoing.

“**Accounts**” shall mean the Cash Management Account, the Clearing Account, the Reserve Accounts and any other account established by this Agreement or the other Loan Documents.

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

“**Affiliated Manager**” shall mean any managing agent of the Property in which Borrower, Mortgage Borrower, Accommodation Pledgor, Guarantor, Sponsor, any SPE Component Entity (if any) or any Affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration Threshold**” shall have the meaning ascribed to such term in the Mortgage Loan Agreement.

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

“**Anti-Corruption Laws**” means any applicable law, regulation, or rule related to combating corruption or bribery, including, but not limited to, the United States Foreign Corrupt Practices Act of 1977 as amended (the “**FCPA**”) and any other applicable law, e.g., UK Bribery Act of 2010.

“**Anti-Money Laundering Laws**” means any applicable law, regulation, or rule related to combating money laundering, suspicious transactions, trade embargos, economic sanctions, or terrorist financing, including, but not limited to, the US Bank Secrecy Act of 1986, the USA Patriot Act of 2001 (in each case to the extent applicable to the Parties and to this Agreement), the Specially Designated Nationals List (“**SDN List**”) or any similar list maintained by the Office of Foreign Assets Control (“**OFAC**”) at the United States Department of the Treasury and the laws of any other applicable country, e.g., UK Money Laundering Regulations 2017 (as amended) and/or the various European Union Decisions and Regulations relating to financial sanctions in force from time to time.

“**Applicable Laws**” means any law, regulation, or rule applicable to this Agreement or to Lender, including, without limitation, the Anti-Corruption Laws and the Anti-Money Laundering Laws.

“**Appraisal**” shall mean an appraisal of the Property prepared not more than ninety (90) days prior to the relevant date with respect to which an appraisal shall be required hereunder by a member of the American Institute of Real Estate Appraisers selected by Mortgage Lender and approved by Lender, which appraisal shall (i) meet the minimum appraisal standards for national banks promulgated by the Comptroller of the Currency pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (FIRREA), (ii) be prepared on an “as is” basis, and (iii) otherwise be in form and substance satisfactory to Mortgage Lender and Lender.

“**Approved Accounting Method**” shall mean GAAP, the Uniform System of Accounts, federal tax basis accounting or such other method of accounting, in each case consistently applied, as may be reasonably acceptable to Mortgage Lender and Lender. **[Lender to confirm upon completion of underwriting]**

“**Approved Annual Budget**” shall have the meaning set forth in Section 4.13 hereof.

“**Approved Extraordinary Expense**” shall mean an operating expense of the Property not set forth on the Approved Annual Budget but approved by Mortgage Lender and Lender in writing (which such approval shall not be unreasonably withheld or delayed).

“**Approved Operating Expense**” shall mean an operating expense of the Property set forth on the Approved Annual Budget.

“**Architect**” means [\_\_\_\_\_] a [\_\_\_\_\_] and/or such other architect or architects selected by Borrower or Mortgage Borrower which are acceptable to Mortgage Lender and Lender and certified, registered and/or licensed in the State.

“**Architect’s Agreement**” means that certain [AIA Document B101 2017 Standard Form of Agreement] between Mortgage Borrower and Architect dated as of [\_\_\_\_\_] together with all extensions, substitutions, restatements, modifications and amendments thereto.

[“**Assignment of Management Agreement**” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees dated as of the date hereof among Mortgage Lender, Mortgage Borrower, Borrower, Lender and Manager, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time.][TBD IF APPLICABLE]

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

“**Balancing Event**” shall have the meaning set forth in Section 4.39 hereof.

“**Bank**” shall be deemed to refer to the bank or other institution maintaining the Clearing Account pursuant to the Clearing Account Agreement.

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

“**Bankruptcy Event**” shall mean the occurrence of any one or more of the following: (i) Borrower, Mortgage Borrower, Accommodation Pledgor, or any SPE Component Entity shall commence any case, proceeding or other action (A) under the Bankruptcy Code and/or any Creditors Rights Laws seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, liquidation or dissolution or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets; (ii) Borrower, Mortgage Borrower, Accommodation Pledgor, or any SPE Component Entity shall make a general assignment for the benefit of its creditors; (iii) any Restricted Party (or Affiliate thereof) files, or joins or colludes in the filing of, (A) an involuntary petition against Borrower, Mortgage Borrower, Accommodation Pledgor, or any SPE Component Entity under the Bankruptcy Code or any other Creditors Rights Laws, or solicits or causes to be solicited or colludes with petitioning creditors for any involuntary petition under the Bankruptcy Code or any other Creditors Rights Laws against Borrower, Mortgage Borrower, Accommodation Pledgor or any SPE Component Entity or (B) 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 Borrower’s, Mortgage Borrower’s, Accommodation Pledgor or any SPE Component Entity’s assets; (iv) Borrower, Mortgage Borrower or any SPE Component Entity files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Creditors Rights Laws, or solicits or causes to be solicited or colludes with petitioning creditors for any involuntary petition from any Person; (v) any Restricted Party (or Affiliate thereof) consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity or any portion of the Property; (vi) Borrower, Mortgage Borrower, Accommodation Pledgor or any SPE Component Entity makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (vii) any Restricted Party (or Affiliate thereof) contesting or opposing any motion made by Lender to obtain relief from the automatic stay or seeking to reinstate the automatic stay in the event of any proceeding under the Bankruptcy Code or any other Creditors Rights Laws involving Sponsor or its subsidiaries; (viii) any Restricted Party (or Affiliate thereof) taking any action in furtherance of, in collusion with respect to or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in items (i) through (vii) above; and (ix) in the event Lender receives less than the full value of its claim in any proceeding under the Bankruptcy Code or any other Creditors Rights Laws, Sponsor or any of its Affiliates receiving an equity interest or other financial benefit of any kind as a result of a “new value” plan or equity contribution.



“**Benchmark**” shall mean (i) initially, Term SOFR and (ii) on and after the occurrence of a Benchmark Transition Event and the related Benchmark Transition Date, the Benchmark Replacement determined in accordance with the terms and conditions hereof.

“**Benchmark Floor**” shall mean [\_\_\_\_\_ (\_\_\_%)].

“**Benchmark Rate**” shall mean the sum of (i) the greater of (A) the Benchmark and (B) the Benchmark Floor, and (ii) the Benchmark Spread.

“**Benchmark Rate Loan**” shall mean the Loan at all such times as interest thereon accrues at a rate of interest based upon the Benchmark pursuant to Section 2.5 hereof.

“**Benchmark Replacement**” shall mean, with respect to any Benchmark Transition Event, a variable rate or index selected by Lender (which may be, at Lender’s option, without limitation, “Daily Simple SOFR,” “Daily Compounded SOFR,” or “30-Day SOFR Average”).

“**Benchmark Replacement Adjustment**” shall mean, with respect to any Benchmark Replacement and its related Determination Date(s), a spread adjustment (which may be a positive or negative value, or zero) that has been selected by Lender, giving due consideration to (i) any selection or recommendation of a spread adjustment (including, without limitation, a “benchmark replacement spread adjustment”) or method for calculating or determining the same, by the Relevant Governmental Body for the applicable Benchmark Replacement and its related Determination Date(s), (ii) any evolving or then-prevailing market convention for determining a spread adjustment (including, without limitation, a “benchmark replacement spread adjustment”) or method for calculating or determining the same, for the applicable Benchmark Replacement and its related Determination Date(s) in U.S. dollar-denominated syndicated or bilateral commercial real estate credit facilities, and/or (iii) the spread adjustment (including, without limitation, a “benchmark replacement spread adjustment”) or method for calculating or determining the same, then being utilized by Lender or its Affiliates with respect to variable rate commercial real estate loans for the applicable Benchmark Replacement and its related Determination Date(s).

“**Benchmark Replacement Conforming Changes**” shall mean, with respect to any Benchmark Transition Event, any technical, administrative or operational changes (including changes to the definitions of “Business Day,” “Interest Period,” “Monthly Payment Date” and “Determination Date,” the timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, the applicability of adjustments to the interest rate due to the effect of reserve requirements, preceding and succeeding business day conventions and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of the applicable Benchmark Replacement and to permit the administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of the applicable Benchmark Replacement exists, in such other manner as Lender determines is necessary in connection with the administration of the Loan).

“**Benchmark Spread**” shall mean [\_\_\_\_\_ percent (\_\_\_%)], subject to the provisions of Section 2.5(b)(vi) hereof (including, without limitation, the adjustment of the Benchmark Spread by the addition thereto of the Benchmark Replacement Adjustment, when applicable hereunder). Lender’s computation of the Benchmark Spread shall be conclusive and binding on Borrower for all purposes, absent manifest error.

“**Benchmark Transition Date**” shall mean any date designated by Lender for conversion of the then-current Benchmark to a Benchmark Replacement.

“**Benchmark Unavailability Event**” shall mean that one or more of the following has occurred, at any time or from time to time during the term of the Loan, as determined by Lender (which determination shall be conclusive and binding upon Borrower absent manifest error): (i) at any time while the Loan is a Benchmark Rate Loan and the applicable Benchmark is Term SOFR, the Term SOFR Administrator either temporarily or permanently fails to report Term SOFR on a daily basis; (ii) at any time while the Loan is a Benchmark Rate Loan and the applicable Benchmark is not Term SOFR, the applicable administrator of the then-applicable Benchmark either temporarily or permanently fails to report such Benchmark on a daily basis; (iii) due to any Change in Law, it is unlawful (or asserted by any Governmental Authority to be unlawful) for Lender to maintain the Loan as a Benchmark Rate Loan using the then-current Benchmark; or (iv) adequate and reasonable means do not exist for ascertaining the then-current Benchmark.

“**Borrower Compliance Party**” means Borrower and its shareholders, subsidiaries, officers, directors, employees, agents, and Third Parties acting on its behalf.

“**Borrower Party**” and “**Borrower Parties**” shall mean each of Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, Sponsor, any Affiliated Manager and Guarantor.

“**Breakage Costs**” shall have the meaning set forth in Section 2.5(b) hereof.

“**Broker**” shall have the meaning set forth in Section 15.3 hereof.

“**Business Day**” shall mean a day on which commercial banks are not authorized or required by applicable law to close in New York, New York.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under the Approved Accounting Method (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

“**Carry Guaranty**” shall mean that certain Mezzanine Carry Guaranty dated as of the date hereof and executed by Guarantor in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.

“**Carry Holdback**” shall have the meaning set forth in Section 2.12(b). [As of the Closing Date, the amount of the Loan allocated to the Carry Holdback shall be [\_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00)] [**Lender to confirm upon approval of final construction budget**]

“**Cash Management Account**” shall have the meaning set forth in Mortgage Loan Agreement.

“**Cash Management Agreement**” shall have the meaning set forth in Mortgage Loan Agreement.

“**Cash Sweep Period**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Casualty**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Certificate of Occupancy**” shall mean a final certificate of occupancy for the Project, subject to conditions satisfactory to Lender in its sole and absolute discretion.

“**Change in Law**” shall mean the occurrence, after the Closing Date, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“**Clearing Account**” shall have the meaning set forth in Mortgage Loan Agreement.

“**Clearing Account Agreement**” shall have the meaning set forth in Mortgage Loan Agreement.

“**Clearing Account Trigger Event**” shall have the meaning set forth in Mortgage Loan Agreement.

“**Closing Date**” shall mean the date of this Agreement.

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

“**Collateral Assignment of Interest Rate Cap Agreement**” shall mean that certain Mezzanine Collateral Assignment of Interest Rate Cap Agreement, dated as of the date hereof, executed by Borrower 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.

“**Completion**” shall mean the Substantial Completion of the Construction on or prior to the Substantial Completion Date in accordance with all Plans and Specifications, the Construction Contracts, all Legal Requirements, the Franchise Agreement (including, without limitation, receipt of all approvals and completion of all inspections required thereunder to authorize the opening of the Property to the public) and this Agreement, such compliance to be evidenced to the satisfaction of Lender; together with the delivery to Lender of a temporary certificate of occupancy (if subject to any conditions, such conditions being acceptable to Lender) for the Improvements and evidence that all other approvals from Governmental Authorities have been issued and all other Legal Requirements have been satisfied so as to allow the Improvements to be used and operated in accordance with the Loan Documents.

“**Completion Guaranty**” shall mean that certain Mezzanine Completion Guaranty dated as of the date hereof and executed by Guarantor in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.

“**Condemnation**” shall mean any permanent or temporary taking by any Governmental Authority as the result, 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.

“**Construction**” shall mean the performance of the Work and the supplying of any materials to be supplied in connection with the Work.

“**Construction Balancing Event**” shall have the meaning set forth in Section 4.39(a).

“**Construction Budget**” shall mean the budget for the Hard Costs and Soft Costs, which is attached to this Agreement as Exhibit [ ].

“**Construction Contract**” shall mean each of the General Contract, the Architect's Agreement, and each Trade Contract, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time to time in accordance with the terms and conditions of this Agreement and the Mortgage Loan Agreement.

“**Construction Documents**” shall mean, collectively, all Construction Contracts, the Plans and Specifications, the Construction Budget, the Permits and the Construction Schedule, as any of the foregoing may be amended, replaced, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement and the Mortgage Loan Agreement.

“**Construction Reserve**” has the meaning set forth in the Mortgage Loan Agreement.

“**Construction Schedule**” has the meaning set forth in Section 4.30(a) hereof.

“**Contract**” shall mean any contract or agreement with any architect, engineer, contractor, subcontractor, management agent, leasing agent, sales agent, service and maintenance agent, or any other third party, whether existing as of the Closing Date or thereafter arising, relating to the design, construction, ownership, condition, use, occupancy, possession, management, operation, space leasing, service, maintenance or repair of, or otherwise in respect of, the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time (but the same shall not be deemed to include any Lease or the Management Agreement).

“**Control**” as to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of such Person, whether through ownership of voting securities or other beneficial interests, by contract or otherwise, and the terms “Controlled”, “controlled”, “Controlling” or “controlling” shall have a correlative meaning.

“**Counterparty**” shall mean the counterparty under any Interest Rate Cap Agreement or Replacement Interest Rate Cap Agreement, which counterparty shall satisfy the Minimum Counterparty Rating and otherwise be acceptable to Lender.

“**Cost Savings**” has the meaning set forth in Section 4.31(d) hereof.

“**Costs**” means, collectively, the Hard Costs and Soft Costs of the Construction and such other costs as set forth in the Construction Budget.

“**Creditors Rights Laws**” shall mean any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

“**Crowdfunded Person**” shall mean a Person capitalized primarily by monetary contributions (i) of less than \$35,000 each from more than 35 investors who are individuals or (ii) which are funded primarily (A) in reliance upon Regulation Crowdfunding promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended and/or (B) through internet-mediated registries, platforms or similar portals, subscriptions, benefit events and/or other similar methods.

“**Debt**” shall mean the outstanding principal amount 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 Minimum Interest Payment, Exit Fee and Breakage Costs, if applicable) due to Lender in respect of the Loan under the Loan Documents.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled principal (if applicable) and interest payments hereunder.

“**Debt Service Coverage Ratio**” shall mean, as of any date of calculation, the ratio calculated by Lender of (i) the Underwritable Cash Flow to (ii) the aggregate amount of Debt Service and Mortgage Debt Service which will be due for the twelve (12) month period immediately succeeding the date of calculation; provided, that, the foregoing shall be calculated by Lender assuming that the Loan will be in place for the entirety of said period.

“**Debt Yield**” shall mean, as of any date of calculation, a ratio calculated by Lender and conveyed as a percentage in which (i) the numerator is the Underwritable Cash Flow and (ii) the denominator is the then aggregate outstanding principal balance of the Loan and the Mortgage Loan.

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

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

“**Determination Date**” shall mean, with respect to any Interest Period, either (i) if the then-applicable Benchmark is Term SOFR, the date that is two (2) Term SOFR Business Days prior to the first day of such Interest Period; provided, however, that if Term SOFR does not so appear on the date specified above, then the applicable Determination Date for such Interest Period shall instead be the Term SOFR Business Day first preceding such date specified above, or (ii) if the then-applicable Benchmark is not Term SOFR, the date and time determined by Lender in accordance with the provisions of Section 2.5 hereof relating to Benchmark Replacement Conforming Changes.

“**Developer**” shall mean [\_\_\_\_\_, a \_\_\_\_\_] and/or such other developer selected by Borrower or Mortgage Borrower and approved by Lender and Mortgage Lender.

“**Developer Fees**” means all fees payable to the Developer under the Development Agreement.

“**Development Agreement**” shall have the meaning set forth in Mortgage Loan Agreement.

“**Development Consultant**” shall mean [\_\_\_\_\_] or such replacement Person as Lender and Mortgage Lender may designate and engage to assist Lender and Mortgage Lender in reviewing all or any portions of the Construction, the required permits and approvals for the Construction, to inspect the Improvements and the Property as the Work progresses and to consult with and to provide advice to and to render reports to Lender and Mortgage Lender which, at Lender’s option, may be either an officer or

employee of Lender or Mortgage Lender or a consulting architect, engineer or inspector appointed or engaged by Lender and/or Mortgage Lender at the sole cost and expense of Borrower and/or Mortgage Borrower.

“**Distribution**” means the declaration or payment of any dividend or distribution on or in respect of any shares of any class of capital stock of any Person or any distribution of cash or cash flow in respect of any partnership, membership or other ownership interest in any Person, or the purchase, redemption, or other retirement of any shares of any class of capital stock or ownership interest of any Person or ownership interests in such Person, directly or indirectly through a subsidiary (of any tier) or otherwise; the making of any loans to any shareholder, member, constituent partner or Affiliate; the return of capital by any Person to its shareholders, members or partners as such; or any other distribution on or in respect of any shares of any class of capital stock or ownership interest of any Person or any partnership, membership or other ownership interest in any Person.

“**Draw Request**” shall have the meaning set forth in Mortgage Loan Agreement.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (i) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (ii) a segregated trust account or accounts 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 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**” shall mean (i) [\_\_\_\_\_] (for so long as [\_\_\_\_\_] Bank does not suffer a material adverse change in condition from that existing on the Closing Date as determined by Lender) or (ii) any other 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 “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 Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by Fitch and “A2” by Moody’s.

“**Embargoed Person**” shall have the meaning set forth in Section 4.25 hereof.

“**Environmental Indemnity**” shall mean that certain Mezzanine 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 Laws**” shall have the meaning set forth in the Environmental Indemnity.

“**Equipment Leases**” shall have the meaning set forth in Mortgage Loan Agreement.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as the same may heretofore have been or shall be amended, restated, replaced or otherwise modified.

“**Event of Default**” shall have the meaning set forth in Section 10.1 hereof.

“**Excess Cash Flow**” shall have the meaning set forth in Section 8.3 hereof.

“**Excess Cash Flow Account**” shall have the meaning set forth in Section 7.4 hereof.

“**Excess Cash Flow Funds**” shall have the meaning set forth in Section 7.4 hereof.

“**Exchange Act**” shall mean the Securities and Exchange Act of 1934, as amended.

“**Exit Fee**” shall mean an amount equal to [\_\_\_ percent (\_\_\_%)] of the maximum principal amount of the Loan.

“**Extended Maturity Date**” shall have the meaning set forth in Section 2.11 hereof.

“**Extension Fee**” shall mean [one quarter of one percent (0.25%)] of the maximum principal amount of the Loan.

“**Extension Option**” shall have the meaning set forth in Section 2.11 hereof.

“**Extension Period**” shall have the meaning set forth in Section 2.11 hereof.

“**FATCA**” shall mean Sections 1471 through 1474 of the IRS Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRS Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the IRS Code.

“**FF&E**” shall mean furniture, fixtures and equipment at or in or used in connection with the use, occupancy, operation and maintenance of all or any part of the hotel located on the Property and of the type customarily utilized in hotel properties such as the Property.

“**FF&E Reserve Account**” shall have the meaning set forth in Mortgage Loan Agreement.

“**FF&E Reserve Funds**” shall have the meaning set forth in Mortgage Loan Agreement.

“**FF&E Reserve Monthly Deposit**” shall have the meaning set forth in Mortgage Loan Agreement.

“**Financing Statement**” shall mean, individually and collectively, the UCC Financing Statement or UCC Financing Statements naming Borrower, as debtor, and Lender, as secured party, pertaining to the Collateral, and filed in the appropriate filing office or offices required under applicable state law.

“**Final Completion**” means that Borrower shall have caused Mortgage Borrower to have caused each of the matters described in Section 4.29(d) to have been completed.

“**Final Completion Date**” means [\_\_\_\_\_].[TBD]

“**Final Funding Date**” shall mean the earliest to occur of (i) the date Lender has advanced the full amount of the Loan, (ii) the Substantial Completion Date, or (iii) an Event of Default.

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

“**Fitch**” shall mean Fitch, Inc.

“**Foreign Taxes**” shall have the meaning set forth in Section 2.5(b) hereof.

[“**Franchise Agreement**” shall mean (a) that certain [\_\_\_\_\_], as amended in accordance with the terms and provisions hereof, dated [\_\_\_\_\_] between Borrower and Franchisor or (b) if the context requires, any Replacement Franchise Agreement executed in accordance with the terms and provisions hereof.

“**Franchisor**” shall mean [Wyndham].

“**Future Advance**” shall have the meaning set forth in Section 2.12 hereof.

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

“**General Contract**” shall have the meaning set forth in Mortgage Loan Agreement.

“**General Contractor**” shall mean [\_\_\_\_\_, a \_\_\_\_\_] and/or such other general contractor selected by Borrower or Mortgage Borrower and approved by Lender and Mortgage Lender.

“**Government Entity**” means any national, federal, state or local, whether domestic or foreign, government, quasi-governmental entity, court, tribunal or any governmental bureau, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any country. A State-Owned Business is a Government Entity under the Administrative Agent’s policies and procedures.

“**Government Lists**” shall have the meaning set forth in Section 3.27 hereof.

“**Government Official**” means any (a) elected or appointed government official (e.g., ministers or politicians); (b) person who works for, or on behalf of, a Government Official, agency, or enterprise performing a governmental function, including members of a royal family or military (e.g., customs officers or tax authorities); (c) person who works for, or on behalf of, a State-Owned Business; (d) political party officer or candidate for public office (e.g., a candidate running for governor or a mayor); (e) person acting for, or on behalf of, a public international organization (e.g., United Nations, Red Cross, or IMF); and (f) person otherwise categorized as a Government Official under local law.

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

“**Gross Rents**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Guarantor**” shall mean [, individually and collectively,] [\_\_\_\_\_] and any successor to and/or replacement of any of the foregoing, in each case, pursuant to and in accordance with the applicable terms and conditions of the Loan Documents.

“**Guaranty**” shall mean, individually and collectively, each of the Guaranty of Recourse Obligations, the Carry Guaranty, [Guaranty of Interest Reserve], and the Completion Guaranty.

[“**Guaranty of Interest Reserve**” means that certain Mezzanine Interest Reserve Replenishment Guaranty dated as of the date hereof and executed by Guarantor in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.]

**“Guaranty of Recourse Obligations”** shall mean that certain Mezzanine Guaranty of Recourse Obligations dated as of the date hereof and executed by Guarantor in favor of Lender, together with all extensions, substitutions, restatements, modifications and amendments thereto.

**“Hard Costs”** means, collectively, all costs and expenses set forth in the Construction Budget which are denominated as “Hard Costs”.

**“Improvements”** shall have the meaning set forth in the granting clause of the Mortgage Security Instrument.

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

**“Indemnified Parties”** shall mean (i) Lender, (ii) any successor owner or holder of the Loan or participations in the Loan, (iii) any servicer of the Loan, (iv) any Investor or any prior Investor, (v) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of Lender or any Investor or other third party, (vi) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (vii) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, Affiliates or subsidiaries of any and all of the foregoing, and (viii) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties’ assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan.

**“Indemnified Liabilities”** shall have the meaning set forth in Section 11.5 hereof.

**“Initial Advance”** shall have the meaning set forth in Section 2.12 hereof.

**“Insurance Account”** shall have the meaning set forth the Mortgage Loan Agreement.

**“Insurance Payment Date”** shall mean, with respect to any applicable Policies, the date occurring 30 days prior to the date the applicable Insurance Premiums associated therewith are due and payable.

**“Insurance Premiums”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Interest Holdback”** shall have the meaning set forth in Section 2.12(b) hereof.

**“Intercreditor Agreement”** shall mean that certain intercreditor or other similar agreement by and among Lender and Mortgage Lender relating to the Loan and the Mortgage Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with its terms.

**“Interest Period”** shall have the meaning set forth in Section 2.6 hereof.

**“Interest Rate”** shall mean the rate or rates at which the outstanding principal amount of the Loan bears interest from time to time as determined in accordance with the provisions of Section 2.5 hereof.

**“Interest Rate Cap Agreement”** shall mean, as applicable, any interest rate cap agreement (together with the confirmation and schedules relating thereto) in form and substance satisfactory to Lender between Borrower and Counterparty or any Replacement Interest Rate Cap Agreement, in each case which also satisfies the requirements set forth in Section 2.8.

**“Interest Rate Cap Reserve Account”** shall have the meaning set forth in Section 7.9 hereof.

**“Interest Rate Cap Reserve Funds”** shall have the meaning set forth in Section 7.9 hereof.

**“Interest Reserve”** shall have the meaning set forth in Section 7.6 hereof.

**“Interest Reserve Account”** shall have the meaning set forth in Section 7.6 hereof.

**“Interest Reserve Funds”** shall have the meaning set forth in Section 7.6 hereof.

**“Interest Shortfall”** shall have the meaning set forth in Section 2.7 hereof.

**“Investor”** shall mean any investor or potential investor in the Loan (or any portion thereof or interest therein).

**“IRS Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time or any successor statute.

**“Labor and Materials Charge”** shall have the meaning set forth in Section 4.7 hereof.

“**Land**” shall have the meaning set forth in the Mortgage Security Instrument.

“**Lease**” shall have the meaning set forth in the Mortgage Security Instrument.

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

“**LTV**” shall mean a ratio, as determined by Lender, in which, as of any date of determination by Lender: (i) the numerator is equal to the outstanding principal balance of the Loan and Mortgage Loan and (ii) the denominator is equal to the appraised value of the Property based on an Appraisal.

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Security Instrument, the Environmental Indemnity, the Consent of Management Agreement, the Collateral Assignment of Interest Rate Cap Agreement, [the Guaranty of Interest Reserve], each Guaranty, and all other documents executed and/or delivered in connection with the Loan, as each of the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time. [**To be confirmed**]

“**Loan Proceeds**” shall mean amounts advanced by Lender under the Loan in accordance with this Agreement.

“**Losses**” shall mean any and all losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs and reasonable attorneys’ fees, in the case of each of the foregoing, of whatever kind or nature and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

“**Major Contract**” shall mean (i) any management (other than the Management Agreement), brokerage or leasing agreement or (ii) any cleaning, maintenance, service or other contract or agreement of any kind (other than Leases) of a material nature (materiality for these purposes to include contracts in excess of \$[\_\_\_\_\_] or which extend beyond one year (unless cancelable by Borrower or Mortgage Borrower on thirty (30) days or less notice without penalty)), in either case relating to the ownership, leasing, management, use, operation, maintenance, repair or restoration of the Property, whether written or oral, but excluding Construction Contracts.

“**Major Trade Contract**” shall mean (a) each Trade Contract for a Material Trade and (b) each other Trade Contract having a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any change order or change orders, equal to or in excess of [\_\_ percent (\_\_%)] of the total Hard Costs set forth in the Construction Budget; provided, however, that for purposes of this definition multiple Trade Contracts with a single Trade Contractor, or an Affiliate thereof, as the case may be, shall be deemed to be one Trade Contract.

“**Major Lease**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Management Agreement**” shall mean the management agreement entered into by and between Mortgage Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms and conditions of this Agreement.

“**Manager**” shall mean [\_\_\_\_\_] or such other entity selected as the manager of the Property in accordance with the terms of this Agreement and the other Loan Documents.

“**Material Action**” shall mean, with respect to any Person, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against such Person or file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal, state, local or foreign law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or a substantial part of its property, or take any action to consolidate or merge such Person with or into any other Person, or take any action to divide, dissolve or liquidate such Person, or make any assignment for the benefit of creditors of such Person, or sell all or substantially all of such Person’s assets, or admit in writing such Person’s inability to pay its debts generally as they become due, or declare or effectuate a moratorium on the payment of any obligation, or take action in furtherance of any such action.

“**Material Adverse Effect**” shall mean any material adverse effect upon (i) the business operations, economic performance, assets, condition (financial or otherwise), equity, contingent liabilities, prospects, material agreements or results of operations of Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, any Guarantor or the Property, (ii) the ability of

Borrower or any Guarantor to perform their respective obligations under any of the Loan Documents, (iii) the enforceability or validity of any of the Loan Documents, the perfection or priority of any lien created under any of the Loan Documents or the rights, interests or remedies of Lender under any of the Loan Documents, or (iv) the value, use, operation of, or cash flows from, the Property.

“**Material Trades**” shall mean Trade Contracts for foundation, superstructure, curtain wall, HVAC, electrical, plumbing and sprinkler. **[Lender to confirm upon completion of underwriting]**

“**Maturity Date**” shall mean [\_\_\_\_], 20[\_\_\_], [as such date may be extended pursuant to and in accordance with Section 2.11 hereof], or such other date on which the final payment of the principal amount of the Loan becomes due and payable as herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum non-usurious 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.

“**Milestones**” means those certain events and actions set forth on Schedule 4.29(b) of the Mortgage Loan Agreement to be completed and performed by the applicable Milestone Dates.

“**Milestone Dates**” means the specific dates by which the Milestones must be completed and performed, as set forth on Schedule 4.29(b) of the Mortgage Loan Agreement.

“**Minimum Counterparty Rating**” shall mean a long term credit rating from Moody’s of at least “A1”.

“**Minimum Disbursement Amount**” shall mean [\_\_\_\_] (\$ \_\_\_\_).

“**Minimum Interest**” shall have the meaning set forth in Section 2.7(d) hereof.

“**Minimum Interest Payment**” shall have the meaning set forth in Section 2.7(d) hereof.

“**Monthly Debt Service Payment**” shall have the meaning set forth in Section 2.6 hereof.

“**Monthly Payment Date**” shall mean [\_\_\_\_] 6, 20[\_\_\_] and the sixth (6th) day of every calendar month occurring thereafter during the term of the Loan.

“**Moody’s**” shall mean Moody’s Investor Service, Inc.

“**Mortgage Borrower**” shall mean [\_\_\_\_], a [\_\_\_\_].

“**Mortgage Borrower Company Agreement**” shall mean the [limited liability company operating agreement] of Mortgage Borrower.

“**Mortgage Carry Holdback**” shall mean the “Carry Holdback” as defined in the Mortgage Loan Agreement. [As of the Closing Date, the amount of the Mortgage Loan allocated to the Mortgage Carry Holdback shall be [\_\_\_\_] and 00/100 Dollars (\$ \_\_\_\_\_.00)] **[Lender and Mortgage Lender to confirm upon approval of final construction budget]**

“**Mortgage Equity Collateral**” shall mean the 100% direct and/or indirect equity ownership interest held by Accommodation Pledgor in Mortgage Borrower.

“**Mortgage Equity Foreclosure**” shall mean the transfer of the Mortgage Equity Collateral to Mortgage Lender in connection with the exercise of Mortgage Lender’s rights and remedies under the Mortgage Loan Documents, provided that such transfer is made in accordance with the applicable terms and conditions of the Intercreditor Agreement.

“**Mortgage Loan Future Funding**” shall mean a “Future Funding” under, as defined in, and pursuant to the Mortgage Loan Agreement.

“**Mortgage Lender**” shall mean [\_\_\_\_], in its capacity as lender under the Mortgage Loan, and its successors and/or assigns.

“**Mortgage Loan**” shall mean that certain loan in the original principal amount of \$[\_\_\_\_] made by Mortgage Lender to Mortgage Borrower.

“**Mortgage Loan Agreement**” shall mean that certain Construction Loan Agreement dated as of even date herewith between Mortgage Lender and Mortgage Borrower, as amended, supplemented or otherwise modified from time to time.

“**Mortgage Loan Documents**” shall mean the “Loan Documents” as defined in the Mortgage Loan Agreement, including the documents, certificates and instruments evidencing, securing or otherwise executed in connection with the Mortgage Loan (as the same exist as of the date hereof and as the same may be amended, restated, replaced, supplemented or otherwise modified).



**“Mortgage Loan Event of Default”** shall mean an “Event of Default” under and as defined in the Mortgage Loan Agreement.

**“Mortgage Loan Monthly Debt Service”** shall mean, with respect to any particular period of time, regularly scheduled monthly principal (if applicable) and interest payments due under the Mortgage Loan Documents.

**“Mortgage Loan Obligations”** means the “Obligations” as defined in the Mortgage Loan Agreement.

**“Mortgage Security Instrument”** shall mean the “Security Instrument” as defined in the Mortgage Loan Agreement.

**“Net Proceeds”** shall mean: (i) the net amount of all insurance proceeds payable as a result of a Casualty to the Property, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys’ fees and costs), if any, in collecting such insurance proceeds, or (ii) the net amount of the Award, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys’ fees and costs), if any, in collecting such Award.

**“Note”** shall mean that certain Mezzanine Promissory Note of even date herewith in the principal amount of \$[\_\_\_\_\_], made by Borrower in favor of Lender, as the same may be amended, restated, replaced, extended, renewed, supplemented, severed, split, or otherwise modified from time to time.

[**“O&M Program”** shall have the meaning set forth in the Mortgage Loan Agreement.]

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

**“OFAC”** shall have the meaning set forth in Section 3.27 hereof.

**“Officer’s Certificate”** shall mean a certificate delivered to Lender by Borrower which is signed by Responsible Officer of Borrower.

**“Offsite Materials”** has the meaning set forth in Section 2.16 hereof.

**“Operating Expenses”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Organizational Chart”** shall have the meaning set forth in Section 3.28 hereof.

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

**“Ownership Certificates”** shall mean, individually and collectively, the certificate(s) evidencing the Pledged Company Interests.

**“PACE Loan”** shall mean any Property-Assessed Clean Energy loan or any similar financing.

**“Patriot Act”** shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

**“Patriot Act Offense”** shall have the meaning set forth in Section 3.27 hereof.

**“Permits”** shall have the meaning given to such term in the Mortgage Loan Documents.

**“Permitted Encumbrances”** shall have the meaning given to such term in the Mortgage Loan Documents.

**“Permitted Equipment Leases”** shall have the meaning given to such term in the Mortgage Loan Documents.

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

**“Personal Property”** shall have the meaning set forth in the granting clause of the Mortgage Security Instrument.

[**“PIP”** shall have the meaning set forth in Section 4.47 hereof.]

**“Plans and Specifications”** shall have the meaning given to such term in the Mortgage Loan Documents.

**“Pledged Company Interests”** shall have the meaning set forth in the Security Instrument.

**“Policies”** shall have the meaning set forth in the Mortgage Loan Agreement.

**“Prepayment Notice”** shall have the meaning specified in Section 2.7(a) hereof.

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

published or are limited, regulated or administered by a governmental or quasigovernmental body, then Lender shall select a comparable interest rate index.

“**Prime Floor**” shall mean the Benchmark Floor.

“**Prime Rate**” shall mean the sum of (i) the greater of (A) Prime and (B) the Prime Floor, and (ii) the Prime Spread.

“**Prime Rate Loan**” shall mean the Loan at such time as interest thereon accrues at a rate of interest based upon Prime pursuant to Section 2.5 hereof.

“**Prime Spread**” shall mean the difference (expressed as the number of basis points) between (a) the Benchmark Rate on the Determination Date that the Benchmark was last applicable to the Loan and (b) Prime on the Determination Date that the Benchmark was last applicable to the Loan; provided, however, in no event shall such difference be a negative number.

“**Prohibited Entity**” shall mean any Person which (i) is a statutory trust organized under 12 *Del.C.* § 3801 *et seq.* (or any successor statute thereto), or under any similar state or federal law, (ii) is a Crowdfunded Person or (iii) owns a direct or indirect interest in Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity or the Property through a tenancy-in-common or other similar form of ownership interest.

“**Prohibited Person**” means any of the following: (a) a person or entity currently listed on the Specially Designated Nationals List (“**SDN List**”) or any similar list maintained by the Office of Foreign Assets Control (“**OFAC**”) at the United States Department of the Treasury or a similar list of any other applicable country, e.g., the UK’s Consolidated List Of Financial Sanctions Targets in the UK or the EU’s Consolidated list of persons, groups and entities subject to EU financial sanctions; (b) a person or entity owned or controlled, directly or indirectly, by a person or entity listed on the SDN List or any similar list maintained by OFAC; (c) a person or entity with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of U.S. law, regulation, or executive order; (d) a person that is a citizen or entity incorporated in any country subject to U.S. country-based economic sanctions whereby conducting transactions with that person or entity would be in violation of any applicable law, rule, or regulation, or (e) any other person subject to a prohibition or where relevant persons are otherwise prohibited from engaging in transactions pursuant to the UK or EU sanctions regime.

“**Prohibited Transfer**” shall mean (i) a Sale or Pledge of the Property, the Mortgage Equity Collateral or the Collateral or any part thereof or any legal or beneficial interest in either (including, without limitation, the Loan and/or Loan Documents or the Mortgage Loan and/or Mortgage Loan Documents), (ii) a Sale or Pledge of an interest in any Restricted Party and/or (iii) Borrower, Accommodation Pledgor or Mortgage Borrower’s acquisition of any real property, other than the real property owned by Mortgage Borrower as of the Closing Date. A Prohibited Transfer shall include, but not be limited to, (A) an installment sales agreement wherein (1) Borrower, Accommodation Pledgor or Mortgage Borrower agrees to sell the Property or any part thereof for a price to be paid in installments or (2) Borrower or Accommodation Pledgor agrees to sell the Mortgage Equity Collateral or any part thereof for a price to be paid in installments or (3) Borrower or any other Restrict Party agrees to sell the Collateral or any part thereof for a price to be paid in installments; (B) an agreement by Mortgage Borrower leasing all or a substantial part of the Property for other than actual occupancy by a Tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower, Accommodation Pledgor or Mortgage Borrower’s right, title and interest in and to any (1) Leases or any Rents or (2) Property Documents; (C) 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 in one or a series of transactions; (D) 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 or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (E) if a Restricted Party is a limited liability company, any division, 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 any member or any profits or proceeds relating to such membership interest; (F) 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; (G) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) or the engagement of a new Manager, in each case, other than in accordance with the terms and conditions of this Agreement; (H) if Mortgage Borrower enters into, or the Property is subjected to, any PACE Loan; or (I) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by Borrower, Accommodation Pledgor or Mortgage Borrower or by any other Person, pursuant to any contractual agreement or other instrument or under applicable law (including, without limitation, common law) and/or any other action instituted by (or at the behest of) Borrower, Accommodation Pledgor or Mortgage Borrower or its Affiliates or consented to or acquiesced in by Borrower, Accommodation Pledgor or Mortgage Borrower or its Affiliates which results in a Property Document Event.

“**Project**” shall have the meaning set forth in the Mortgage Security Instrument.

“**Property**” shall have the meaning set forth in the Mortgage Security Instrument.

“**Punchlist Items**” means, collectively, items of construction, decoration, mechanical adjustment or installation that remain to be completed after Substantial Completion, the non-completion of which does not prevent the use and occupancy of the Improvements

for their intended purposes, as set forth in the temporary certificate of occupancy for the Improvements or which otherwise remain incomplete under the Construction Documents.

“**Qualified Management Agreement**” shall mean a management agreement with a Qualified Manager with respect to the Property which is approved by Lender in writing.

“**Qualified Manager**” shall mean a Person approved by Lender in writing.

“**REA**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Register**” shall have the meaning set forth in 15.20(b) hereof.

“**Registrar**” shall have the meaning set forth in 15.20(b) hereof.

“**Relevant Governmental Body**” shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York, or any successor thereto.

“**Rent Roll**” shall have the meaning set forth in the Mortgage Loan Agreement.

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

“**Replacement Interest Rate Cap Agreement**” shall have the meaning set forth in Section 2.8(c) hereof.

“**Required Borrower Equity**” means [the amount of \$[\_\_\_\_\_]], which amount shall have been or will be contributed to Borrower as follows: [\_\_\_\_\_].

“**Reserve Accounts**” shall mean the any reserve and/or escrow account established by this Agreement or the other Loan Documents, whether as of the Closing Date or thereafter at any time during the term of the Loan (but specifically excluding the Cash Management Account and the Clearing Account).

“**Reserve Funds**” shall mean the escrow funds established by this Agreement or the other Loan Documents.

“**Responsible Officer**” means with respect to a Person, the chairman of the board, president, chief operating officer, chief financial officer, treasurer or vice president of such Person or such other similar officer of such Person reasonably acceptable to Lender.

“**Restoration**” shall mean, following the occurrence of a Casualty or a Condemnation in connection with which the repair of the Property (or any portion thereof) is required or permitted hereunder, the completion of the repair and restoration of the Property (or applicable portion thereof) as nearly as possible to the condition the Property (or applicable portion thereof) was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender and Mortgage Lender.

“**Restricted Party**” shall mean Borrower, Mortgage Borrower, Sponsor, Guarantor, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, Mortgage Borrower, Sponsor, Guarantor, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager or any non-member manager.

“**Retainage**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**Sale or Pledge**” shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

“**Security Instrument**” shall mean that certain Pledge and Security Agreement dated as of the date hereof by Borrower in favor of Lender.

“**Soft Costs**” shall have the meaning set forth in the Mortgage Loan Agreement.

“**SPE Component Entity**” shall have the meaning set forth on Exhibit [ ] attached hereto.

“**Sponsor**” shall mean [Guarantor – **CONFIRM WITH LENDER BASED ON ORG CHART**].

“**Springing Member LLC**” shall mean a Delaware limited liability company properly structured with at least one springing member that shall, upon the dissolution, withdrawal or disassociation of such limited liability company’s last remaining member, immediately become the sole member of such limited liability company.

“**State**” shall mean the state in which the Property or any part thereof is located.

“**State-Owned Business**” means any business, company, corporation, business, enterprise, firm, partnership, or venture of any kind in which a Government Entity owns 25% or more of the outstanding equity or that has a PEP serving as a senior executive or a board member.

“**Stored Materials**” means materials purchased by Mortgage Borrower or General Contractor on behalf of Mortgage Borrower or to be purchased with the proceeds of a Draw Request for use in the Construction and stored at the Property and not yet installed or incorporated into the Improvements.

“**Strike Rate**” shall mean [\_\_\_\_\_ percent (\_\_\_%)], subject to the provisions of Section [2.8](g) hereof.

“**Substantial Completion**” or “**Substantially Complete**” means that point in time when Borrower shall have caused Mortgage Borrower to have caused each of the matters described in Section 4.29 hereof to have been completed.

“**Substantial Completion Date**” means \_\_\_\_\_, 20\_\_ . [TBD]

“**Survey**” shall mean that certain survey of the Property certified and delivered to Lender in connection with the closing of the Loan.

“**Tax Payment Date**” shall mean, with respect to any applicable Taxes, the date occurring 30 days prior to the date the same are due and payable.

“**Taxes**” shall mean all taxes, assessments, water rates, sewer rents, and other governmental impositions, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Tenant**” shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement.

“**Term SOFR**” shall mean, with respect to each Interest Period, the rate identified as “1 Month CME Term SOFR” by the Term SOFR Administrator on the CME Market Data Platform <https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html> (or any successor source for the rate currently identified as “1 Month CME Term SOFR” identified as such by the Term SOFR Administrator from time to time) as of 6:00 a.m. (New York City time) on the Determination Date (rounded upwards, if necessary, to the nearest 1/8<sup>th</sup> of 1%).

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited or a successor administrator of the rate currently identified as “1 Month CME Term SOFR” that has been broadly adopted by the commercial real estate finance industry as a successor administrator of such rate, as determined by Lender in good faith.

“**Term SOFR Business Day**” means any day except for a Saturday, Sunday, a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. governmental securities or a day for and on which the Term SOFR Administrator is not required to publish Term SOFR in accordance with the applicable guidelines, rules or requirements for, or announcements regarding, the publication of Term SOFR as issued and in force by, or with respect to, the Term SOFR Administrator from time to time.

“**Title Company**” shall mean the national title insurance company that issued the Title Insurance Policy on the Closing Date.

“**Title Insurance Policy**” shall mean, individually and collectively, each UCC title insurance policy issued with respect to the Collateral and insuring the lien of the Security Instrument.

“**Trade Contract**” shall mean any agreement, contract or purchase order between Mortgage Borrower, an Affiliate of Mortgage Borrower or General Contractor, on the one hand, and any Trade Contractor, on the other hand, pursuant to which such Trade Contractor agrees to provide labor, materials, equipment and/or services in connection with the completion of the Project, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement and the Mortgage Loan Agreement.

“**Trade Contractor**” shall mean any Person that is a contractor, subcontractor, sub-subcontractor, supplier or provider of labor, materials, equipment and/or services in connection with the completion of the Project.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State.

“**Unaffiliated Third Party**” means any company or individual retained by the Borrower or Mortgage Borrower, either directly or through a company or other legal entity, to (1) provide services on behalf of the Borrower or Mortgage Borrower; (2) find or introduce co-investors, clients, or investment targets; (3) arrange introductions to Government Officials; or (4) assist the Borrower or Mortgage Borrower to obtain licenses, permits, or other governmental approvals. Third Parties do not include travel and entertainment vendors paid by employees of Borrower or Mortgage Borrower who submit the expense for reimbursement.

“**Underwriting Adjustments**” shall mean adjustments made by Lender in its calculation of Underwritable Cash Flow and the components thereof, in each case, based upon Lender underwriting criteria, which such adjustments shall include, without limitation, adjustments for (i) items of a non-recurring nature and (ii) imminent liabilities and/or other expense increases (including, without limitation, imminent increases to Taxes and Insurance Premiums). [To be updated depending on def of DSCR.]

“**Underwritable Cash Flow**” shall have the meaning given to such term in the Mortgage Loan Documents. [To be updated depending on def of DSCR.]

“**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**” shall mean direct full faith and credit obligations of the United States of America that are not subject to prepayment, call or early redemption.

“**Work**” means the demolition, grading, site preparation, foundation work and construction, furnishing and equipping of the Project and related facilities pursuant to the Construction Documents, including all onsite and offsite improvements.

**Section 1.2 Principles of Construction.**

(a) All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. 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. 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.

(b) Notwithstanding anything to the contrary contained herein, including references to the Mortgage Loan or to capitalized terms being defined in the Mortgage Loan Documents, nothing herein creates any obligation of Borrower with respect to any of the Mortgage Loan Documents and Borrower has no obligation to comply with and shall not be liable under any Mortgage Loan Document, and nothing herein creates any obligation of Mortgage Borrower with respect to any of the Loan Documents and Mortgage Borrower does not have any obligation to comply with and shall not be liable under this Agreement or any of the other Loan Documents.

**ARTICLE 2**

**GENERAL TERMS**

**Section 2.1 No Loan Commitment.** Except as expressly and specifically set forth herein, Lender has no obligation or other commitment to loan any funds to Borrower or otherwise make disbursements to Borrower. Borrower hereby waives any right Borrower may have to make any claim to the contrary.

**Section 2.2 The Loan.** Subject to and upon the terms and conditions set forth in this Agreement and the other Loan Documents, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

**Section 2.3 Disbursement to Borrower.**

(a) Upon the satisfaction of the conditions precedent to the making of the Loan as set forth below in this Section 2.3, Lender shall make the Initial Advance. Borrower may request and receive Future Advances in accordance with, and subject to the conditions contained in, this Agreement, including, without limitation, Section 2.12 hereof. Any amount borrowed and repaid hereunder in respect of the Loan may not be re-borrowed.

(b) The obligation of Lender to make the Loan, including the Initial Advance and all Future Advances, is subject to the following conditions precedent, each of which shall be satisfied and remain satisfied prior to the Initial Advance and each Future Advance:

(c) Lender shall have received all of the Loan Documents, each properly executed and notarized, if applicable, by Borrower, Guarantor and/or others, as applicable, each dated as of the date hereof.

(i) Lender shall have received and approved all of the following:

(A) the pro forma Title Insurance Policy, evidencing Title Company’s irrevocable commitment to issue the Title Insurance Policy;

(B) the Survey;

(C) such opinions of counsel as Lender shall require; and

(D) the establishment of the Accounts required under the Mortgage Loan Agreement.

(ii) Lender shall have received all such other documents, instruments, certificates, opinions, assurances, consents or approvals as Lender or its counsel may reasonably request.

(iii) The representations and warranties of Borrower and Guarantor contained in the Loan Documents shall be true and correct on the Closing Date and as of the date of each Future Advance and each disbursement from any Reserve Account.

(iv) The Borrower Parties shall be in compliance with all the terms and provisions of this Agreement and the other Loan Documents and no Default or Event of Default shall exist and be continuing.

(v) Lender and Mortgage Lender shall have received and approved the Architect's Agreement, the General Contract and Trade Contracts covering at least [\_\_\_\_\_]percent (\_\_\_\_%) of the Hard Costs of the Project contemplated in the Construction Budget, which shall include, at a minimum, all Material Trades.

(vi) Lender and Mortgage Lender shall have received executed Major Trade Contractor Consents from each Major Trade Contract who is party to a Trade Contract as of the date of the Future Advance being made, in form and substance satisfactory to and Mortgage Lender.

(vii) Lender and Mortgage Lender have received and approved the Construction Budget, the Construction Schedule and the Plans and Specifications and construction drawings for one hundred percent (100%) of the Construction.

(viii) Lender and Mortgage Lender shall have received evidence of the issuance of all Permits necessary to commence Construction and to achieve Final Completion, and all such Permits shall be in full force and effect.

(ix) Lender and Mortgage Lender shall have verified to its satisfaction the contribution of the Required Borrower Equity in the Mortgage Borrower and the Property.

(x) Lender and Mortgage Lender shall have received one of the following in form and substance reasonably acceptable to Lender and Mortgage Lender: (i) a sub guard policy; (ii) unconditional performance and payment bond from the General Contractor; (iii) unconditional performance and payment bonds from all major subcontractors as designated by Lender and Mortgage Lender; or (iv) a letter of credit from an issuer and in an amount acceptable to Lender and Mortgage Lender. Lender and Mortgage Lender shall be named a dual obligee on all bonds.

(xi) Lender and Mortgage Lender shall have verified that all insurance required by this Agreement is in place.

(xii) Lender and Mortgage Lender shall have received and approved an Appraisal acceptable to Lender.

(xiii) Borrower shall pay (or shall have paid) to Lender the actual fees and costs of Lender's outside legal counsel and any and all other fees and expenses required to be paid by Borrower pursuant to this Agreement.

(xiv) The Financing Statement has been submitted for filing and the Pledged Company Interest delivered to Lender.

(xv) No Material Adverse Effect shall then exist.

(xvi) Lender shall have received and approved the Mortgage Loan Documents and shall have entered into the Intercreditor Agreement with Mortgage Lender.

(xvii) Mortgage Lender shall have made or shall contemporaneously make the requisite advance of the Mortgage Loan under and pursuant to the Mortgage Loan Documents.

(xviii) Lender shall have verified to its satisfaction the availability of funding in full of the Mortgage Loan and its investment in the Property.

(xix) *[Add language for receipt/approval by Lender of documentation for Key Money and/or Wyndham Guaranties, if applicable].*

**Section 2.4 The Note and the other Loan Documents.** The Loan shall be evidenced by the Note and this Agreement and secured by this Agreement and the other Loan Documents.

**Section 2.5 Interest Rate.**

(a) Interest on the outstanding principal balance of the Loan shall accrue from the Closing Date at the Interest Rate until repaid in accordance with the applicable terms and conditions hereof.

(b) The following additional provisions shall apply and, subject to Section 2.5(c) hereof, the Interest Rate shall be determined in accordance with this Section 2.5(b):

(i) Subject to the terms and conditions hereof, the Loan shall be a Benchmark Rate Loan, and the Interest Rate with respect to each Interest Period shall be the Benchmark Rate, unless the Loan is converted to (and for so long as the Loan remains) a Prime Rate Loan pursuant to the provisions hereof, in which case the Interest Rate with respect to the applicable Interest Period shall be the Prime Rate. Notwithstanding any provision of this Agreement to the contrary, in no event shall Borrower have the right to convert a Benchmark Rate Loan to a Prime Rate Loan, or vice versa.

(ii) Any change in the rate of interest hereunder due to (A) a change in the Benchmark or Prime, as applicable, or (B) a conversion of the Loan from a Benchmark Rate Loan to a Prime Rate Loan, or vice versa, shall, in each such case, become effective as of the opening of business on the first day on which such change or conversion shall become effective.

(iii) Subject to the final sentence of this clause (iii), upon the occurrence of a Benchmark Unavailability Event, Lender shall forthwith give notice thereof (which notice may be given by telephone, confirmed in writing) to Borrower at least

one (1) day prior to the last day of the related Interest Period. If such notice is given, then the related outstanding Benchmark Rate Loan shall be converted, on the last day of the then current Interest Period, to a Prime Rate Loan and Borrower shall cooperate with any and all reasonable requests of Lender to make any necessary changes to this Agreement or the other Loan Documents to conform the same to such change in the interest rate hereunder. Notwithstanding the foregoing, in the event that both a Benchmark Unavailability Event and a Benchmark Transition Event have occurred, the provisions of this Agreement relating to the Benchmark Transition Event shall govern and control unless a Benchmark Unavailability Event has also occurred with respect to the applicable Benchmark Replacement, in which case the provisions of this Agreement relating to the Benchmark Unavailability Event shall govern and control.

(iv) Subject to the final sentence of this clause (iv), if, pursuant to the terms hereof, any portion of the Loan has been converted to a Prime Rate Loan and Lender shall determine that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice of such determination (which notice may be given by telephone, confirmed in writing), to Borrower at least one (1) day prior to the last day of the related Interest Period. If such notice is given, the related outstanding Prime Rate Loan shall be converted to a Benchmark Rate Loan on the last day of the then current Interest Period. Notwithstanding the foregoing, in the event that a Benchmark Transition Event has occurred, the provisions of this Agreement relating to the Benchmark Transition Event shall govern and control.

(v) Upon the occurrence of a Benchmark Transition Event, the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder as of the applicable Benchmark Transition Date, without the need for any amendment to, or further action or consent of any other party to, this Agreement or any of the other Loan Documents, and from and after such Benchmark Transition Date the Loan shall continue to be deemed to be a Benchmark Rate Loan, bearing interest at the new Benchmark. In no event shall Borrower have the right to change the Benchmark, or to unilaterally implement any Benchmark Replacement Adjustment.

(vi) In connection with any Benchmark Transition Event, Lender shall have the right to make Benchmark Replacement Conforming Changes to this Agreement or any of the other Loan Documents from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any such Benchmark Replacement Conforming Changes will become effective without any further action or consent of Borrower, Guarantor, or any other Person. In addition, within ten (10) Business Days after request by Lender, Borrower shall execute, acknowledge, and deliver, at Borrower's cost and expense, all further acts, deeds, conveyances, assignments, financing statements, transfers, documents, agreements, assurances, and such other instruments as Lender may reasonably require from time to time in such manner as Lender determines is reasonably necessary to implement any applicable Benchmark Replacement Conforming Changes. In no event shall Borrower have the right to unilaterally implement any Benchmark Replacement Conforming Changes.

(vii) Lender shall promptly notify Borrower of (A) any occurrence of a Benchmark Transition Event and its related Benchmark Transition Date, (B) the implementation of any Benchmark Replacement and related Benchmark Replacement Adjustment and (C) the implementation of any Benchmark Replacement Conforming Changes; provided, however, that the failure of Lender to deliver any such notice to Borrower shall not in any way undermine the effectiveness of any of the foregoing. Any determination, decision or election made by Lender pursuant to, or in connection with, this Section 2.5 (including, without limitation, any determination with respect to a tenor, rate or adjustment, or of the occurrence or non-occurrence of an event, circumstance or date, or any decision to take or refrain from taking any action, or to make or refrain from making any election or selection) will be conclusive and binding on Borrower and all other parties to the Loan Documents, absent manifest error, and may be made in Lender's sole discretion and without consent from, or consultation with, Borrower, Guarantor, or any other Person.

(viii) All payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, any and all present or future taxes, levies, imposts, duties, charges, fees, deductions, reserves or withholdings imposed, levied, collected, withheld or assessed by any Governmental Authority, including any interest, additions to tax, or penalties applicable thereto, excluding (a) net income, franchise and branch profits taxes (x) imposed as a result of Lender being organized under the laws of, or having its principal office or applicable lending office located in, the jurisdiction imposing such tax (or any political subdivision thereof) or (y) that are imposed as a result of a present or former connection between Lender and the jurisdiction imposing such tax (other than connections arising from Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in the Loan or Loan Document), (b) U.S. federal withholding taxes imposed on amounts payable to or for the account of Lender with respect to an applicable interest in the Loan (other than pursuant to an assignment request by Borrower) or Lender changes its lending office, except in each case to the extent that, pursuant to this Section 2.5(b)(viii), amounts with respect to such taxes were payable either to Lender's assignor immediately before Lender became a party hereto or to Lender immediately before it changed its lending office, (c) taxes attributable to Lender's failure to comply with Section 2.5(b)(xii) below, and (d) any withholding taxes imposed under FATCA (such non-excluded taxes being referred to collectively as "**Foreign Taxes**"). If any Foreign Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Foreign Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any Foreign Tax is payable pursuant to applicable law by Borrower, as promptly as possible thereafter, Borrower shall send to Lender an original official receipt, if available, or certified copy thereof showing payment of such Foreign Tax. Borrower hereby indemnifies Lender for any incremental taxes, interest or penalties that may become payable by Lender which may result from any failure by Borrower to pay any such Foreign Tax when due to the appropriate

taxing authority or any failure by Borrower to remit to Lender the required receipts or other required documentary evidence. Borrower shall indemnify Lender, within 10 days after demand therefor, for the full amount of any Foreign Taxes (including Foreign Taxes imposed or asserted on or attributable to amounts payable under this Section 2.5(b)(viii)) payable or paid by Lender or required to be withheld or deducted from a payment to Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Foreign Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Lender shall be conclusive absent manifest error. All amounts payable under this Section 2.5(b)(viii) shall constitute additional interest hereunder and shall be secured by the Security Instrument and the other Loan Documents. The provisions of this Section 2.5(b)(viii) shall survive any payment or prepayment of the Loan and any foreclosure or satisfaction of the Security Instrument. Any reference under this Section 2.5(b)(viii) to "Lender" shall be deemed to include any participant and any assignees.

(ix) If any Change in Law shall hereafter make it unlawful for Lender to make or maintain a Benchmark Rate Loan at the then-applicable Benchmark as contemplated hereunder, then (A) the obligation of Lender hereunder to make such a Benchmark Rate Loan, or to convert a Prime Rate Loan to a such a Benchmark Rate Loan, shall be canceled forthwith and (B) any outstanding Benchmark Rate Loan shall be converted automatically to a Prime Rate Loan on the last day of the then current Interest Period or within such earlier period as required by law. Borrower hereby agrees to promptly pay to Lender, upon demand, any additional amounts necessary to compensate Lender for any reasonable costs incurred by Lender in making any conversion in accordance with this Agreement, including, without limitation, any interest or fees payable by Lender to lenders of funds obtained by it in order to make or maintain such Benchmark Rate Loan hereunder. Lender's notice of such costs, as certified to Borrower, shall be conclusive absent manifest error; provided, however, that, for purpose of this clause (ix), Lender will treat Borrower in the same manner as similarly-situated borrowers with similar loans originated by Lender.

(x) If any Change in Law:

(A) shall hereafter impose, modify or hold applicable any reserve, capital adequacy, tax, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of Lender which is not otherwise included in the determination of the Benchmark hereunder;

(B) shall hereafter have the effect of reducing the rate of return on Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy) by any amount deemed by Lender to be material; or

(C) shall hereafter impose on Lender any other condition, and the result of any of the foregoing is to increase the cost to Lender of making, renewing or maintaining loans or extensions of credit or to reduce any amount receivable hereunder;

then, in any such case, Borrower shall promptly pay Lender, upon demand, any additional amounts necessary to compensate Lender for such additional cost or reduced amount receivable as determined by Lender. If Lender becomes entitled to claim any additional amounts pursuant to this subsection, Lender shall provide Borrower with not less than thirty (30) days' notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender to Borrower shall be conclusive in the absence of manifest error; provided, however, that, for purpose of this clause (x), Lender will treat Borrower in the same manner as similarly-situated borrowers with similar loans originated by Lender. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the other Loan Documents.

(xi) Borrower agrees to indemnify Lender and to hold Lender harmless from any loss or expense which Lender sustains or incurs (A) to the extent resulting from any default by Borrower in payment of the principal of, or interest on, a Benchmark Rate Loan, including, without limitation, such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by Lender in order to maintain such Benchmark Rate Loan, (B) as a consequence of any prepayment (whether voluntary or mandatory) of the Benchmark Rate Loan on a day that is not the last day of an Interest Period, including, without limitation, such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain the Benchmark Rate Loan hereunder and (C) as a consequence of the conversion (for any reason whatsoever, whether voluntary or involuntary) of the Interest Rate from the Benchmark Rate to the Prime Rate with respect to any portion of the outstanding principal amount of the Loan then bearing interest at the Benchmark Rate on a date other than the last day of an Interest Period, including, without limitation, such loss or expenses arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain a Benchmark Rate Loan hereunder (the amounts referred to in clauses (A), (B) and (C) are herein referred to collectively as the "**Breakage Costs**"); provided, however, Borrower shall not indemnify Lender from any loss or expense arising from Lender's willful misconduct or gross negligence. This provision shall survive payment of the Note in full and the satisfaction of all other obligations of Borrower under this Agreement and the other Loan Documents.



(xii) If Lender is a U.S. Person (other than the lender originally named herein), Lender shall deliver to Borrower, on or about the date on which it becomes Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), two executed copies of Form W-9 certifying that it is not subject to U.S. federal backup withholding tax (unless it establishes to the reasonable satisfaction of Borrower that it is otherwise eligible for an exemption from backup withholding tax or other withholding tax). If Lender is not a U.S. Person, Lender shall deliver to Borrower, to the extent legally entitled to do so, on or about the date on which it becomes Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), whichever of the following is applicable: (A) two executed copies Form W-8BEN or W-8BEN-E, establishing an exemption from U.S. federal withholding tax under an applicable tax treaty, (B) two executed copies of Form W-8ECI, (C) if Lender is claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRS Code, (x) a certificate to the effect that Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the IRS Code, a “10 percent shareholder” of Borrower within the meaning of Section 871(h)(3)(B) of the IRS Code, or a “controlled foreign corporation” related to Borrower as described in Section 881(c)(3)(C) of the IRS Code (a “**U.S. Tax Compliance Certificate**”) and (y) two executed copies of Form W-8BEN or IRS Form W-8BEN-E, or (D) two executed copies of Form W-8IMY, accompanied by Forms W-8BEN, W-8BEN-E, W-9, and U.S. Tax Compliance Certificates, for each beneficial owner, as applicable. If a payment made to Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if Lender were to fail to comply with the applicable reporting requirements of FATCA, Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by applicable law for Borrower to comply with its obligations under FATCA. Solely for purposes of the preceding sentence, “FATCA” shall include any amendments made to FATCA after the date of this Agreement. Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so. Any reference under this Section 2.5(b)(xii) to “Lender” shall be deemed to include any participant and any assignees.

(c) In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by applicable Legal Requirements, overdue interest in respect of the Loan, shall, at Lender’s election, accrue interest at the Default Rate, calculated from the date the Default occurred which led to such Event of Default, without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be paid immediately upon demand, which demand may be made as frequently as Lender shall elect.

(d) Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (i) the actual number of days elapsed in the period for which the calculation is being made by (ii) a daily rate based on a three hundred sixty (360) day year (that is, the Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (iii) the outstanding principal balance of the Loan. The accrual period for calculating interest due on each Monthly Payment Date shall be the Interest Period in which such Monthly Payment Date falls. Borrower understands and acknowledges that such interest accrual requirement results in more interest accruing on the Loan than if either a thirty (30) day month and a three hundred sixty (360) day year or the actual number of days and a three hundred sixty-five (365) day year were used to compute the accrual of interest on the Loan.

(e) This Agreement and the other Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the 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. 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 from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

(f) In the event of a conversion of the Loan from a Benchmark Rate Loan to a Prime Rate Loan, or vice versa, or the replacement of the then-applicable Benchmark with a Benchmark Replacement, Borrower shall pay to Lender, upon demand, any additional amounts necessary to compensate Lender for out-of-pocket costs and expenses in making such conversion or replacement in accordance with this Section 2.5.

## **Section 2.6 Loan Payments.**

(a) Borrower shall make a payment to Lender of interest only (calculated using the Closing Date as the Determination Date) on the Closing Date for the period from the Closing Date through and including the last day of the calendar month in which the Closing Date occurs. Each interest accrual period (the “**Interest Period**”) thereafter shall commence on the [first (1<sup>st</sup>)] day of each calendar month during the term of the Loan and shall end on and include the last day of such calendar month. No Interest Period shall be shortened by reason of any payment of the Loan prior to the expiration of such Interest Period.

(b) On each Monthly Payment Date throughout the term of the Loan, Borrower shall make a payment to Lender of interest accruing on the outstanding principal balance of the Loan during the immediately preceding Interest Period in which such Monthly Payment Date occurs (each such payment, a “**Monthly Debt Service Payment**”), which payments shall be applied, so long as no Event of Default exists, to accrued and unpaid interest. Notwithstanding the foregoing, the Monthly Debt Service Payment due on

the first Monthly Payment Date will be funded from the Interest Holdback so long as no Event of Default has occurred and then exists on such date

(c) Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instrument and the other Loan Documents (including without limitation, the Exit Fee and the Minimum Interest Payment, if any).

(d) If any principal, interest or any other sum due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (i) five percent (5%) of such unpaid sum and (ii) the maximum amount permitted by applicable law in order to defray the expense 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 amount shall be secured by the Security Instrument and the other Loan Documents.

(e) Additionally:

(i) Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

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

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

(iv) Lender shall have the right from time to time, in its sole discretion, upon not less than thirty (30) days prior written notice to Borrower, to change the Monthly Payment Date to a different calendar day each such month.

## **Section 2.7 Prepayments.**

(a) Except as otherwise provided in this Section 2.7 and Section 2.11, Borrower shall not have the right to prepay the Loan in whole or in part. From and after the Closing Date, Borrower may, provided no Event of Default has occurred and is continuing, at its option and upon not less than thirty (30) days (and not more than ninety (90) days) prior notice (a "**Prepayment Notice**") to Lender, which notice must specify the date on which such prepayment is to be made, prepay the Debt in whole (but not in part, other than as required in connection with a casualty, condemnation or in connection with any prepayment by Borrower to satisfy any extension conditions) on any date; provided that such prepayment is accompanied by payment of the Breakage Costs, the Exit Fee and the Minimum Interest Payment, in each case to the extent applicable. In addition to the foregoing, any prepayment received by Lender shall include interest which would have accrued thereon through the remainder of the Interest Period in which such prepayment occurs (such amounts, the "**Interest Shortfall**"). Lender shall not be obligated to accept any prepayment unless Borrower has delivered the Prepayment Notice required hereunder and such prepayment is accompanied by payment of the Breakage Costs, the Exit Fee, the Minimum Interest Payment, in each case to the extent applicable, and the applicable Interest Shortfall due in connection therewith. Borrower hereby further agrees that, in the event Borrower delivers a Prepayment Notice and fails to prepay the Loan in accordance with the terms of this Section 2.7 on the date specified in such Prepayment Notice, Borrower shall (i) pay Lender all reasonable out-of-pocket costs and expenses incurred by Lender, including, without limitation, any Breakage Costs or similar expenses, as a result of such failure and (ii) be obligated to provide a new Prepayment Notice as a condition to any prepayment of the Loan pursuant to the requirements of this Section 2.7.

(b) On each date on which Mortgage Borrower is entitled, pursuant to the terms and conditions of the Mortgage Loan Agreement, to receive any Net Proceeds (i.e., such Net Proceeds are not required to be used for Restoration or to be applied to prepay the Mortgage Loan), Borrower shall, at Lender's option, apply such proceeds to prepay the Debt in an amount equal to such Net Proceeds. Any such prepayment shall be accompanied by (i) any applicable Interest Shortfall, the applicable portion of the Exit Fee and any Breakage Costs, (ii) all other sums due and payable under the Loan Documents, and (iii) all out-of-pocket costs and expenses incurred by Lender in connection with such prepayment. Any prepayment received by Lender pursuant to this Section 2.7(b) on a date other than a Monthly Payment Date shall be held by Lender as collateral security for the Loan in an interest bearing, Eligible Account at an Eligible Institution, with such interest accruing to the benefit of Borrower, and shall be applied by Lender on the next Monthly Payment Date, with any interest on such funds paid to Borrower on such date provided no Event of Default then exists.

(c) If concurrently with or after an Event of Default (including, without limitation, after acceleration of the Debt), payment of all or any part of the principal of the Loan is tendered by or on behalf of Borrower (including, without limitation, by virtue of an application amounts held in any Reserve Accounts or any other cash collateral for the Loan by Lender pursuant to the terms and conditions of the Loan Documents), a purchaser at a UCC foreclosure or any other Person, Borrower, such purchaser at a UCC foreclosure or other Person shall pay the Minimum Interest Payment, the Exit Fee and the Breakage Costs, in each case to the extent applicable, in addition to (A) the outstanding principal balance of the Loan, and (B) all accrued and unpaid interest and other amounts payable under the Loan Documents (including, without limitation, the Interest Shortfall). Notwithstanding anything to the contrary

contained herein or in any other Loan Document, any prepayment of the Debt shall be applied to the Debt in such order and priority as may be determined by Lender in its sole discretion.

(d) In all events and under all circumstances Borrower shall be obligated to pay to Lender minimum interest in an amount equal to [**1.25x on the original maximum principal amount of the Loan**] (the “**Minimum Interest**”). Upon prepayment or repayment in full of the Obligations or the acceleration thereof in accordance with the terms of any of the Loan Documents, Borrower shall pay to Lender an amount (such amount, the “**Minimum Interest Payment**”) equal to the positive difference, if any, between (i) the entire Minimum Interest, minus (ii) the aggregate total of all (w) Monthly Debt Service Payments, (x) Exit Fees, (y) Origination Fees, and (z) any payments of principal of the Loan, paid by Borrower during the term of the Loan (exclusive of any portions thereof constituting interest accrued at the Default Rate in excess of the Interest Rate that would apply hereunder but for the existence of any Event of Default). In furtherance of the foregoing, Borrower expressly acknowledges and agrees that (x) Lender shall have no obligation to accept any prepayment or repayment of the Loan unless and until Borrower shall have complied with this Section 2.7(d), and (y) Lender shall have no obligation to release or, if requested by Borrower, assign the Note and Security Instrument upon payment of the Obligations unless and until Lender shall have received the entire Minimum Interest Payment. In the event that any Minimum Interest Payment is due hereunder, Lender shall deliver to Borrower a statement setting forth the amount and determination of the Minimum Interest Payment, and, provided that Lender shall have in good faith applied the formula described above, 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 fifteen (15) day period preceding the date of such prepayment. Lender shall not be obligated or required to have actually reinvested the prepaid principal balance at the Benchmark or otherwise as a condition to receiving the Minimum Interest Payment. Borrower expressly acknowledges and agrees that the Minimum Interest Payment shall constitute additional consideration for the Loan, and shall, upon payment, be the sole and exclusive property of Lender.

(e) Any prepayment received by Lender in connection with Borrower’s exercise of an Extension Option under Section 2.11 of this Agreement shall be accompanied by (i) any applicable Interest Shortfall, the Exit Fee, the Minimum Interest (if due and payable) and any Breakage Costs, and (ii) all out-of-pocket costs and expenses incurred by Lender (including attorneys’ disbursements and reasonable fees) in connection with such prepayment.

(f) The Minimum Interest Payment and the Exit Fee is fully earned on the date hereof, and due and payable, on the date of such repayment or prepayment, or on the date such repayment or prepayment is required to be made, as applicable, and non-refundable when made. Without limiting the generality of the foregoing, and notwithstanding anything to the contrary in this Agreement or any Loan Document, it is understood and agreed that if the Obligations are accelerated as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise), the Minimum Interest Payment, if any, determined as of the date of acceleration, and the Exit Fee will also be due and payable and will be treated and deemed as though the Loan was prepaid as of such date and shall constitute part of the Obligations for all purposes herein. The Minimum Interest Payment, if any, and the Exit Fee shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. **THE BORROWER EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING MINIMUM INTEREST PAYMENT OR THE EXIT FEE IN CONNECTION WITH ANY SUCH ACCELERATION.** Borrower expressly agrees that (i) each of the Minimum Interest Payment and the Exit Fee is reasonable and is the product of an arm’s length transaction between sophisticated business people, ably represented by counsel, (ii) each of the Minimum Interest Payment and the Exit Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between Lender and Borrower giving specific consideration in this transaction for such agreement to pay the Minimum Interest Payment and the Exit Fee, (iv) Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section 2.7(f), (v) Borrower’s agreement to pay the Minimum Interest Payment and the Exit Fee is a material inducement to the Lender to make the Loan, and (vi) each of the Minimum Interest Payment and the Exit Fee represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lender and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lender or profits lost by the Lender as a result of any event giving rise to an obligation to pay the Minimum Interest Payment or the Exit Fee. The parties hereto further acknowledge and agree that neither the Minimum Interest Payment nor the Exit Fee is intended to act as a penalty or to punish Borrower for any such repayment or prepayment.

(g) Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, in no event shall Borrower permit Mortgage Borrower or any other Person to repay at maturity, or prepay (which shall be deemed to include any repayment in connection with any acceleration of the Mortgage Loan and any acquisition of the Mortgage Loan by Mortgage Borrower, Guarantor, or any Affiliate of either of the foregoing) the Mortgage Loan, in whole or in part, unless (i) the Debt is contemporaneously repaid in full in accordance with the applicable terms and conditions of this Agreement or (ii) the Debt has been previously repaid on a *pro-rata* basis in accordance with the applicable terms and conditions of this Agreement in connection with satisfying any applicable extension conditions of the Mortgage Loan or the Loan. Borrower’s failure to comply with the foregoing shall, at Lender’s option, constitute an Event of Default hereunder.

## **Section 2.8 Interest Rate Cap Agreement**

(a) Prior to or contemporaneously with the Closing Date, Borrower shall enter into an Interest Rate Cap Agreement with a Benchmark strike rate equal to the Strike Rate. The Interest Rate Cap Agreement (i) shall at all times be in a form and substance acceptable to Lender, (ii) shall at all times be with a Counterparty, (iii) shall at all times be for a period equal to the term

of the Loan, and (iv) shall at all times have a notional amount equal to or greater than the face amount of the Note and shall at all times provide for the applicable Benchmark strike rate to be equal to the Strike Rate. Borrower shall direct such Counterparty to deposit directly into the Interest Rate Cap Reserve Account (or into such Account as Lender designates) any amounts due Borrower under such Interest Rate Cap Agreement so long as any portion of the Debt is outstanding, provided that the Debt shall be deemed to be outstanding if the Collateral is transferred by UCC foreclosure. Additionally, Borrower shall collaterally assign to Lender, pursuant to the Collateral Assignment of Interest Rate Cap Agreement, all of its right, title and interest in and to the Interest Rate Cap Agreement (and any replacements thereof), including, without limitation, its right to receive any and all payments under the Interest Rate Cap Agreement (and any replacements thereof), and Borrower shall, and shall cause Counterparty to, deliver to Lender a fully executed Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be deposited directly into the Interest Rate Cap Reserve Account, or into such other Account as Lender may designate).

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

(c) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty below a long term rating of "A3" by Moody's, Borrower shall (x) replace the Interest Rate Cap Agreement not later than ten (10) Business Days following receipt of notice of such downgrade, withdrawal or qualification with an Interest Rate Cap Agreement in form and substance reasonably satisfactory to Lender (and meeting the requirements set forth in this Section 2.8) (a "**Replacement Interest Rate Cap Agreement**") from a Counterparty reasonably acceptable to Lender having a Minimum Counterparty Rating or (y) if provided for in such Interest Rate Cap Agreement, cause the Counterparty to deliver collateral to secure Borrower's exposure under the Interest Rate Cap Agreement.

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

(e) Each Interest Rate Cap Agreement shall contain the following language or its equivalent: "In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty below a long term rating of "A3" by Moody's, the Counterparty must, within ten (10) business days, either (x) post collateral on terms acceptable to Borrower, or (y) find a replacement Counterparty, at the Counterparty's sole cost and expense, acceptable to Borrower; provided that, notwithstanding such a downgrade, withdrawal or qualification, unless and until the Counterparty transfers the Interest Rate Cap Agreement to a replacement Counterparty pursuant to the foregoing clause (y), the Counterparty will continue to perform its obligations under the Interest Rate Cap Agreement. Failure to satisfy the foregoing shall constitute an "Additional Termination Event" as defined by Section 5(b)(v) of the ISDA Master Agreement, with the Counterparty as the "Affected Party." In the event that a Counterparty is required pursuant to the terms of an Interest Rate Cap Agreement to (i) deliver collateral as specified in the applicable Interest Rate Cap Agreement, or (ii) find a replacement Counterparty, Borrower covenants and agrees that Borrower shall seek Lender's approval with respect thereto and shall not approve or consent to the foregoing unless and until Borrower receives Lender's prior written approval and shall approve or consent to the foregoing upon receipt of Lender's prior written approval. Borrower's failure to comply with the requirements of this Section 2.8(e) shall constitute, at Lender's option, an immediate Event of Default.

(f) Borrower shall obtain and deliver to Lender an opinion from counsel (which counsel may be in house counsel for the Counterparty) for the Counterparty (upon which Lender and its successors and assigns may rely) which shall be in customary form reasonably acceptable to Lender.

(g) In the event of a conversion of the Loan from a Benchmark Rate Loan to a Prime Rate Loan, or vice versa, or the replacement of the Benchmark with a Benchmark Replacement, Borrower shall replace the Interest Rate Cap Agreement not later than ten (10) Business Days following the occurrence thereof with a Replacement Interest Rate Cap Agreement (or other hedge arrangement reasonably acceptable to Lender and generally accepted as industry standard, as reasonably determined by Lender) pursuant to the requirements of this Agreement and in form and substance reasonably acceptable to Lender (including, without limitation, with respect to the strike rate or swapped rate, as applicable).

(h) Borrower shall deliver to Lender a new Collateral Assignment of Interest Rate Cap Agreement acceptable to Lender in connection with each Replacement Interest Rate Cap Agreement.

**Section 2.9 Original Issue Discount.** Borrower acknowledges that at closing, the Loan will be funded with a non-refundable discount of [ ] percent ([ ]%) of the maximum amount of the Loan (i.e., [\$\_\_\_\_\_ .00]) (the "Original Issue Discount"). The parties intend that the non-refundable discount will be treated as an Original Issue Discount for tax purposes. FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE CODE, THE LOAN IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. REQUESTS FOR INFORMATION REGARDING THE

ORIGINAL ISSUE DISCOUNT ON THE LOAN MAY BE DIRECTED TO LENDER AT ITS ADDRESS FOR NOTICE IN SECTION [ ] HEREOF.

**Section 2.10 Payment of Exit Fee.**

(a) Borrower shall be obligated to pay the Exit Fee to Lender as follows: (i) upon any (and each) partial prepayment of the Loan in accordance with the terms hereof, in addition to all other amounts payable to Lender under Section 2.7 hereof, Borrower shall pay to Lender, on account of the Exit Fee, an amount equal to [ ] percent ( )% of the amount so prepaid; (ii) upon any (and each) application of any condemnation awards or Net Proceeds to the Debt in accordance with the terms of this Agreement and the Security Instrument, [ ] percent ( )% of the amount thereof shall be retained by Lender on account of the Exit Fee and the balance thereof shall be applied to the Debt; and (iii) upon repayment in full of the Debt or the acceleration thereof in accordance with the terms of any of the Loan Documents, Borrower shall pay to Lender the entire Exit Fee which would be due on such date, less any amounts on account thereof previously paid to Lender under the foregoing clauses (i) and (ii) of this Section 2.10(a).

(b) In furtherance of the foregoing, Borrower expressly acknowledges and agrees that Lender shall have no obligation to accept any prepayment of the Loan unless and until Borrower shall have complied with this Section 2.10.

(c) Borrower expressly acknowledges and agrees that the Exit Fee shall constitute additional consideration for the Loan.

**Section 2.11 Extension of the Maturity Date.** Borrower shall have the option to extend the term of the Loan beyond the initial Maturity Date for [two (2)] successive terms (the “**Extension Option**”) of [twelve (12) months] each (each, an “**Extension Period**”) to (i) [ ], 20[ ] if the first Extension Option is exercised, and (ii) [ ], 20[ ] if the second Extension Option is exercised (each such date, the “**Extended Maturity Date**”) upon satisfaction of the following terms and conditions (in each case as determined by Lender):

(a) no Event of Default shall have occurred and be continuing at the time an Extension Option is exercised and on the date that the applicable Extension Period is commenced;

(b) Borrower shall notify Lender of its irrevocable election to extend the Maturity Date as aforesaid not earlier than ninety (90) days and no later than sixty (60) days prior to the applicable Maturity Date; provided, however, that Borrower shall be permitted to revoke such notice at any time up to five (5) Business Days before the Maturity Date provided that Borrower pays to Lender all actual out-of-pocket costs incurred by Lender in connection with such notice, including, without limitation, any Breakage Costs;

(c) Borrower shall obtain and deliver to Lender prior to exercise of such Extension Option, pursuant to the applicable terms and conditions of Section 2.8 hereof, a Replacement Interest Rate Cap Agreement, which Replacement Interest Rate Cap Agreement shall be effective commencing on the first day of the related Extension Period and shall have a maturity date not earlier than the last day of the related Extension Period;

(d) Borrower shall have paid to Lender the Extension Fee on the date the related Extension Period is commenced;

(e) the Reserve Accounts shall contain the amounts required under this Agreement as of the date of commencement of the Extension Period, including, without limitation, depositing amounts in the Interest Reserve Account sufficient to pay all Monthly Debt Service Payments and, as applicable, due through the Extended Maturity Date, and Borrower shall deposit such additional reserve funds with Lender as Lender may require [CONFIRM RESERVES];

(f) each Guarantor shall execute and deliver a reaffirmation, in form and substance satisfactory to Lender, of such Guarantor’s obligations under each of the Loan Documents executed and delivered by such Guarantor;

(g) Borrower shall deliver to Lender such other certificates, documents or instruments as Lender may reasonably require, including, without limitation, an Officer’s Certificate stating that all representations and warranties of Borrower set forth in Article 3 hereof remain true and correct, subject to any changes in facts or circumstances permitted to have occurred, or not prohibited from having occurred, pursuant to the terms of the Loan Documents (in which case such change of facts and circumstances shall be set forth in such Officer’s Certificate with reference to the applicable representations and warranties) or setting forth any exceptions to such representations and warranties, which exceptions shall be satisfactory to Lender;

(h) if required by Lender, Lender shall have received, at Borrower’s expense, a title continuation from the title company that provided the Title Insurance Policy evidencing that there are no liens against the Property other than Permitted Encumbrances;

(i) Final Completion has been achieved;

(j) [in connection with the first Extension Option, the LTV [shall be less than [ ]% at the time such Extension Option is exercised and on the date that such Extension Period is commenced; provided, however, that if the foregoing condition is not satisfied, Borrower may prepay a portion of the outstanding principal balance of the Loan as may be necessary so that such condition is satisfied, provided that any such prepayment shall be subject to Borrower’s obligation to pay the proportionate share of the Exit Fee applicable thereto pursuant to Section 2.10 hereof;]

(k) [in connection with the second Extension Option, the LTV [shall be less than [\_\_]% at the time such Extension Option is exercised and on the date that such Extension Period is commenced; provided, however, that if the foregoing condition is not satisfied, Borrower may prepay a portion of the outstanding principal balance of the Loan as may be necessary so that such condition is satisfied, provided that any such prepayment shall be subject to Borrower's obligation to pay the proportionate share of the Exit Fee applicable thereto pursuant to Section 2.10 hereof;]

(l) [in connection with the first Extension Option, [the Debt Service Coverage Ratio [shall not be less than 1.[\_\_] to 1.00] [the Debt Yield [shall not be less than \_\_%] at the time such Extension Option is exercised and on the date that such Extension Period is commenced; provided, however, that if the foregoing condition is not satisfied, Borrower may prepay a portion of the outstanding principal balance of the Loan as may be necessary so that such condition is satisfied, provided that any such prepayment shall be subject to Borrower's obligation to pay the proportionate share of the Exit Fee applicable thereto pursuant to Section 2.10 hereof;]

(m) [in connection with the second Extension Option, [the Debt Service Coverage Ratio [shall not be less than 1.[\_\_] to 1.00] [the Debt Yield [shall not be less than \_\_%] at the time such Extension Option is exercised and on the date that such Extension Period is commenced; provided, however, that if the foregoing condition is not satisfied, Borrower may prepay a portion of the outstanding principal balance of the Loan as may be necessary so that such condition is satisfied, provided that any such prepayment shall be subject to Borrower's obligation to pay the proportionate share of the Exit Fee applicable thereto pursuant to Section 2.10 hereof - **ADD ADDITIONAL APPLICABLE TESTS FOR THE APPLICABLE NUMBER OF EXTENSION PERIODS**]; and

(n) Borrower shall have paid all out-of-pocket costs and expenses incurred by Lender in connection with the exercise by Borrower of the Extension Option.

(o) the Mortgage Loan has been extended (or will be contemporaneously extended), such that the term of the Mortgage Loan shall not expire prior to the expiration of the term of the Loan.

All references in this Agreement and in the other Loan Documents to the Maturity Date shall mean the applicable Extended Maturity Date in the event an Extension Option is exercised.

**Section 2.12 Future Advances.** Following the initial advance of Loan proceeds to Borrower made on the Closing Date (the "**Initial Advance**"), Borrower may request in writing that Lender make one or more additional advances to Borrower (each, a "**Future Advance**") and subject to the limitations set forth in this Agreement, including, without limitation, this Article 2 and Section 4.39 hereof, Lender shall make each such Future Advance to Borrower or third parties directly, provided that all of the conditions set forth below have been satisfied to Lender's satisfaction with respect to each such Future Advance, within fifteen (15) Business Days of the satisfaction of all such conditions. Each such Future Advance funded by Lender shall be and constitute part of the Loan.

(a) The conditions to any Future Advance shall be as follows:

(i) each of the conditions in Section 2.3 hereof remains satisfied;

(ii) No Default or Event of Default has occurred and is continuing under this Agreement or any of the other Loan Documents at the time such request is made or at the time the applicable Future Advance is made;

(iii) the minimum amount of such Future Advance shall be [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)];

(iv) Lender shall not be required to make more than one Future Advance per calendar month (unless Lender elects in its sole and absolute discretion to make any Future Advance more frequently);

(v) reserved;

(vi) Lender shall have received an inspection report from Lender's Development Consultant in form and substance acceptable to Lender;

(vii) (A) the Property shall comply in all material respects with all Legal Requirements, and (B) if any Restoration is then continuing, Borrower shall have caused Mortgage Borrower to diligently pursue such Restoration and Lender has determined that the non-completion of such Restoration prior to the making of the Future Advance is not reasonably likely to have a Material Adverse Effect;

(viii) Borrower submits a Draw Request for such Future Advance that complies with Sections 2.13 and 2.14 hereof;

(ix) Borrower has made any deposit into the Construction Reserve requested by Lender under Section 4.39 hereof (regardless of the time period by which Borrower is required to make such deposit under Section 4.39 hereof);

(x) there are no mechanics liens recorded against the Property or bonded stop notices served on Lender for which Borrower has not caused Mortgage Borrower to take the actions required under Section 4.43(a) hereof (regardless of the time period by which Borrower or Mortgage Borrower is required to take such actions under Section 4.43(a) hereof); and

(xi) Borrower shall pay (A) all of Lender's costs and expenses (including, without limitation, reasonable attorneys' fees and any reports required by Lender or Lender's Development Consultant (including, without limitation, an engineering report)) associated with Borrower's request for a Future Advance (as well as any other then-outstanding fees and costs of Lender), whether or not the Future Advance is ultimately made, and (B) a future advance disbursement fee to Lender in the amount of [ \$ \_\_\_\_\_ ] [CONFIRM].

(xii) Neither the Property nor any portion thereof, shall be subject to any existing or threatened Condemnation or taking by eminent domain proceedings, similar proceedings or otherwise.

(xiii) The Property shall not have been injured or damaged by any Casualty, unless (i) Mortgage Lender shall make the Net Proceeds available to Mortgage Borrower for Restoration pursuant to the Mortgage Loan Agreement, (ii) Mortgage Borrower is prosecuting such Restoration with reasonable diligence, and (iii) the Construction Schedule is not materially impacted.

(xiv) There shall be no pending or threatened in writing litigation known to Borrower, any Guarantor, against Borrower, Mortgage Borrower, Accommodation Pledgor, any Guarantor or the Property, which, if decided unfavorably, could result in a Material Adverse Effect.

(xv) There shall be no Balancing Event.

(xvi) The Mortgage Lender has approved a Mortgage Loan Future Funding in an amount that is pro-rata with the Future Advance requested pursuant to the applicable Draw Request.

(b) The portion of the Loan allocated in the Construction Budget for interest on the Loan through the initial Maturity Date (the "**Interest Holdback**") shall be held by Lender as an unfunded interest reserve (such unfunded reserve hereinafter referred to as the "**Carry Holdback**"). Borrower hereby authorizes Lender to make advances thereof to pay interest when due on the Loan. Such authorization is irrevocable and no further direction or authorization shall be required for Lender to make such advances. So long as no Event of Default has occurred and is continuing, Lender shall disburse to itself from the Interest Holdback the amount of interest due on each Payment Date provided that there are sufficient available undisbursed amounts in such Interest Holdback and Lender is otherwise obligated to make such Future Advances under this Agreement. If an Event of Default has occurred and is continuing, Lender may, but is not obligated to, disburse funds from the Interest Holdback for the payment of interest. Nothing in this provision shall prevent Borrower from paying interest on the Loan from additional equity contributed by Borrower's Members.

(c) The portion of the Loan allocated in the Construction Budget for payment of Taxes through the initial Maturity Date (the "**Tax Holdback**") shall be held by Mortgage Lender in the Mortgage Carry Holdback. Borrower hereby authorizes Lender to authorize Mortgage Lender to make advances thereof to pay Taxes when due prior. Such authorization is irrevocable and no further direction or authorization shall be required for Lender to authorize Mortgage Lender to make such advances. So long as no Event of Default has occurred and is continuing, Lender shall authorize Mortgage Lender to disburse from the Tax Holdback to pay Taxes when due provided that there are sufficient available undisbursed amounts in such Tax Holdback and Lender is otherwise obligated to make such Future Advances under this Agreement. If an Event of Default has occurred and is continuing, Lender may, but is not obligated to, authorize Mortgage Lender to disburse funds from the Tax Holdback for the payment of Taxes. Nothing in this provision shall prevent Borrower from causing Mortgage Borrower to pay the Taxes from additional equity contributed by Borrower's Members.

(d) The portion of the Loan allocated in the Construction Budget for payment of Insurance Premiums through the initial Maturity Date (the "**Insurance Holdback**") shall be held by Mortgage Lender in the Mortgage Carry Holdback. Borrower hereby authorizes Lender to authorize Mortgage Lender to make advances thereof to pay Insurance Premiums when due. Such authorization is irrevocable and no further direction or authorization shall be required for Lender to authorize Mortgage Lender to make such advances. So long as no Event of Default has occurred and is continuing, Lender shall authorize Mortgage Lender to disburse from the Insurance Holdback to pay Insurance Premiums when due provided that there are sufficient available undisbursed amounts in such Insurance Holdback and Lender is otherwise obligated to make such Future Advances under this Agreement. If an Event of Default has occurred and is continuing, Lender may, but is not obligated to, authorize Mortgage Lender to disburse funds from the Insurance Holdback for the payment of Insurance Premiums. Nothing in this provision shall prevent Borrower from causing Mortgage Borrower to pay the Insurance Premiums from additional equity contributed by Borrower's Members.

(e) Borrower acknowledges and agrees that Lender's obligation to make any particular Future Advance in accordance with Section 2.12 is an independent contract made by and between Lender and Borrower separate and apart from any obligation of Lender to fund any other Future Advance. The obligations of Borrower under this Agreement and the other Loan Documents shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Borrower, or any other party, against Lender by reason of Lender's failure to make any Future Advance. Borrower agrees that it shall not assert (and shall not have) any defense (including the assertion of any right of rescission, set-off, counterclaim or defense) to the payment of the Debt owed to Lender in the event Lender breaches any obligation to make any Future Advance that it is required to make hereunder. The making of any Future Advance by Lender at the time when an Event of Default exists shall not be deemed a waiver by Lender or cure by Borrower of that Event of Default, nor shall Lender's rights and remedies be prejudiced in any manner thereby.

(f) Each Future Advance made to Borrower shall be received, held and used by Borrower to make a capital contribution to Mortgage Borrower and Mortgage Borrower shall use such capital contribution (together with the proceeds of all

Mortgage Loan Future Fundings) to pay for costs specified in the Construction Budget, as the case may be, which were specified in the Draw Request for such Future Advance in accordance with the Construction Budget and as permitted by the Mortgage Loan Agreement.

**Section 2.13 Disbursements of Future Advances Generally.**

(a) Lender shall disburse Future Advances to Borrower for further disbursement by (or at the direction of) Borrower to Mortgage Borrower and then to General Contractor, subcontractors and designers; provided, however, Lender reserves the right to make Future Advances to any third party payees directly. Such direct disbursements may be made individually or jointly with Borrower, Mortgage Borrower and/or General Contractor, as Lender may elect in its discretion. Such direct disbursements also may be made by check payable to the Person to whom a disbursement is to be made. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable direction and authorization for Lender to so disburse from the Future Advance. No further direction or authorization from Borrower or Mortgage Borrower shall be necessary or required for such direct disbursements and all such disbursements shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the applicable Loan Documents as fully as if made directly to Borrower, regardless of the disposition thereof by the applicable payee.

(b) Lender shall not be obligated to make Future Advances in respect of Hard Costs in excess of an amount equal to Hard Costs actually incurred by Mortgage Borrower for work in place as part of the Construction, as certified by the Development Consultant, less a sum equal to the aggregate of (x) the aggregate deficiency which has been funded by Borrower under Section 4.39 hereof or Mortgage Borrower under Section 4.39 of the Mortgage Loan Agreement, if any, and (y) the Retainage with respect to such Hard Costs.

(c) Lender shall not be obligated to make Future Advances for the Loan's allocated portion of any category of costs set forth as a line item of the Construction Budget which is greater than the sum of: (i) the Loan's allocated portion of the amount set forth for such category in the applicable line item of the Construction Budget (as may be reallocated by the General Contractor or the Mortgage Borrower, as the case may be, to the extent permitted by and in accordance with the requirements of Section 4.31 hereof and (ii) subject to Lender's and Mortgage Lender's prior approval, the Loan's allocated portion of the unused Hard Costs contingency line item.

(d) Funds held in the Construction Reserve shall be disbursed by Mortgage Lender (subject to satisfaction of all conditions to such disbursement) to fund the amount requested in a Draw Request prior to Lender funding a Future Advance.

**Section 2.14 Draw Requests.** Borrower shall, and shall cause Mortgage Borrower to, submit to Lender, Mortgage Lender and Development Consultant a complete draw request (a "**Draw Request**") substantially in the form required pursuant to Section 2.14 of the Mortgage Loan Agreement, with all supporting documentation, not less than fifteen (15) Business Days prior to the date of any requested Future Advance. If Borrower and Mortgage Borrower submits any portion of a Draw Request or any additional, supplemental or revised materials, information or documentation in connection with such Draw Request after the initial submission of a Draw Request, then the initial Draw Request shall be deemed incomplete and such fifteen (15) Business Day period shall recommence as of the last date of any such subsequent submission. Borrower and Mortgage Borrower shall not submit to Lender a Draw Request more than once per month.

**Section 2.15 Retainage.** Each requested Future Advance for Hard Costs shall be reduced by the Retainage applicable to such Hard Costs, and the amount of all such Retainage with respect to a particular Trade Contract or the General Contract shall be advanced to Mortgage Borrower when all of the work under such Trade Contract or the General Contract, as applicable, has been completed to the satisfaction of the Architect (as certified by such Architect and confirmed by the Development Consultant), and all applicable lien waivers (including, without limitation, a final lien waiver for all work contracted for and all work performed by such Trade Contractor or the General Contractor, as the case may be), have been obtained with respect to the applicable work performed.

**Section 2.16 Stored Materials.**

(a) Lender shall make disbursements for the payment of Stored Materials to be utilized in connection with the Construction upon satisfaction of the criteria set forth in the Mortgage Loan Agreement.

(b) The foregoing provisions are not intended to apply to disbursements of proceeds of the Loan which are made for the purpose of making deposits required by vendors with respect to purchase orders of construction materials, and any such use of the proceeds of the Loan shall be subject to Lender's approval; provided, however, that if and when any materials are fully fabricated, the provisions of this Section 2.16 shall apply.

**ARTICLE 3**

**REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Lender as of the Closing Date and the date of each Future Advance that:

**Section 3.1 Existence and Authority.** Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of formation; (b) has all necessary approvals, governmental and otherwise, and full power and authority



to own the Pledged Company Interests; and (d) has full power, authority and legal right to grant, bargain, sell, pledge, assign, warrant, transfer and convey the Collateral pursuant to the terms hereof and to keep and observe all of the terms of this Agreement, the Note, the Security Instrument and the other Loan Documents on Borrower's part to be performed. Borrower is a "registered organization" within the meaning of the UCC.

**Section 3.2 Borrower's Principal Place of Business.** Borrower's principal place of business and its chief executive office as of the date hereof is set forth in Section 5.5.

**Section 3.3 Validity of Documents.** (a) The execution, delivery and performance of this Agreement, the Note, the Security Instrument and the other Loan Documents by Borrower and Guarantor and the borrowing evidenced by the Note and this Agreement (i) are within the power and authority of such parties; (ii) have been authorized by all requisite organizational action of such parties; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or Governmental Authority, any license, certificate or other approval required for the conduct of Borrower's business, any applicable organizational documents, or any applicable indenture, agreement or other instrument, including, without limitation, the Management Agreement; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of Borrower's assets, except the lien and security interest created hereby and by the other Loan Documents; and (vi) will not require any authorization or license from, or any filing with, any Governmental Authority (except for Uniform Commercial Code filings relating to the security interests created by the Loan Documents), (b) this Agreement, the Note, the Security Instrument and the other Loan Documents have been duly executed and delivered by Borrower and Guarantor and (c) this Agreement, the Note, the Security Instrument and the other Loan Documents constitute the legal, valid and binding obligations of Borrower and Guarantor. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower 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, render the Loan Documents unenforceable (except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Creditors Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)). Neither Borrower nor Guarantor has asserted any right of rescission, set-off, counterclaim or defense with respect to the Loan Documents. No consent, approval, authorization or order of any court or Governmental Authority is required for the execution, delivery and performance by Borrower of, or compliance by Borrower with, the Loan Documents or the consummation of the transactions contemplated hereby, other than those which have been obtained by Borrower.

**Section 3.4 Agreements.** Borrower has no material financial obligation under any agreement or instrument to which Borrower is a party or by which Borrower or the Collateral or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the ownership of the Collateral and (b) obligations under this Agreement, the Security Instrument, the Note and the other Loan Documents. Borrower is not a party to any agreement or instrument or subject to any restriction which would have a Material Adverse Effect. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Collateral or the Property are bound. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations hereunder or under the Note to an obligation owed to another party.

**Section 3.5 Collateral.**

(a) Borrower is the sole beneficial owner of, and has good and marketable title to, the Collateral, and no lien exists or will exist (except the liens and security interests created by the Loan Documents) upon the Collateral at any time, and no right or option to acquire the same exists in favor of any other Person.

(b) The Collateral is not and will not be subject to any contractual restriction upon the transfer thereof (except for any such restriction contained in the Pledge, the Mortgage Loan Documents and the Mortgage Borrower Company Agreement).

(c) The office where Borrower keeps its records concerning the Collateral, and where such records will be located at all times, is the address specified in Section 3.2 hereof.

(d) There is no certificate or instrument evidencing or representing any of the Collateral other than the Ownership Certificates, which are being delivered to Lender on the date hereof.

(e) The Security Instrument and the Financing Statement create a valid security interest in the Collateral, securing the payment of the Debt, and upon the filing in the appropriate filing offices of the Financing Statement and delivery of the Ownership Certificates to Lender, such security interest will be perfected, first priority security interests and all filings and other actions necessary to perfect such security interest will have been duly taken. Upon the exercise of its rights and remedies under the Security Instrument and the Financing Statement, Lender will succeed to all of the rights, titles and interest of Borrower in Mortgage Borrower without the consent of any other Person and will, without the consent of any other Person,

be admitted as a member in Mortgage Borrower. Mortgage Borrower is not taxed as a corporation under the Code or any other applicable laws.

(f) The Collateral is covered by a UCC insurance policy in the amount of the Loan, insuring that the Security Instrument creates a valid and perfected first lien on the Collateral, and that Borrower is the sole owner of the Collateral, with such endorsements and affirmative coverages as Lender shall have requested, which (a) is in full force and effect, (b) is freely assignable to and will inure to the benefit of Lender and any successor or assignee of Lender, including the trustee in any Secondary Market Transaction, (c) has been paid in full, (d) has had no claims made against it, and (e) lists no exceptions. Mortgage Borrower's policy of owner's title insurance includes a "mezzanine lender's endorsement" naming Lender.

(g) There are no prior assignments of the Collateral that are presently outstanding except in accordance with the Loan Documents.

**Section 3.6 Purchase Options.** Neither the Collateral, the Property nor any part thereof or interest therein are subject to any purchase options, rights of first refusal or offers to purchase or other similar rights in favor of any Person.

**Section 3.7 Reserved.**

**Section 3.8 Reserved.**

**Section 3.9 Reserved.**

**Section 3.10 Reserved.**

**Section 3.11 Financial Condition.** Borrower is solvent and Borrower has received reasonably equivalent value for the granting of the Security Instrument. No proceeding under Creditors Rights Laws with respect to any Borrower Party has been initiated. In the last ten (10) years, no (i) petition in bankruptcy has been filed by or against any Borrower Party and (ii) Borrower Party has ever made any assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws. No Borrower Party is contemplating either the filing of a petition by it under any Creditors Rights Laws or the liquidation of its assets or property and Borrower has no knowledge of any Person contemplating the filing of any such petition against any Borrower Party. With respect to any loan or financing in which any Borrower Party or any Affiliate thereof has been directly or indirectly obligated for or has, in connection therewith, otherwise provided any guaranty, indemnity or similar surety (including, without limitation and to the extent applicable, any loan which is being refinanced by the Loan), none of such loans or financings has ever been (i) more than thirty (30) days in default or (ii) transferred to special servicing.

**Section 3.12 Financial Information.** All financial data, including, without limitation, the balance sheets, statements of cash flow, statements of income and operating expense and rent rolls, that have been delivered to Lender in respect of Borrower, Sponsor, Guarantor and/or the Property (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Borrower, Sponsor, Guarantor or the Collateral, 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 the Approved Accounting Method throughout the periods covered, except as disclosed therein. None of Borrower, Sponsor or Guarantor has any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are reasonably likely to have a Material Adverse Effect, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower, Sponsor or Guarantor from that set forth in said financial statements. Borrower shall promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report (including, without limitation, customer satisfaction reports), formal correspondence and material estimate received by it under the Franchise Agreement.

**Section 3.13 Fraudulent Conveyance.** Borrower (a) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

**Section 3.14 Disclosure.** Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

**Section 3.15 No Plan Assets.** Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA. Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA. Transactions by or with Borrower are not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans. None of the assets of Borrower constitutes “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Neither Borrower, nor any member of a “controlled group of corporations” (within the meaning of Section 414 of the IRS Code), maintains, sponsors or contributes to a “defined benefit plan” (within the meaning of Section 3(35) of ERISA).

**Section 3.16 Not a Foreign Person.** Borrower is not a “foreign person” within the meaning of § 1445(f)(3) of the IRS Code.

**Section 3.17 Business Purposes.** The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

**Section 3.18 Litigation.** There is no action, suit, proceeding or governmental investigation, in each case, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower’s knowledge, threatened or contemplated against or relating to Borrower, Sponsor or Guarantor or against or affecting the Collateral.

**Section 3.19 Intentionally Omitted.**

**Section 3.20 Taxes.**

(a) All Taxes and governmental assessments owing in respect of the Collateral have been paid or an escrow of funds in an amount sufficient to cover such payments has been established hereunder. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Collateral, nor are there any contemplated improvements to the Collateral that may result in such special or other assessments.

(b) Borrower has filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. Borrower knows of no basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

(c) All 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 this Agreement, the Security Instrument, the Note and the other Loan Documents, have been paid or will be paid.

**Section 3.21 Insurance.** There are no present claims of any material nature under any of the Policies, and to Borrower’s knowledge, no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

**Section 3.23 Illegal Activity/Forfeiture.** No portion of the Collateral or Property has been purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Borrower’s knowledge, there are no illegal activities or activities relating to controlled substances at the Property. There has not been committed by Borrower or any Borrower Party or any other Person in possession of or involved with the operation or use of the Collateral or Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Collateral or any part thereof or any monies paid in performance of Borrower’s obligations under this Agreement, the Note, the Security Instrument or the other Loan Documents.

**Section 3.24 Special Purpose Entity.** Since Borrower’s, Mortgage Borrower’s, Accommodation Pledgor’s, and any SPE Component Entity’s creation and as of the date hereof, Borrower, Mortgage Borrower, Accommodation Pledgor and each SPE Component Entity have complied with and are in compliance with the requirements set forth on Exhibit [ ] attached hereto.

**Section 3.25 Federal Reserve Regulations.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement, the Security Instrument, the Note or the other Loan Documents.

**Section 3.26 Reserved.**

**Section 3.27 Embargoed Person.** Neither Borrower nor any owner of a direct or indirect interest in Borrower (a) is listed on any Government Lists, (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of the Office of Foreign Assets Control (“OFAC”) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, (d) is a Prohibited Entity or a Prohibited

Person, or (e) is currently under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term “**Patriot Act Offense**” means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (i) the criminal laws against terrorism; (ii) the criminal laws against money laundering, (iii) the Bank Secrecy Act, as amended, (iv) the Money Laundering Control Act of 1986, as amended, or (v) the Patriot Act. “Patriot Act Offense” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “**Government Lists**” means (A) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (B) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrower in writing is now included in “Government Lists”, or (C) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Lender notified Borrower in writing is now included in “Government Lists”. Borrower has implemented procedures to ensure that no Person who now or hereafter owns any equity interest in Borrower is a Prohibited Person or Controlled by a Prohibited Person.

**Section 3.28**     **Reserved.**

**Section 3.29**     **Reserved.**

**Section 3.30**     **Reserved.**

**Section 3.31**     **Contracts.** Borrower has not entered into, and is not bound by, any Major Contract which continues in existence, except those previously disclosed in writing to Lender. Each of the Major Contracts is in full force and effect, there are no monetary or other material defaults by Borrower thereunder and, to the knowledge of Borrower, there are no monetary or other material defaults thereunder by any other party thereto. None of Borrower, Manager or any other Person acting on Borrower's behalf has given or received any notice of default under any of the Major Contracts that remains uncured or in dispute. Borrower has delivered true, correct and complete copies of the Major Contracts (including all amendments and supplements thereto) to Lender. No Major Contract has as a party an Affiliate of Borrower. All fees and other compensation for services previously performed under the Major Contracts have been paid in full.

**Section 3.32**     **Mortgage Loan Representations.** All of the representations and warranties contained in the Mortgage Loan Documents are hereby incorporated into this Agreement and deemed made hereunder for the benefit of Lender as and when made thereunder (including, for purposes of clarity, that any exceptions thereto for matters “otherwise disclosed to Lender” or words of similar effect shall be deemed to refer to Lender) and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Mortgage Lender or to whether the related Mortgage Loan Document has been repaid, defeased or otherwise terminated, unless otherwise consented to in writing by Lender.

**Section 3.33**     **No Default Under Mortgage Loan.** No Mortgage Loan Event of Default has occurred and there exists no default that with the giving of notice would constitute a Mortgage Loan Event of Default.

**Section 3.35**     **No Change in Facts or Circumstances; Disclosure.** All information submitted by (or on behalf of) Borrower, Guarantor or Sponsor to Lender and in all financial statements, rent rolls, 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, Sponsor and/or Guarantor in this Agreement or in the other Loan Documents, are accurate, complete and correct in all material respects. 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 have a Material Adverse Effect. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Borrower agrees that, unless expressly provided otherwise, all of the representations and warranties of Borrower set forth in this Article 3 and elsewhere in this Agreement and the other Loan Documents shall survive for so long as any portion of the Debt remains owing to Lender.

## ARTICLE 4

### BORROWER COVENANTS

Borrower hereby covenants and agrees with Lender that, from the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents:

**Section 4.1**     **Existence.** Borrower shall not (i) engage in any division, dissolution, liquidation or consolidation or merger with or into any other business entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of Borrower except to the extent expressly permitted by the Loan Documents, or (iv) cause, permit or suffer any SPE Component Entity to (A) divide, dissolve, wind up or liquidate or

take any action, or omit to take any action, as a result of which such SPE Component Entity would be dissolved, wound up or liquidated in whole or in part or (B) amend, modify, waive or terminate the organizational documents of such SPE Component Entity, in each case without obtaining the prior written consent of Lender.

**Section 4.2 Change of Name, Identity or Structure.** Borrower shall not change (or permit to be changed) Borrower's, Mortgage Borrower's, Accommodation Pledgor's or the SPE Component Entity's (a) name, (b) identity (including its trade name or names), (c) principal place of business set forth in this Agreement, or (d) corporate, partnership or other structure or state of formation, without, in each case, notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's, Mortgage Borrower's, Accommodation Pledgor's or the SPE Component Entity's structure or state of formation, without first obtaining the prior written consent of Lender.

Borrower shall execute and deliver to Lender, 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 Mortgage Borrower intends to operate the Property, and representing and warranting that Mortgage Borrower does business under no other trade name with respect to the Property.

**Section 4.3 Ownership of Mortgage Borrower and Accommodation Pledgor.** At all times while the Debt is outstanding, (i) Mortgage Borrower shall remain solely owned and under Control of Accommodation Pledgor, (ii) Accommodation Pledgor shall remain solely owned and under Control of Borrower, and (iii) Borrower shall not, and shall not permit any other Borrower Member, to issue any additional equity interest in Borrower.

**Section 4.4 Title to the Collateral.** Borrower will warrant and defend the validity and priority of Lender's security interest in the Collateral.

**Section 4.5 Maintenance and Use of Property.** Borrower shall (or shall cause Mortgage Borrower to) cause the Property to be maintained in a good and safe condition and repair and shall not commit or suffer any waste of the Property. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender or as otherwise permitted pursuant to Section 4.20 hereof. Borrower shall not (and will not cause or permit Mortgage Borrower to), without the prior written consent of Lender, initiate, join in, acquiesce in, or consent to any change in any restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not (and will not cause or permit Mortgage Borrower to) cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

**Section 4.6 Taxes and Other Charges.**

(a) Borrower shall cause Mortgage Borrower to pay (or cause to be paid) 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. Borrower shall not suffer (and shall not cause or permit Mortgage Borrower to suffer) and shall promptly cause to be paid and discharged (or cause Mortgage Borrower to pay and discharge) any lien or charge whatsoever which may be or become a lien or charge against the Property, and shall promptly pay for all utility services provided to the Property.

(b) Following receipt of the prior written consent of Lender, Borrower, at its own expense, may contest (or permit to be contested) 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, which consent may be conditioned upon, among other things, Borrower furnishing such security or reserve deposits as may be required by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender 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, canceled or lost or there shall be any danger of the lien of the Security Instrument being primed by any related lien.

**Section 4.7 Labor and Materials.**

(a) Subject to Section 4.8(b) below, Borrower will promptly pay or cause Mortgage Borrower to promptly pay (or cause to be paid) when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (any such bills and costs, a "**Labor and Materials Charge**") and never permit to exist in respect of the Property or any part thereof any lien or security interest, 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 created hereby and by the Security Instrument, except (with respect to the Property) for the Permitted Encumbrances.

(b) Following receipt of written consent of Lender, Borrower, at its own expense, may or may permit Mortgage Borrower to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Labor and Materials Charge, the applicability of any Labor and Materials Charge to Mortgage Borrower or to the Property or any

alleged non-payment of any Labor and Materials Charge and defer paying the same, which consent may be conditioned upon, among other things, Borrower furnishing or causing Mortgage Borrower to furnish such security as may be required by Lender, to insure the payment of any such Labor and Materials Charge, together with all interest and penalties payable in connection therewith. Lender may apply any such security or part thereof, as necessary to pay for such Labor and Materials Charge at any time when, in the judgment of Lender, the validity, applicability or non-payment of such Labor and Materials Charge 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 or there shall be any danger of the lien of the Security Instrument being primed by any related lien.

(c) For avoidance of doubt, until such claim or lien is either released, discharged, bonded or paid in accordance with the terms of Section 4.8(a), Lender shall have no obligation to fund Future Advances to Borrower.

**Section 4.8 Property Access.** Borrower shall cause Mortgage Borrower to permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice, subject to the rights of Tenants.

**Section 4.9 Litigation.** Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against any Borrower Party which might have a Material Adverse Effect.

**Section 4.10 Title Insurance Proceeds.** Borrower covenants, subject to the Mortgage Lender's rights under the Mortgage Loan Documents, to remit (or cause the Mortgage Borrower to remit) to Lender all title insurance proceeds paid by the title insurance company insuring Mortgage Borrower's title to the Property upon the occurrence of any loss under such title insurance policy; provided however, in no event shall such title insurance proceeds paid to Lender exceed, in the aggregate, the outstanding amount of the Debt.

**Section 4.11 Books and Records.**

(a) Borrower will (or will cause Mortgage Borrower to, as applicable) keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with the requirements set forth on Exhibit [ ] hereof and the Approved Accounting Method, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and Mortgage Borrower 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 and retain such copies or extracts thereof as Lender shall desire.

(b) Borrower will furnish to Lender annually, within ninety (90) days following the end of each Fiscal Year of Mortgage Borrower, a complete copy of Borrower's and Mortgage Borrower's annual financial statements prepared and reviewed by an independent certified public accountant acceptable to Lender (provided, however, that at any time an Event of Default exists or Lender has a reasonable basis to believe any such financial statements are inaccurate in any material respect or do not fairly represent the financial condition of Borrower, Mortgage Borrower or the Property, the same shall, upon Lender's written request, be audited by such independent certified public accountant) in accordance with the Approved Accounting Method covering the Property for such Fiscal Year and containing statements of profit and loss for Borrower, Mortgage Borrower and the Property and a balance sheet for Borrower and Mortgage Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual net operating income, net cash flow, gross income, operating expenses and occupancy statistics for the Property (including an average daily room rate).

(c) Borrower will furnish, or cause Mortgage Borrower to furnish, to Lender on or before thirty (30) 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 and fairly present the financial condition and results of the operations of Borrower, Mortgage Borrower and the Property as applicable: (i) prior to Final Completion, a status report (in form reasonably acceptable to Lender) detailing the progress of the completion of the Work and any expenditures for costs of Construction; and (ii) from and after Substantial Completion, (A) a rent roll for the subject quarter, (B) an occupancy report for the Property (including an average daily room rate) and any franchise scores, franchise inspection reports or other similar information made available to Borrower during the subject quarter, (C) FF&E and PIP expenditures, (D) the most current Smith Travel Research Reports, in a form reasonably acceptable to Lender, then available to Borrower reflecting market penetration and relevant hotel properties competing with the Property, and (E) quarterly and year-to-date operating statements (including expenditures for FF&E) prepared for each calendar quarter, noting net operating income, gross income, and operating expenses (not including any contributions to the [FF&E Reserve Funds]). In addition, such certificate shall also be accompanied by an Officer's Certificate stating that Borrower is in compliance with the requirements set forth in Section 4.22 as of the date of such certificate.

(d) Borrower will furnish, or cause to be furnished, to Lender on or before twenty (20) days after the end of each calendar month 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, Mortgage Borrower and the Property (subject to normal year-end adjustments) as applicable (x) prior to Final Completion, a status report (in form reasonably acceptable to Lender) detailing the progress of the completion of the Work and any expenditures for Construction Costs; and (y) from and after Final Completion: (i) a rent roll for the subject month, (ii) an accounts payable aging report and an accounts receivable aging report for the

subject month, (iii) an occupancy report for the Property (including an average daily room rate) and any franchise scores, franchise inspection reports or other similar information made available to Borrower during the subject month, (iv) FF&E and PIP expenditures, (v) the most current Smith Travel Research Reports, in a form reasonably acceptable to Lender, then available to Borrower or Mortgage Borrower reflecting market penetration and relevant hotel properties competing with the Property, (vi) monthly and year-to-date operating statements (including expenditures for FF&E) prepared for each calendar month, noting net operating income, gross income, and operating expenses (not including any contributions to the reserve funds maintained under the Mortgage Loan Documents for Capital Expenditures and the [Immediate Repair Funds]), and (vii) other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing a comparison of budgeted income and expenses and the actual income and expenses.

(e) For the partial year period commencing on the Closing Date, and for each Fiscal Year thereafter, Borrower shall (or shall cause Mortgage Borrower to) submit to Lender an Annual Budget not later than sixty (60) days prior to the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval (each such Annual Budget so approved by Lender, an "**Approved Annual Budget**"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower or Mortgage Borrower in accordance with this Section 4.11(d), 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 (or shall cause Mortgage Borrower to) promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall (or shall cause Mortgage Borrower to) promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, (1) to the extent that an Approved Annual Budget does not exist for the immediately preceding calendar year, all operating expenses of the Property for the then current calendar year shall be deemed extraordinary expenses of the Property and shall be subject to Lender's prior written approval (not to be unreasonably withheld or delayed) and (2) to the extent that an Approved Annual Budget exists for the immediately preceding calendar year, such Approved Annual Budget shall apply to the then current calendar year; provided, that such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and utilities expenses;

(f) Borrower shall (or shall cause Mortgage Borrower to) furnish 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, Mortgage Borrower, Guarantor and Sponsor as may be reasonably requested by Lender.

(g) Borrower shall (or shall cause Mortgage Borrower to) furnish 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 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 Mortgage Borrower after request therefor).

(h) If Borrower or Mortgage Borrower shall consist of more than one Person, then the annual financial statements required to be delivered hereunder shall be in the form of an annual combined balance sheet of each Borrower and each Mortgage Borrower, respectively (and, in each case, no other Person), together with the related combined statements of operations, members' capital and cash flows with respect to each Borrower and each Mortgage Borrower, respectively,, including a combined balance sheet and a statement of income for the Property on a combined basis.

(i) Borrower shall cause Mortgage Borrower to promptly deliver to Lender any financial statement or other information furnished to Mortgage Lender under or pursuant to the Mortgage Loan Agreement.

(j) Borrower agrees that all financial information delivered to Lender pursuant to this Section 4.11 shall: (i) be complete and correct; (ii) present fairly the financial condition of the applicable Person; (iii) disclose all liabilities that are required to be reflected or reserved against; and (iv) be prepared (A) in the form required by Lender and certified by a Responsible Officer of Borrower or Mortgage Borrower, as applicable (B) in hardcopy and electronic formats and (C) in accordance with the Approved Accounting Method. Borrower and Mortgage Borrower, as applicable, shall be deemed to warrant and represent that, as of the date of delivery of any such financial statement, there has been no material adverse change in financial condition, nor have any assets or properties been sold, transferred, assigned, mortgaged, pledged or encumbered since the date of such financial statement except as disclosed by Borrower or Mortgage Borrower in a writing delivered to Lender. Borrower agrees that all financial information delivered hereunder shall not contain any misrepresentation or omission of a material fact.

**Section 4.12 Contracts.** Borrower may cause Mortgage Borrower to enter into any Contract without Lender's consent so long as such Contract (a) contains terms that are commercially reasonable and comparable to existing local market terms for similar contractual agreements with respect to commercial properties similar to the Property, and (b) does not contain any terms which would have a Material Adverse Effect. Notwithstanding anything to the contrary contained herein, Borrower shall be required to obtain Lender's prior written approval of all Major Contracts affecting the Property (including any renewals or extensions thereof, or any amendments or modifications thereto), which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall (or shall cause Mortgage Borrower to) (i) diligently perform and observe all of the terms, covenants and conditions under each Contract to which it is a party, and do all things necessary to keep unimpaired its rights thereunder, (ii) promptly notify Lender of any notice of default given by

any party under any Major Contract and deliver to Lender a copy of each such notice, and (iii) enforce the performance and observance of all of the material terms, covenants and conditions required to be performed and/or observed by the other party to each Contract and to which Mortgage Borrower is a party in a commercially reasonable manner.

**Section 4.13 Cooperation in Proceedings.** Borrower shall (and shall cause Mortgage Borrower 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 Note, the Security Instrument or the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**Section 4.14 Estoppel Certificates.**

(a) After request by Lender, Borrower, within ten (10) Business Days of such request, shall furnish Lender or any proposed assignee with (1) a statement, duly acknowledged and certified, setting forth (i) the outstanding principal balance of the Note, (ii) the Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment and performance of the Obligations, and (v) any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations created and evidenced hereby and by the Security Instrument or the Property, and (2) a similar statement from Mortgage Borrower with respect to the Mortgage Loan.

(b) From and after Substantial Completion, Borrower shall, or shall cause Mortgage Borrower to, use commercially reasonable efforts to deliver to Lender, within ten (10) Business Days of request, duly executed estoppel certificates from any one or more Tenants as required by Lender attesting to such facts regarding the Lease as Lender may reasonably require, including, but not limited to, attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, no free rent or other concessions are due lessee and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Borrower shall, or shall cause Mortgage Borrower to, use commercially reasonable efforts to deliver to Lender, within ten (10) Business Days of request, duly executed estoppel certificates from Franchisor as required by Lender attesting to such facts regarding the Franchise Agreement as Lender may reasonably require, including, but not limited to, attestations that the Franchise Agreement is in full force and effect with no defaults thereunder on the part of any party.

**Section 4.15 Leases and Rents.**

(a) All Leases and all renewals of Leases executed after the date hereof shall (i) provide for rental rates comparable to existing local market rates for similar properties, (ii) be on commercially reasonable terms with unaffiliated, third parties (unless otherwise consented to by Lender), (iii) provide that such Lease is subordinate to the Security Instrument and that the lessee will attorn to Mortgage Lender and any purchaser at a foreclosure sale, (iv) not permit payment of rent by anything other than lawful money of the United States of America and (v) not contain any terms which would have a Material Adverse Effect. Notwithstanding anything to the contrary contained herein, Borrower shall not, and shall cause Mortgage Borrower not to, without the prior written approval of Lender (which approval may be given or withheld in Lender's sole but reasonable discretion), enter into, renew, extend, amend, modify, permit any assignment of or subletting under, waive any provisions of, release any party to, terminate, reduce rents under, accept a surrender of space under, or shorten the term of, in each case, any Lease.

(b) Without limitation of subsection (a) above, Borrower shall, or shall cause Mortgage Borrower to (i) observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) enforce the material 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; (iii) not collect any of the Rents more than one (1) month in advance (other than security deposits); (iv) not execute any assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Mortgage Loan Documents); and (v) hold all security deposits under all Leases in accordance with Legal Requirements. Upon request, Borrower shall (or shall cause Mortgage Borrower to) furnish Lender with executed copies of all Leases.

(c) Borrower shall (or shall cause Mortgage Borrower to) notify Lender in writing, within two (2) Business Days following receipt thereof, of Mortgage Borrower's receipt of any early termination fee or payment or other termination fee or payment paid by any Tenant under any Lease, and Borrower shall cause Mortgage Borrower to deposit same in reserve with Mortgage Lender to be disbursed by Mortgage Lender for tenant improvement and leasing commission costs with respect to the Property and/or for payment of the Debt (as defined in the Mortgage Loan Documents) or otherwise in connection with the Mortgage Loan, as so determined by Mortgage Lender.

**Section 4.16 Notice of Default.** Borrower shall promptly advise Lender of any material adverse change in the condition (financial or otherwise) of any Borrower, Mortgage Borrower, Accommodation Pledgor, other Borrower Party, the Property, the Collateral or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

**Section 4.17 Other Agreements.** Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Collateral, or given by Borrower to Lender for the purpose of further securing the Debt and any amendments, modifications or changes thereto.



**Section 4.18 Alterations.** Notwithstanding anything contained herein to the contrary, Lender's prior approval shall be required in connection with any alterations to any Improvements (a) that may have a Material Adverse Effect, (b) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Alteration Threshold or (c) that are structural in nature, which approval may be granted or withheld in Lender's sole discretion. If the total unpaid amounts incurred and to be incurred with respect to any alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall promptly deliver to Lender cash as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents.

**Section 4.19 [Management Agreement. [REVISE AS APPLICABLE]**

(a) Borrower shall cause Mortgage Borrower to (i) cause Manager to manage the Property in accordance with the Management Agreement, (ii) diligently perform and observe all of the terms, covenants and conditions of the Management Agreement on the part of Mortgage Borrower to be performed and observed, (iii) promptly notify Lender of any default under the Management Agreement of which it is aware, (iv) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, estimate, report and each material notice received by Borrower or Mortgage Borrower under the Management Agreement, and (v) promptly enforce the performance and observance of all of the covenants required to be performed and observed by Manager under the Management Agreement.

(b) Borrower shall not and shall not permit Mortgage Borrower to, without the prior written consent of Lender (i) surrender, terminate, cancel, modify, renew or extend the Management Agreement (other than a renewal or extension provided for in the Management Agreement); provided, that, Borrower may, or may cause Mortgage Borrower to, replace Manager with a Qualified Manager pursuant to a Qualified Management Agreement.

(c) In the event that the Management Agreement expires or is surrendered, terminated or cancelled, Borrower shall cause Mortgage Borrower to enter into a Qualified Management Agreement with a Qualified Manager or with another manager approved by Lender contemporaneously with such expiration, surrender, termination or cancellation.

(d) Subject to the rights of Mortgage Lender under the Mortgage Loan Documents, Lender shall have the right to require Borrower to cause Mortgage Borrower to replace Manager with a Qualified Manager chosen by Mortgage Borrower which is not an Affiliated Manager to manage the Property pursuant to a Qualified Management Agreement upon the occurrence of any one or more of the following events: (i) at any time following the occurrence of an Event of Default, (ii) if at any time a Cash Sweep Period has occurred and is continuing, (iii) if Manager shall be in default under the Management Agreement beyond any applicable notice and cure period, (iv) if Manager shall become insolvent or a debtor in any involuntary bankruptcy or insolvency proceeding that is not dismissed within ninety (90) days of the filing thereof, or any voluntary bankruptcy or insolvency proceeding, or (v) if at any time Manager has engaged in gross negligence, fraud or willful misconduct.

(e) Upon the occurrence and during the continuance of an Event of Default, Borrower shall not, and shall not permit Mortgage Borrower to, exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender.

(f) If at any time Lender consents to the appointment of a new manager and/or the execution of a management agreement under this Agreement, such manager, Borrower and Mortgage Borrower shall, as a condition of Lender's consent, execute a new assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or in such other form and substance reasonably satisfactory to Lender).]

**Section 4.20 No Joint Assessment.** Borrower shall not (and shall not cause or permit Mortgage Borrower to) suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

**Section 4.21 ERISA.** Borrower shall not and shall not permit Mortgage Borrower to 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 hereunder or under the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. 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 reasonable discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the IRS Code, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) neither Borrower nor Mortgage Borrower are subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) with respect to each of Borrower and Mortgage Borrower, one or more of the following circumstances is true: (A) equity interests in Borrower or Mortgage Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3 101(b)(2); (B) less than 25 percent of each outstanding class of equity interests in Borrower or Mortgage Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3 101(f)(2); or (C) Borrower or Mortgage Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R § 2510.3 101(c) or (e) or an investment company

registered under The Investment Company Act of 1940, as amended. Borrower shall not (and shall not cause or permit Mortgage Borrower to) maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any member of Borrower's or Mortgage Borrower's "controlled group of corporations" to maintain, sponsor, contribute to or become obligated to contribute to a "defined benefit plan" or a "multiemployer pension plan" (as each of the same is defined in Section 3.15 of this Agreement).

**Section 4.22 Special Purpose Entity.** Borrower and each SPE Component Entity shall at all times comply with the requirements set forth on Exhibit [ ] attached hereto and shall not take or permit any action that would result in Borrower, or any SPE Component Entity not being in compliance with the representations, warranties and covenants set forth in Section 3.24 and Exhibit [ ] attached hereto.

**Section 4.23 Debt Cancellation.** Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

**Section 4.24 Anti-Corruption Laws.** Borrower Compliance Party and each party hereto has complied, and will continue to comply, with all Applicable Laws, including, without limitation, the Anti-Corruption Laws and the Anti-Money Laundering Laws. Borrower Compliance Party has not, and agrees that it shall not, in connection with the transactions contemplated by this Agreement, or in connection with any other business transactions involving Lender or its subsidiaries, make any payment, transfer anything of value, or offer anything of value, directly or indirectly (i) to any governmental official or employee (including employees of a government corporation or public international organization) or to any political party or candidate for public office or (ii) to any other person or entity if such payments or transfers would violate the laws of the country in which made, the laws of the United States, the UK or the European Union including the trade sanction and economic embargo programs enforced by OFAC or the laws of any other applicable country. Lender shall have the right to perform a periodic anti-corruption re-diligence. Upon reasonable request, Borrower Compliance Party shall complete a re-diligence questionnaire to be returned to Lender's compliance group. Borrower shall not use, and shall ensure that its directors, officers, employees, and agents shall not use, the proceeds of the Loan, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any sanctioned person, or in any sanctioned country, or (iii) in any manner that would result in the violation of any sanctions applicable to any party hereto. Borrower shall conduct its business in compliance with Anti-Corruption Laws, maintain policies and procedures designed to promote and achieve compliance with such laws and take all reasonable and prudent steps to ensure that each of its agents, directors, employees and officers comply with such laws.

**Section 4.25 Embargoed Person.** At all times throughout the term of the Loan, including after giving effect to any transfers of all or any portion of the Property or any direct or indirect equity or beneficial interests in Borrower, Mortgage Borrower or any Guarantor that is not a natural person, (a) none of the funds or other assets of Borrower, Mortgage Borrower or any Guarantor shall constitute property of, or shall be beneficially owned, directly or indirectly, by any Person subject to trade restrictions under United States law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., the Patriot Act and any Executive Orders or regulations promulgated thereunder, each as may be amended from time to time, with the result that the investment in Borrower, Mortgage Borrower, Sponsor or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law (each, an "**Embargoed Person**"), or the Loan made by Lender would be in violation of law, (b) no Embargoed Person shall have any interest of any nature whatsoever in Borrower, Mortgage Borrower, Sponsor or any Guarantor, as applicable, with the result that the investment in Borrower, Mortgage Borrower, Sponsor or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law, and (c) none of the funds of Borrower, Mortgage Borrower, Sponsor or any Guarantor, as applicable, shall be derived from any unlawful activity with the result that the investment in Borrower, Mortgage Borrower, Sponsor or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law.

**Section 4.26 Patriot Act.** Borrower shall (and shall cause Mortgage Borrower to) comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower, Mortgage Borrower and/or the Property, including those relating to money laundering and terrorism. Lender shall have the right to audit Borrower's and Mortgage Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower, Mortgage Borrower and/or the Property, including those relating to money laundering and terrorism. In the event that Borrower or Mortgage Borrower fail to comply with the Patriot Act or any such requirements of Governmental Authorities, then Lender may, at its option, cause Borrower (or cause Borrower to cause Mortgage Borrower to) to comply therewith and any and all costs and expenses incurred by Lender in connection therewith shall be secured by the Security Instrument and the other Loan Documents and shall be immediately due and payable.

**Section 4.27 No Plan Assets; Illegal Activity/Forfeiture.** Borrower shall take all necessary actions in order to remain in compliance with the representation contained in Sections 3.15 and 3.23 hereof at all times during the term of the Loan, and shall not take any actions that would cause Borrower to violate any of the same. Borrower covenants and agrees not to commit, permit or suffer to exist any act or omission affording any right of forfeiture described in Section 3.23.

**Section 4.28 O&M Program.** [Borrower hereby represents and warrants that Borrower has, as of the date hereof, caused Mortgage Borrower to comply in all respects with the O&M Program. Borrower hereby covenants and agrees that, during the term of the Loan, including any extension or renewal thereof, Borrower shall cause Mortgage Borrower to comply in all respects with the terms and conditions of the O&M Program.]

**Section 4.29 Commencement and Completion of Construction.**

(a) Borrower shall cause Mortgage Borrower to cause Construction to be commenced by the applicable Milestone Date.

(b) Borrower shall cause Mortgage Borrower to achieve, complete and perform each other Milestone by the applicable Milestone Date.

(c) By the Substantial Completion Date, Borrower shall cause Mortgage Borrower cause each of the following to occur:

(i) Borrower shall cause Mortgage Borrower to deliver to Lender all information, reports, Permits, documents and other items required to be delivered to Borrower by the General Contractor under the General Contract to evidence Substantial Completion under the General Contract and all conditions to substantial completion under the General Contract shall have been satisfied;

(ii) Borrower shall cause Mortgage Borrower to furnish to Lender such other certificates, approvals, licenses and permits of any Governmental Authority which are required under applicable Legal Requirement concerning the development, Construction, use, occupancy and operation of the Property (other than a final certificate of occupancy);

(iii) Borrower shall cause Mortgage Borrower to deliver to Lender a temporary certificate of occupancy with respect to all of the Improvements issued by the applicable Governmental Authority (and following the issuance of temporary certificate(s) of occupancy for the Property, Borrower shall diligently and continuously pursue the issuance of the final certificate(s) of occupancy for the Property thereafter and shall renew, if applicable, the temporary certificates until the final certificates of occupancy are obtained);

(iv) Borrower shall cause Mortgage Borrower to have substantially completed the Improvements in accordance with the Plans and Specifications, excluding only the Punchlist Items;

(v) Except with respect to the Punchlist Items, Borrower shall cause Mortgage Borrower to furnish Lender with progress and final lien waivers and releases in accordance with all Legal Requirements and as otherwise acceptable to Lender from (x) the General Contractor and all subcontractors and material suppliers that have provided materials, labor or both with respect to the Construction and (y) from [Designer/designers] and Architects; and

(vi) Borrower shall, and shall cause Mortgage Borrower to, furnish to Lender a certificate from Borrower and Mortgage Borrower, currently dated, in the form attached hereto as Exhibit [ ].

(d) On or before the Final Completion Date, Borrower shall cause the following to occur:

(i) Borrower shall cause Mortgage Borrower to deliver to Lender and Mortgage Lender all information, reports, Permits, documents and other items required to be delivered to Borrower by the General Contractor under the General Contract to evidence Final Completion under the General Contract;

(ii) Borrower shall cause Mortgage Borrower to satisfy all conditions to the disbursement of Retainage under the General Contract;

(iii) Borrower shall cause Mortgage Borrower to cause all Punchlist Items to be one hundred percent (100%) completed;

(iv) Borrower shall cause Mortgage Borrower to deliver to Lender and Mortgage Lender a certificate certifying that all Punchlist Items have been one hundred percent (100%) completed;

(v) Borrower shall cause Mortgage Borrower to deliver to Lender and Mortgage Lender the Certificate of Occupancy (or its equivalent) issued by the applicable Governmental Authority with respect to all of the Improvements and any other final Permits issued by all applicable Governmental Authorities necessary for the occupancy, rental and operation of the Property for its intended purposes and in connection therewith;

(vi) Borrower shall cause Mortgage Borrower to fully pay for all items in connection with the Construction and all Punchlist Items and Lender and Mortgage Lender shall receive: (i) a duly executed and

acknowledged contractor's sworn statement and final affidavit in the form required by the Legal Requirements of the State; (ii) as applicable, an unconditional final lien waiver and release from the General Contractor in statutory form; (iii) a final payment affidavit from the General Contractor in statutory form; and (iv) unconditional waivers and releases upon final payment from the Architect, any designer and all subcontractors, sub subcontractors, suppliers and materialmen in form required by the Legal Requirements of the State and as otherwise satisfactory to Lender and Mortgage Lender, without any outstanding liens, demands or claims;

(vii) Borrower shall cause Mortgage Borrower to deliver to Lender and Mortgage Lender a full set of "as built" Plans and Specifications for all completed Improvements, in both document and CAD format and copies of all warranties applicable to the Improvements;

(viii) Borrower shall cause Mortgage Borrower to deliver to Lender and Mortgage Lender the General Contractor's final accounting for the cost of the work and all required supporting documentation, as approved by Borrower;

(ix) Borrower shall cause Mortgage Borrower to deliver to Lender and Mortgage Lender duly executed and completed warranties and guarantees for all material, equipment and workmanship as required by the Construction Documents from the subcontractors and manufacturers;

(x) Borrower shall cause Mortgage Borrower to deliver to Lender and Mortgage Lender a final certificate of payment issued by the Architect in the form of Exhibit [ ];

(xi) reserved; and

(xii) Borrower shall cause Mortgage Borrower to deliver to Mortgage Lender an As Built Survey of the Property.

(e) At all times while any General Contractor's or sub contractor's work remains outstanding, Borrower shall cause Mortgage Borrower to cause those bonds applicable to Contractor or sub contractor to remain in full force and effect or be replaced. Any replacement bonds or new bonds for any contractor or sub contractor shall be in form and substance acceptable to Lender and Mortgage Lender.

#### **Section 4.30 Construction Schedule.**

(a) Completion. Attached as Exhibit [ ] is a projected schedule (the "**Construction Schedule**") for the progress of the Construction prepared by Borrower and Mortgage Borrower, including, without limitation, a trade-by-trade break down of the anticipated periods of the progress of Construction, the applicable Milestones and setting forth the projected monthly disbursements throughout the Construction period reflecting, among other things, the anticipated dates of Substantial Completion and Final Completion and the timing of disbursements of incremental amounts of various subcategories of the Construction Budget.

(b) Amendments to Construction Schedule. Borrower shall (or shall cause Mortgage Borrower to) deliver to Lender any and all amendments to the Construction Schedule. In no event shall the Construction Schedule be amended to change any of the Milestone Dates or to provide that the Construction contemplated by the Construction Documents will not be Substantially Complete on or before the Substantial Completion Date or that Final Completion shall not occur by the Final Completion Date.

#### **Section 4.31 Construction Budget.**

(a) Budget. The Construction Budget is attached hereto as Exhibit [ ]. The Construction Budget contains a detailed full cost preliminary budget for the Costs of the Construction through Final Completion. The Construction Budget contains a contingency in the amount of not less than [ ] percent ([ ]%) of Hard Costs, and [ ] percent ([ ]%) of Soft Costs [TBD]. The Construction Budget shall not be amended, including without limitation, the creation of any new line items or reallocation between line items, without Lender's prior written consent. To the extent not paid for by reallocating the line item designated as "Contingency" or any Cost Savings, any new line items shall be paid for by Borrower or Mortgage Borrower from sources other than Loan Proceeds, Mortgage Loan proceeds or Reserve Accounts. From time to time, Borrower, Mortgage Borrower, Mortgage Lender or Lender may determine that modifications are necessary to the Construction Budget due to actual or anticipated changes in Hard Costs or Soft Costs. If, after due consultation and consideration of the views of Borrower and Mortgage Borrower, Borrower, Mortgage Borrower, Mortgage Lender and Lender do not agree on the changes to the Construction Budget, Lender's and Mortgage Lender's determination shall control.

(b) Fees to Affiliates. The Construction Budget shall not contain any line items payable to Borrower or Mortgage Borrower or any Affiliate of Borrower.

(c) Contingency Line Items. Subject to the prior written approval of Lender and Mortgage Lender, Borrower and Mortgage Borrower may revise the Construction Budget from time to time to move amounts available under any line item for Costs that are designated as (i) "Hard Cost Contingency" to other line items for Costs in the Construction Budget that are designated as Hard Costs and (ii) "Soft Cost Contingency" to other line items for Costs in the Construction Budget that are designated as Soft Costs.

(d) Determination of Cost Saving. If a component of the Construction (other than interest, fees and other expenses payable under the Loan) which is the subject of a line item shall be determined by Lender and Mortgage Lender and verified by Development Consultant, to be completed without the expenditure of the entire amount allocated in the Construction Budget to such line item and the General Contractor and all subcontractors and other Persons have been paid in full for work performed and materials provided with respect to the component of the Construction which is the subject of such line item, the difference between the amount of such line item in the Construction Budget and the amount so expended for such line item shall be deemed to be a “**Cost Saving**”.

(e) Use of Cost Savings. If there is a Cost Saving in a particular line item of the Construction Budget, and if such Cost Saving is substantiated by evidence reasonably satisfactory to Lender and Mortgage Lender and verified by the Development Consultant, then Borrower and Mortgage Borrower shall have the right, upon prior written approval of Lender and Mortgage Lender, not to be unreasonably withheld, to reallocate such Cost Saving to (i) another line item with respect to which additional costs have been or may be incurred in the Construction Budget, or (ii) a “Contingency” line item in the Construction Budget; provided, however, that Borrower and Mortgage Borrower shall not reallocate any portion of the line items for interest, fees and other expenses payable under the Loan, Taxes or Insurance Premiums or re-allocate any line item in contravention of applicable Legal Requirements or any agreement with any Person.

**Section 4.32 Construction Contracts.** Borrower shall (and shall cause Mortgage Borrower to) ensure that the General Contractor and each Trade Contractor is properly licensed in the State. Borrower shall (and shall cause Mortgage Borrower to) require the General Contractor to perform in accordance with the terms of the General Contract and shall not terminate, amend, modify or alter the responsibilities of the General Contractor under the General Contract without Lender’s and Mortgage Lender’s prior written consent. Borrower shall (and shall cause Mortgage Borrower to) require each Major Trade Contractor to perform in accordance with the terms of its Major Trade Contract and shall not terminate, amend, modify or alter the responsibilities of any Major Trade Contractor under a Major Trade Contract without Lender’s and Mortgage Lender’s prior written consent. Borrower shall not, and shall not permit the Mortgage Borrower or General Contractor to, enter into any new Major Trade Contract without Lender’s prior written consent, which consent shall not be unreasonably withheld.

**Section 4.33 Design Agreements.** Borrower shall (and shall cause Mortgage Borrower to) ensure that each designer is properly licensed in the State. Borrower shall (and shall cause Mortgage Borrower to) cause each designer to perform in accordance with the terms of its respective design agreements and shall not amend, modify or alter the responsibilities of the designers under its design agreements without Lender’s and Mortgage Lender’s prior written consent, which consent shall not be unreasonably withheld. Borrower shall not (and shall cause Mortgage Borrower not to) enter into any new design agreements without Lender’s and Mortgage Lender’s prior written consent, which consent shall not be unreasonably withheld.

**Section 4.34 Plans and Specifications; Change Order Approvals.**

(a) Changes; Lender Consent. Except as otherwise provided in this Agreement, Borrower shall not (and shall cause Mortgage Borrower not to) make any changes in the Plans and Specifications (other than immaterial field changes) without Lender’s and Mortgage Lender’s prior written consent if such change: (i) constitutes a change in the building material or equipment specifications, or in the architectural or structural design, value or quality of any of the Improvements; (ii) would result in an increase of Construction Costs in excess of \$[ ] for any single change or in excess of \$[ ] for all such changes; (iii) would affect the structural integrity, quality of building materials, or overall efficiency of operating systems or utility systems of the Improvements; (iv) would reduce (A) the square footage of the Improvements by more than a de minimis amount or (B) the number of hotel rooms; or (v) would result in the failure of Mortgage Borrower to achieve Substantial Completion by the Substantial Completion Date or Final Completion by the Final Completion Date. Borrower shall (and shall cause Mortgage Borrower to) provide prompt notice to Lender of all change orders, whether or not Lender’s consent is required. Borrower shall (and shall cause Mortgage Borrower to) at all times maintain, for inspection by Lender, a full set of working drawings of the Improvements.

(b) Changes; Submission Requirements. Borrower shall (and shall cause Mortgage Borrower to) submit any proposed change in the Plans and Specifications to Lender, Mortgage Lender and Development Consultant at least ten (10) days prior to the commencement of Construction relating to such proposed change whether or not such change is subject to Lender’s consent. Borrower shall not (and shall cause Mortgage Borrower not to) implement any change order that requires Lender’s consent hereunder unless Lender consents to such change order. Requests for any change which requires consent shall be accompanied by working drawings and a written description of the proposed change, submitted on a change order form acceptable to Lender, signed by Mortgage Borrower, Borrower and by the Architect and the General Contractor. At its option, Lender may require Borrower to cause Mortgage Borrower to provide: (i) evidence satisfactory to Lender of the cost and time necessary to complete the proposed change; and (ii) a deposit in the amount of any increased costs into the Construction Reserve (except to the extent funds are re allocated or deducted from Contingency as permitted under Section 4.31).

**Section 4.35 Contractors/Construction Information.** Within fifteen (15) days after Lender’s written request, Borrower shall (and shall cause Mortgage Borrower to) deliver to Lender and Development Consultant from time to time in a form acceptable to Lender: (a) a list detailing the name, address and phone number of each contractor, subcontractor and material supplier to be employed or used for construction of the Improvements together with the dollar amount, including changes, if any, of each contract and subcontract, and the portion thereof, if any, paid through the date of such list; (b) copies of each Construction Contract identified in such list, including

any changes thereto; (c) certificates of insurance from each contractor, subcontractor and material supplier to be employed or used for construction of the Improvements; (d) a cost breakdown of the projected total cost of constructing the Improvements, and that portion, if any, of each cost item which has been incurred; and (e) an updated Construction Schedule detailing the progress of Construction and the projected sequencing and completion time for uncompleted work, all as of the date of such schedule. Borrower agrees that Lender may disapprove any contractor, subcontractor or material supplier which, in Lender's determination, is deemed financially or otherwise unqualified or which is inadequately insured; provided, however, that the absence of any such disapproval shall not constitute a warranty or representation of qualification by Lender. Lender may contact any such contractor, subcontractor or material supplier with the Architect or Borrower's or Mortgage Borrower's construction representative to discuss the course of Construction.

**Section 4.36 Prohibited Contracts.** Without Lender's prior written consent, Borrower shall not (and not permit Mortgage Borrower to) enter into any contract for the purchase or leasing of any materials, furnishings, equipment, fixtures or other parts or components of the Improvements, if any third party shall retain any ownership interest (other than lien rights created by operation of Legal Requirements) in such items after their delivery to the Property. Borrower shall have ten (10) days to effect the removal of any such retained interest. In the event Lender approves any such purchase or lease, Borrower shall (and shall cause Mortgage Borrower to) provide Lender with an estoppel and a recognition agreement from such third party allowing Lender to acquire or lease such materials, furnishings, equipment, fixtures or other parts or components of the Improvements upon a foreclosure of the Security Instrument or transfer in lieu of foreclosure.

**Section 4.37 Construction Responsibilities.** Borrower shall (and shall cause Mortgage Borrower to) cause all Improvements to be constructed in a good and workmanlike manner without defect according to the Construction Documents. Borrower and Mortgage Borrower shall be solely responsible for all aspects of the Construction of the Improvements, including, without limitation, the quality and suitability of the Plans and Specifications and their compliance with all Legal Requirements, the supervision of the work of Construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all Draw Requests and the proper application of all disbursements of Loan Proceeds and Reserve Accounts. Lender is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the Construction or any other matter referred to above.

**Section 4.38 Foundation Survey.** Borrower shall (and shall cause Mortgage Borrower to) promptly deliver to Lender and Development Consultant: (a) upon completion of the foundations of the Improvements, a survey showing the location of the Improvements and confirming that the Improvements are located entirely within the Property and do not encroach upon any easement, or breach or violate any governmental requirement; and (b) upon Final Completion, an as built survey satisfactory to Lender. All such surveys shall be performed and certified by a licensed engineer or surveyor acceptable to the Title Company and satisfactory to Lender.

**Section 4.39 Construction Loan In Balance.**

(a) Any undisbursed Loan Proceeds, together with all sums in the Construction Reserve and Mortgage Loan Future Fundings shall be at all times equal to or greater than the amount which Lender from time to time determines necessary to: (i) pay all Hard Costs and Soft Costs in accordance with the Construction Budget, the General Contract and the Loan Documents and Mortgage Loan Documents; and (ii) enable Borrower and Mortgage Borrower to perform and satisfy all of the covenants of Borrower contained in the Loan Documents and Mortgage Borrower in the Mortgage Loan Documents through the Maturity Date (other than those obligations for which other Reserve Accounts are maintained under the Loan Documents and/or Mortgage Loan Documents) (the failure of the foregoing to be true, a "**Construction Balancing Event**"). If Lender determines at any time that the undisbursed Loan Proceeds, together with the Mortgage Loan Future Fundings and the funds in the Construction Reserve are insufficient for said purposes, Borrower shall (or shall cause Mortgage Borrower to), within ten (10) days after Lender's written demand therefor, deposit with Mortgage Lender from its own funds the amount of such deficiency which funds shall be deposited into the Construction Reserve and disbursed in accordance with the terms and provisions of this Agreement.

(b) If, at any time during the term of the prior to the Final Funding Date, the unfunded Loan Proceeds allocated in the Carry Holdback are reduced to an amount equaling less than [\_\_\_\_\_] 00/100 Dollars (\$\_\_\_\_\_) (a "**Carry Holdback Balancing Event**"), and together with any Construction Balancing Event, hereinafter individually and/or collectively, as applicable, a "**Balancing Event**"), Borrower shall, within ten (10) days after Lender's written demand therefor, deposit with Lender from its own funds an amount such that the balance in the Carry Holdback shall equal not less than [\_\_\_\_\_] 00/100 Dollars (\$\_\_\_\_\_)].<sup>1</sup>

(c) In addition, from and after the Final Funding Date, in the event the amounts on deposit and held by Lender in the Tax Account, the Insurance Account, the Operating Expenses Account and/or the Interest Reserve Account shall, in the aggregate, subsequently fall below [\_\_\_\_\_] 00/100 Dollars (\$\_\_\_\_\_), Borrower shall, within ten (10) days after Lender's written demand therefor, deposit with Lender from its own funds the allocated amount of such deficiency into the Interest Reserve

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<sup>1</sup> Mortgage loan to address deposits required by mezz loan agreement

Account, the Tax Account, the Insurance Account, and/or the Operating Expense Account, as applicable, provided that in no event shall the aggregate amount of be less than [ ] 00/100 Dollars [(\$ )].

**Section 4.40 Cooperation with Regard to Liquor Licenses.** To the extent permitted by Legal Requirements and the Mortgage Loan Documents, Borrower shall (and, if applicable, shall cause Mortgage Borrower and Manager and/or any applicable Affiliates to) execute and deliver to Lender such additional documents, instruments, certificates, assignments and other writings, and otherwise provide (and cause Mortgage Borrower, Manager and/or any applicable Affiliate to provide) such cooperation, in each case as may be necessary to transfer any liquor Licenses with respect to the Property into, or obtain the issuance of new liquor Licenses in, the name of Lender or its designee during the continuance of an Event of Default. Such cooperation shall include, without limitation, completing transfer requests, surrendering or cancelling any existing liquor Licenses, and using commercially reasonable efforts to make representatives of Borrower, Mortgage Borrower, Manager, and their Affiliates available for meetings with any applicable Governmental Authority in connection with the transfer or issuance of such liquor Licenses, subject in all instances to applicable Legal Requirements. Furthermore, neither Borrower, Mortgage Borrower, Manager, nor any of its Affiliates shall hinder or interfere with the liquor License transfers or issuances made or contemplated by this Agreement, or with efforts of Lender or its successors and assigns to obtain temporary or permanent liquor Licenses. Effective during the existence of an Event of Default, subject to the Mortgage Loan Documents, Borrower hereby irrevocably appoints Lender as its and Mortgage Borrower's and as Affiliated Manager's agent and attorney-in-fact to execute all such documents and instruments as Lender shall require or deem advisable in order to cause the transfer or issuance of such liquor Licenses as Lender may require and to cause a cancellation of such existing liquor Licenses as Lender may require. The foregoing power of attorney is coupled with an interest and shall be irrevocable. In addition to all other remedies which Lender may have at law or in equity for the enforcement of the terms and provisions of this Agreement, subject to the terms of the Mortgage Loan Agreement, Borrower expressly agrees that Lender shall have the right to bring an action in specific performance to enforce each and every term and provision of this Section 4.40.

**Section 4.41 Development Consultant.** Borrower shall (or shall cause Mortgage Borrower to) deliver to Development Consultant copies of any item to be delivered to Lender by Borrower or Mortgage Borrower with respect to any matter pertaining to the Construction. Borrower acknowledges and agrees that Lender may require the Development Consultant, at Borrower's expense, to make periodic inspections of the Property and to review all change orders relating to the Project. Before making any Future Advance, Lender may request the Development Consultant to inspect all work and materials for which payment is requested and all other work upon the Property and/or submit to Lender a progress inspection report. Borrower agrees to bear and shall pay or reimburse Lender within ten (10) Business Days after demand for the Development Consultant's fees and all actual costs and expenses incurred by the Development Consultant. Borrower shall be responsible for making its own inspections of the Property during the course of Construction and shall determine to its own satisfaction that the work done and materials supplied are in accordance with applicable contracts with its contractors. By making a Future Advance after any inspection of the Property by Lender or the Development Consultant, Lender shall not be deemed to waive any Event of Default, to waive any right to require construction defects or any other work to be corrected, or to acknowledge that all or any portion of the construction conforms to the Plans and Specifications. Notwithstanding any provision of this Agreement to the contrary, in the event that Lender should determine that the actual quality or value of the work performed or the materials furnished does not correspond with the quality or value of the work required by the Plans and Specifications, upon Lender's demand Borrower shall promptly correct the conditions to which Lender objects.

**Section 4.42 Liens and Bonded Stop Notices.**

(a) If a claim of lien is recorded which affects the Property or Improvements or a bonded stop notice is served upon Lender, Mortgage Lender, Mortgage Borrower or Borrower, Borrower shall (or shall cause Mortgage Borrower to), within thirty (30) calendar days after the earlier of Borrower's or Mortgage Borrower's receipt of notice of claim of lien or bonded stop notice cause such claim of lien or bonded stop notice to be released pursuant to Section 4.7(a).

(b) If Borrower (or Mortgage Borrower) fails to pay or discharge any lien (or bond in a manner acceptable to Lender) or any bonded stop notice as provided above, Lender, in addition to such other rights as may be available to it, may pay and discharge such lien or bonded stop notice or deposit in escrow an amount sufficient to do so, and the amount so paid or deposited shall be treated as a Future Advance of the Loan from Lender to Borrower.

**Section 4.43 Development Agreement. [IF APPLICABLE]**

(a) [Concurrently with the execution of this Agreement,] Mortgage Borrower has entered into the Development Agreement with Developer. The Developer Fees shall be equal to [ ] % of the total Hard Costs and Soft Costs.] Notwithstanding anything to the contrary contained in the Development Agreement, the Developer Fees shall be fully deferred during the term of the Loan. Borrower shall cause Mortgage Borrower to perform, observe and enforce all of the terms, covenants and conditions of the Development Agreement on the part of Mortgage Borrower to be performed, observed and enforced under the Development Agreement. Borrower shall not (and shall not permit Mortgage Borrower to) (i) surrender the Development Agreement, (ii) consent to the assignment by the Developer of its interest under the Development Agreement, (iii) without the prior written consent of Lender, terminate or cancel the Development Agreement, or (iv) without the prior written consent of Lender, which consent is not to be unreasonably withheld, change, supplement, alter or amend the Development Agreement. If Borrower or Mortgage Borrower desires to engage another Person

as the Developer, Mortgage Borrower may engage such Person as the replacement Developer, provided that (i) Lender and Mortgage Lender have approved such Person as the new Developer, (ii) the terms of the new development agreement to be entered into with the new Developer are reasonably satisfactory to Lender and Mortgage Lender, and (iii) such new has executed and delivered to Lender and Mortgage Lender an agreement subordinating its rights under the new development agreement to the Loan and Mortgage Loan, in form and substance reasonably satisfactory to Lender and Mortgage Lender, respectively.

(b) Subject to the terms of the Mortgage Loan Documents, Lender shall have the right to require Borrower or Mortgage Borrower to terminate the Development Agreement and enter into a new development agreement reasonably satisfactory to Lender with a new Developer approved by Lender which is not an Affiliate of Borrower upon the occurrence of any one or more of the following events: (i) at any time following the occurrence of an Event of Default, (ii) if Developer shall be in default under the Development Agreement beyond any applicable notice and cure period, (iii) if Developer shall become insolvent or a debtor in any involuntary bankruptcy or insolvency proceeding that is not dismissed within ninety (90) days of the filing thereof, or any voluntary bankruptcy or insolvency proceeding, or (iv) if at any time Developer has engaged in gross negligence, fraud or willful misconduct.]

**Section 4.44 Construction Documents.** Without limiting the other provisions of this Agreement and the other Loan Documents, Borrower shall (a) 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 Construction Documents and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (b) promptly notify Lender of any default under the Construction Documents of which it is aware; (c) promptly deliver to Lender a copy of each notice, report and estimate received by it under the Construction Documents; (d) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed under the Construction Documents in a commercially reasonable manner; (e) cause the Work to be performed, in all material respects, in accordance with the Construction Documents; and (f) not, without the prior written consent of Lender, (i) enter into any new Construction Document or replace or execute modifications to any existing Construction Documents or renew or extend the same (exclusive of, in each case, any automatic renewal or extension in accordance with its terms), (ii) surrender, terminate or cancel the Construction Documents, (iii) reduce or consent to the reduction of the term of the Construction Documents, (iv) increase or consent to the increase of the amount of any charges under the Construction Documents, (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Construction Documents in any material respect or (vi) following the occurrence and during the continuance of an Event of Default, exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Construction Documents.

**Section 4.45 No Responsibility of Lender.** Borrower acknowledges and agrees that the relationship between Borrower and Lender is and shall remain solely that of borrower and lender, and Lender does not undertake or assume any responsibility to review, inspect, supervise, approve or inform Borrower of any matter in connection with any of the development, design or Construction, including matters relating to: (i) the Plans and Specifications, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of any of the Construction and its conformity with the Plans and Specifications; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Borrower by Lender in connection with such matters is solely for the protection of Lender and that neither Borrower nor any third party is entitled to rely on it. Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower. Lender shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Property, whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; or (iii) any Property or any fire or other casualty or hazard thereon. By accepting or approving anything required to be performed or given to Lender under the Loan Documents, Lender shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Lender to anyone. The provisions of this Section 4.45 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of judgement of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

**Section 4.46 Prohibition against Distributions.** Upon achieving Substantial Completion, but subject to Article 8 of this Agreement, Borrower shall be permitted to make Distributions provided that no Cash Sweep Period, Default, or Event of Default, has occurred and is continuing.

**Section 4.47 Franchise Agreement Covenants.**

(a) Borrower shall cause the Property (or shall cause Mortgage Borrower to cause the Property) to be operated, in all material respects, in accordance with the Franchise Agreement. In the event that the Franchise Agreement expires or is terminated by Franchisor (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Franchise Agreement in accordance with the terms and provisions of this Agreement), Borrower shall cause Mortgage Borrower to promptly enter into a Replacement Franchise Agreement with Franchisor, such that the Property shall continuously be operated under the flag or brand associated with a Franchise Agreement or Replacement Franchise Agreement. Upon execution of any Replacement Franchise Agreement, Borrower shall also deliver (or cause Mortgage Borrower to deliver) to Lender a comfort letter from the applicable Qualified Franchisor in form and substance satisfactory to Lender.



(b) Borrower shall (or shall cause Mortgage Borrower to): (i) observe, comply with and enforce all of the terms and conditions of the Franchise Agreement and (ii) promptly notify Lender of any default under the Franchise Agreement of which it is aware.

(c) If (i) an Event of Default occurs and is continuing, (ii) Franchisor shall become bankrupt or insolvent or (iii) a default occurs under the Franchise Agreement by Franchisor, Borrower shall, at the request of Lender, cause Mortgage Borrower to terminate the Franchise Agreement and replace the Franchisor pursuant to a Replacement Franchise Agreement.

(d) Borrower shall cause Mortgage Borrower to complete and pay for in full any property improvement plan or similar requirement now or subsequently required by the Franchisor under the Franchise Agreement (any of the same, the “PIP”) in a good, workmanlike and lien free manner within the time-frame set forth in the PIP (including, without limitation, the Scheduled PIP).

(e) Borrower shall not (and shall not cause or permit Mortgage Borrower to), without Lender’s prior consent: (i) surrender, terminate or cancel the Franchise Agreement or consent to Franchisor’s transfer of its interest thereunder; (ii) reduce or consent to the reduction of the term of the Franchise Agreement; (iii) increase or consent to the increase of the amount of any charges under the Franchise Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Franchise Agreement.

(f) Borrower shall (or shall cause Mortgage Borrower to) deliver to Lender, within ten (10) days of request and no more than once every twelve (12) months unless an Event of Default has occurred and is continuing, a comfort letter and estoppel certificate (unless included in the comfort letter) from Franchisor in form and substance reasonably satisfactory to Lender.

(g) To the extent that Borrower fails to cause Mortgage Borrower to perform any obligation under the Franchise Agreement (including, without limitation, any obligation to perform any PIP), Borrower hereby grants Lender the right, as Borrower’s attorney-in-fact (which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest), to cause Mortgage Borrower 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. Any exercise by Lender of the aforesaid right shall be deemed exercised in accordance with the applicable terms and conditions hereof and of the other Loan Documents.

## ARTICLE 5

### INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

#### Section 5.1 Insurance.

(a) Borrower shall cause Mortgage Borrower to maintain at all times during the term of the Loan the insurance required under [Section 5.1] of the Mortgage Loan Agreement, including, without limitation, meeting all insurer requirements thereunder. In addition, Borrower shall cause Lender to be named as loss payee on property coverages and named as an additional insured, together with Mortgage Lender, as their interest may appear, under such of the insurance policies required under of the Mortgage Loan Agreement as Lender shall require. Borrower shall also cause Mortgage Borrower to cause all insurance policies required under this Section 5.1 to provide for at least thirty (30) days prior notice to Lender in the event of policy cancellation or material changes. Not less than five (5) Business Days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to the terms hereof, certificates of insurance accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder shall be delivered by Borrower to Lender; provided, however, that in the case of renewal Policies, Borrower may furnish Lender with certificates of insurance therefor to be followed by the original Policies when issued.

(b) If at any time Lender is not in receipt of written evidence that all insurance required hereunder and under the Mortgage Loan Agreement 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 Collateral, including the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate and all expenses 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.

(c) For purposes of this Agreement, Lender shall have the same approval rights over the insurance referred to above (including, without limitation, the insurers, deductibles and coverages thereunder, as well as the right to require other reasonable insurance pursuant thereto) as are provided in favor of the Mortgage Lender in the Mortgage Loan Agreement. The Policies delivered pursuant to the Mortgage Loan Agreement shall include endorsements pursuant to which Lender shall have the same rights as the Mortgage Lender as referred to in [Section 5.1.1(e)] of the Mortgage Loan Agreement.

(d) In the event that the Mortgage Loan has been paid in full, except during the continuance of an Event of Default, Borrower shall permit Mortgage Borrower to settle any insurance or condemnation claims with respect to the insurance proceeds or condemnation awards which in the aggregate are less than or equal to the Restoration Threshold. Lender shall have the right to participate in and reasonably approve any settlement for insurance or condemnation claims with respect to the insurance proceeds or condemnation awards which in the aggregate are equal to or greater than the Restoration Threshold. If an Event of Default shall have

occurred and be continuing, Borrower hereby irrevocably empowers Lender, in the name of Mortgage Borrower as its true and lawful attorney in fact, to file and prosecute such claim and to collect and to make receipt for any such payment.

(e) Upon repayment in full of the Mortgage Loan, the provisions of Section 5.1 of the Mortgage Loan Agreement shall be deemed incorporated into this Agreement in their entirety.

**Section 5.2 Casualty.** If the Property shall sustain a Casualty, Borrower shall give prompt notice of such Casualty to Lender and shall cause Mortgage Borrower to promptly commence and diligently prosecute the completion of the Restoration of the Property in accordance with the applicable terms and conditions of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of Restoration (including, without limitation, any applicable deductibles under the Policies) whether or not such costs are covered by the Net Proceeds. In the event of a Casualty where the loss does not exceed the Restoration Threshold, Borrower may (or may cause Mortgage Borrower to) settle and adjust such claim so long as no Event of Default has occurred and is continuing. Any such adjustment must be carried out in a commercially reasonable and timely manner. In the event of a Casualty where the loss exceeds the Restoration Threshold or if an Event of Default then exists, Borrower may (and may cause or permit Mortgage Borrower to) settle and adjust such claim only with the prior written consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower's cost, in any such adjustment; provided, however, if Borrower fails to (and fails to cause Mortgage Borrower) settle and adjust such claim within ninety (90) days after the Casualty, Lender shall have the right to settle and adjust such claim at Borrower's cost and without Borrower's consent. Notwithstanding any Casualty, 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.

**Section 5.3 Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property of which Borrower has knowledge and shall cause Mortgage Borrower to deliver to Lender copies of any and all papers served in connection with such proceedings. Provided no Event of Default has occurred and is continuing, in the event of a Condemnation where the amount of the taking does not exceed the Restoration Threshold, Borrower may (or may cause Mortgage Borrower to) settle and compromise such Condemnation. Any such settlement and compromise must be carried out in a commercially reasonable and timely manner. In the event of a Condemnation where the amount of the taking exceeds the Restoration Threshold or if an Event of Default then exists, Borrower may (and may cause or permit Mortgage Borrower to) settle and compromise the Condemnation only with the prior written consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower's cost, in any litigation and settlement discussions in respect thereof, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, cause Mortgage Borrower to diligently prosecute 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 but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and 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. 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 the Property or any portion thereof is taken by a condemning authority, Borrower shall cause Mortgage Borrower to promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the applicable provisions of the Mortgage Loan Agreement. Borrower shall cause Mortgage Borrower to pay all costs of Restoration whether or not such costs are covered by the Net Proceeds.

**Section 5.4 Restoration.**

- a) Borrower shall deliver, or shall cause Mortgage Borrower to deliver, to Lender all reports, plans, specifications, documents and other materials that are delivered to Mortgage Lender under the applicable terms and conditions of the Mortgage Loan Agreement in connection with a Restoration of the Property after a Casualty or Condemnation, simultaneously with any such delivery to Mortgage Lender. Subject only to the rights of Mortgage Lender pursuant to the Mortgage Loan Agreement, all Net Proceeds that are permitted by the terms of the Mortgage Loan Documents to be paid to Mortgage Borrower or otherwise distributed to Borrower or Mortgage Borrower (rather than being used to rebuild or improve the Property in accordance with the Mortgage Loan Documents) shall be immediately paid over to Lender and are hereby assigned to Lender as additional collateral security hereunder.
- b) Borrower shall (or shall cause Mortgage Borrower to) keep Lender timely informed of the progress of any Restoration and the status of any negotiations with insurers relating to any such Casualty or Condemnation. In addition, Borrower shall (or shall cause Mortgage Borrower to) provide Lender with any and all documentation reasonably requested by Lender relating to any Casualty or Condemnation or Restoration. If any Net Proceeds are to be disbursed by Mortgage Lender for Restoration, Borrower shall deliver or cause to be delivered to Lender copies of all written correspondence delivered to and received from Mortgage Lender that relates to the Restoration and release of the Net Proceeds. If, in

connection with a Restoration, Mortgage Lender does not require the deposit by Mortgage Borrower of any Net Proceeds pursuant to the applicable terms and conditions of the Mortgage Loan Agreement, Lender shall have the right to demand that Borrower make a deposit of such Net Proceeds in accordance with those same terms and conditions, such Net Proceeds to then be governed by such terms and conditions as if each reference therein to “Lender” and “Borrower” referred to Lender and Borrower, respectively.

- c) Notwithstanding any provision in this Agreement to the contrary, all Net Proceeds will be made available to Mortgage Borrower in accordance with the Mortgage Loan Agreement. In the event the Mortgage Loan has been paid in full and Lender receives any Net Proceeds, Lender shall either apply such proceeds to the Debt or for the Restoration in accordance with the same terms and conditions contained in the Mortgage Loan Agreement. Upon repayment in full of the Mortgage Loan, the provisions of the Mortgage Loan Agreement governing Restoration and use of Net Proceeds shall be incorporated into this Agreement in their entirety.

## ARTICLE 6

### NO SALE OR ENCUMBRANCE; PERMITTED TRANSFERS

**Section 6.1 No Sale/Encumbrance.** It shall be an Event of Default hereunder if, without the prior written consent of Lender, a Prohibited Transfer occurs, other than (i) pursuant to Leases in accordance with the provisions of this Agreement and (ii) as expressly permitted pursuant to the terms of this Article 6.

**Section 6.2 Lender’s Rights.** Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and on assumption of this Agreement and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) payment of a transfer fee and all of Lender’s expenses incurred in connection with such Prohibited Transfer, (c) the proposed transferee’s continued compliance with the covenants set forth in this Agreement, including, without limitation, the covenants in Section 4.23, (d) intentionally omitted and/or (e) such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. 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 a Prohibited Transfer without Lender’s consent. This provision shall apply to every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer. Any Prohibited Transfer effected without Lender’s prior written consent in accordance with this Section 6.2 shall be void *ab initio*.

**Section 6.3 Costs and Expenses.** Borrower shall pay all costs and expenses of Lender in connection with any transfer, assumption and/or replacement of any Guarantor, all reasonable fees and expenses of Lender’s counsel, and the cost of any required counsel opinions.

## ARTICLE 7

### RESERVE FUNDS

**Section 7.1 Reserve Funds.** Borrower shall make the deposits of reserve funds that are required of Mortgage Borrower under the Mortgage Loan Agreement into applicable Accounts established therefor, as and when such deposits are required thereunder, which reserve funds shall be subject to the applicable terms and conditions of the Mortgage Loan Agreement (including definitions of terms) with respect to disbursements thereof and Borrower and Lender’s respective rights thereto (in all instances as if the terms “Borrower” and “Lender” in the Mortgage Loan Agreement referred to Borrower and Lender, respectively); provided, however that notwithstanding the foregoing, Borrower shall be relieved of its obligation to make any such deposits so long as Mortgage Borrower is required to, and actually does, make such deposits pursuant to the Mortgage Loan Agreement and Lender receives reasonably satisfactory evidence of the same and of Mortgage Borrower’s payment and/or performance of the costs and obligations to which such funds are allocable pursuant to the terms of the Mortgage Loan Agreement.

**Section 7.2 Intentionally Omitted.**

**Section 7.3 Intentionally Omitted.**

**Section 7.4 Intentionally Omitted.**

**Section 7.5 The Accounts Generally.**

(a) Borrower grants to Lender a first-priority perfected security interest in each of the Accounts and any and all sums now or hereafter deposited in the Accounts as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Accounts and the funds deposited therein shall constitute additional security for the Debt. The provisions of this Section 7.5 (together with the other related provisions of the other Loan Documents) are intended to give Lender “control” of the Accounts and the Account Collateral and serve as a “security agreement” and a “control agreement” with respect to the same, in each case, within the meaning of the UCC. Borrower acknowledges and agrees that the Accounts are subject to the sole dominion, control and discretion of

Lender, its authorized agents or designees, subject to the terms hereof, and Borrower shall have no right of withdrawal with respect to any Account except with the prior written consent of Lender or as otherwise provided herein. The funds on deposit in the Accounts shall not constitute trust funds and may be commingled with other monies held by Lender (or its Servicer). Notwithstanding anything to the contrary contained herein, unless otherwise consented to in writing by Lender, Borrower shall only be permitted to request (and Lender shall only be required to disburse) amounts deposited into the Reserve Accounts on account of the liabilities, costs, work and other matters (as applicable) for which said sums were originally reserved hereunder, in each case, as reasonably determined by Lender.

(b) Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Accounts or the sums deposited therein or permit any lien to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Borrower hereby authorizes Lender to file a financing statement or statements under the UCC in connection with any of the Accounts and the Account Collateral in the form required to properly perfect Lender's security interest therein. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to any Account or Account Collateral.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon the occurrence and during the continuance of an Event of Default, without notice from Lender (i) Borrower shall have no rights in respect of the Accounts, and (ii) Lender shall have all rights and remedies with respect to the Accounts and the amounts on deposit therein and the Account Collateral as described in this Agreement and in the Security Instrument, in addition to all of the rights and remedies available to a secured party under the UCC, and, notwithstanding anything to the contrary contained in this Agreement or in the Security Instrument, may apply the amounts of such Accounts as Lender determines in its sole discretion including, but not limited to, payment of the Debt.

(d) The insufficiency of funds on deposit in the Accounts shall not absolve Borrower of 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.

(e) 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 Accounts, the sums deposited therein or the performance of the obligations for which the Accounts were established, except to the extent arising from the gross negligence or willful misconduct of Lender, its agents or employees. Borrower shall, and shall cause Mortgage Borrower to, assign to Lender all rights and claims Borrower and Mortgage Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Accounts; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) Borrower and Lender shall maintain each applicable Account as an Eligible Account to be held by an Eligible Institution, except as may be otherwise expressly agreed to in writing by Lender. In the event that any institution holding an Account no longer satisfies the criteria for an Eligible Institution, Borrower shall cooperate with Lender in transferring the applicable Account(s) to an institution that satisfies such criteria. Borrower hereby grants Lender power of attorney (irrevocable for so long as the Loan is outstanding) with respect to any such transfers and the establishment of accounts with a successor institution.

(g) Interest accrued on any Account shall not be required to be remitted either to Borrower or to any Account and may instead be retained by Lender.

(h) Borrower acknowledges and agrees that it solely shall be, and shall at all times remain, liable to Lender for all fees, charges, costs and expenses in connection with the Accounts, this Agreement and the enforcement hereof, including, without limitation, any monthly or annual fees or charges as may be assessed by Lender or any holder of an Account in connection with the administration of the Accounts and the reasonable fees and expenses of legal counsel to Lender as needed to enforce, protect or preserve the rights and remedies of Lender under this Agreement.

#### **Section 7.6 Interest Reserve Funds.**

(a) A reserve (the "**Interest Reserve**") shall be established in an Eligible Account held by Lender (the "**Interest Reserve Account**"), as additional security for the Debt and all of the other Obligations, to be governed by this Section 7.6. On the Final Funding Date and monthly thereafter, Borrower shall deposit into the Interest Reserve an amount equal to any projected shortfall for the payment of Debt Service payable for the remaining term of the Loan as determined by Lender. If, at any time, Lender determines that the funds in the Interest Reserve are not sufficient to pay Debt Service through the Maturity Date (as may be extended in accordance with the terms hereof), Borrower shall deposit in the Interest Reserve Account an amount from Borrower's own funds equal to the shortfall determined by Lender (the "**Interest Reserve Shortfall**") within five (5) Business Days after Lender's demand.

(b) Beginning on the Monthly Payment Date following the Final Funding Date until the Maturity Date, Lender shall disburse to itself from the Interest Reserve Account the amount of interest accrued and due and payable under the Loan

to the extent funds are not sufficient to pay such interest under Section 8.3 of this Agreement at the Interest Rate. Depletion of the Interest Reserve Account shall not release Borrower from any of Borrower's obligations under the Loan Documents, including, without limitation, payment of all interest due under this Agreement and other Loan Documents.

(c) In no event shall Lender be obligated to authorize the disbursement of funds in the Interest Reserve if a Default or an Event of Default has occurred and is continuing under this Agreement or under any of the other Loan Documents. Any disbursement of funds from the Interest Reserve after the occurrence and during the continuance of a Default or an Event of Default shall not constitute a waiver of such Default or Event of Default

**Section 7.7 Intentionally Omitted.**

**Section 7.8 Intentionally Omitted.**

**Section 7.9 Interest Rate Cap Reserve Funds.** Unless otherwise directed by Lender, Borrower shall deposit (or shall cause to be deposited directly by Counterparty) into an Eligible Account held by Lender (the "**Interest Rate Cap Reserve Account**") any and all amounts paid by Counterparty pursuant to any Interest Rate Cap Agreement, within one (1) Business Day of Borrower's receipt thereof (if received by Borrower and not directly deposited by Counterparty), all such amounts to be held as additional security for the Debt and all of the other Obligations. Amounts deposited pursuant to this Section 7.9 are referred to herein as the "Interest Rate Cap Reserve Funds". Provided no Event of Default has occurred and is continuing, on each Monthly Payment Date Lender shall disburse an amount of available Interest Rate Cap Reserve Funds in payment of the Monthly Debt Service Payment then due, up to the amount of such Monthly Debt Service Payment.

**Section 7.10 Transfer of Reserve Funds Under Mortgage Loan.** If Mortgage Lender waives any reserves or escrow accounts required in accordance with the terms of the Mortgage Loan Agreement, or if the Mortgage Loan is refinanced or repaid in full (and the Loan is not repaid in full simultaneously therewith) and reserve funds that are required under the Mortgage Loan Agreement are not required under any such new mortgage loan, then Borrower shall cause any and all amounts that would have been deposited into any reserves or escrow accounts in accordance with the terms of the Mortgage Loan Agreement to be transferred to and deposited with Lender in accordance with the terms of this Article 7 (and Borrower shall enter into a clearing account agreement and, if applicable, a cash management agreement, for the benefit of Lender substantially similar to the arrangements entered into by Mortgage Borrower at the time of the closing of the Mortgage Loan), and, if any letters of credit have been delivered by Mortgage Borrower in substitution of any such cash reserves or escrows as may be specifically permitted by the Mortgage Loan Agreement, then Borrower shall also cause such letters of credit to be transferred to Lender to be held by Lender upon the same terms and provisions as set forth in the Mortgage Loan Agreement. Borrower will execute all amendments and other documents necessary to give effect to the terms and conditions of this Article 7. All of the foregoing shall be at the sole cost and expense of Borrower.

**Section 7.11 Excess Cash Flow Funds.** Upon the first occurrence of a Cash Sweep Period, Borrower shall cause to be established an Eligible Account with Lender or Servicer (the "**Excess Cash Flow Account**") for the purposes described in this Section 7.11. On each Monthly Payment Date occurring after the occurrence and continuance of a Cash Sweep Period, Borrower shall deposit (or cause to be deposited) into the Excess Cash Flow Account an amount equal to the Excess Cash Flow generated by the Property for the immediately preceding Interest Period (the amounts on deposit in the Excess Cash Flow Account being herein referred to as the "Excess Cash Flow Funds"). Provided no Event of Default has occurred and is continuing, any Excess Cash Flow Funds remaining in the Excess Cash Flow Account upon the expiration of all Cash Sweep Periods in accordance with the applicable terms and conditions hereof shall be disbursed to Borrower.

## ARTICLE 8

### CASH MANAGEMENT

**Section 8.1 Establishment of Certain Accounts.** Borrower shall cause Mortgage Borrower to establish and maintain the Clearing Account pursuant to and in accordance with the applicable terms and conditions of the Clearing Account Agreement and the applicable terms and conditions of the Mortgage Loan Agreement. Other than as required pursuant to the Mortgage Loan Documents, Borrower shall not permit or cause Mortgage Borrower to 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 any financing statements to be filed with respect thereto. Borrower shall establish with the Bank an Eligible Account (the "**Clearing Account**") within ten (10) Business Days following the first occurrence of a Clearing Account Trigger Event, pursuant to the Clearing Account Agreement, in the name of Borrower for the sole and exclusive benefit of Lender, into which Borrower shall deposit (or cause to be deposited) all revenue generated by the Property. Pursuant to the Clearing Account Agreement, funds on deposit in the Clearing Account shall be transferred to or at the direction of Borrower unless a Cash Sweep Period exists, in which case such funds shall be transferred on each Business Day to the Cash Management Account.

**Section 8.2 Cash Management Account.** Borrower shall cause Mortgage Borrower to comply with the applicable terms and conditions of the Mortgage Loan Agreement relating to the Cash Management Account. Other than as required

pursuant to the Mortgage Loan Documents, Borrower shall not permit or cause Mortgage Borrower to further pledge, assign or grant any security interest in the Cash Management Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any financing statements to be filed with respect thereto. Mortgage Lender shall have the sole right to make withdrawals and/or direct disbursements from the Cash Management Account, to be applied in accordance with the terms and conditions of the Mortgage Loan Documents. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Mortgage Borrower. Lender may direct Mortgage Lender to make all distributions from the Cash Management Account that would, pursuant to the Mortgage Loan Documents, go to Mortgage Borrower, directly to Lender pursuant to written instructions provided by Lender, to pay any amounts owed to Lender by Borrower hereunder.

**Section 8.4 Payments Received Under this Agreement.** Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, provided no Event of Default has occurred and is continuing, at any time Borrower is required, pursuant to the terms and conditions of this Agreement, to make deposits into applicable Accounts maintained by Lender, Borrower's obligations with respect to the monthly payment of Debt Service and amounts due for the Reserve Accounts shall (provided Lender is not prohibited from withdrawing or applying any funds in the applicable Accounts by operation of law or otherwise) be deemed satisfied to the extent sufficient amounts are deposited in applicable Accounts to satisfy such obligations on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

## ARTICLE 9

### RESERVED

## ARTICLE 10

### EVENTS OF DEFAULT; REMEDIES

#### Section 10.1 Event of Default.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) if (i) any monthly Debt Service payment or the payment due on the Maturity Date is not paid when due, (ii) any deposit to any of the Accounts required hereunder or under the other Loan Documents is not paid when due, or (iii) any other portion of the Debt is not paid when due and (in the case of this clause (iii) only) such non-payment continues for five (5) days following notice to Borrower that the same is due and payable;

(b) if any of the Taxes or Other Charges are not paid when the same are due and payable except to the extent sums sufficient to pay the Taxes or Other Charges in question had been reserved hereunder prior to the applicable due date for the Taxes or Other Charges in question for the express purpose of paying the Taxes or Other Charges in question and Lender failed to pay the Taxes or Other Charges in question when required hereunder, (ii) Lender's access to such sums was not restricted or constrained in any manner and (iii) no Event of Default was continuing;

(c) if (i) the Policies are not kept in full force and effect pursuant to Section 5.1 hereof, except to the extent (A) the failure to maintain such Policies resulted solely from failure to pay the applicable Insurance Premiums therefor, (B) sums sufficient to pay such Insurance Premiums had been reserved hereunder prior to the applicable due date for the express purpose of paying such Insurance Premiums and Lender failed to pay the same when required hereunder, (C) Lender's access to such sums was not restricted or constrained in any manner and (D) no Event of Default was continuing, or (ii) evidence of the Policies being in full force and effect is not delivered to Lender as and when required in Section 5.1 hereof and either (A) such failure continues for two (2) Business Days following written notice thereof to Borrower or (B) such failure continues beyond the date that is two (2) Business Days prior to the scheduled expiration date of such Policies;

(d) if (i) any of the representations contained in Section 3.24 hereof are or become untrue, or (ii) any of the covenants contained in Section 4.22 hereof are breached or violated; provided, however, that such breach or violation shall not result in an Event of Default hereunder if (A) such breach or violation was inadvertent, non-recurring and immaterial and (B) within twenty (20) days of the earlier to occur of notice from Lender or Borrower's knowledge of such breach or violation thereof, Borrower (x) cures such breach or violation, (y) provides Lender with written evidence of such cure and (z) if requested by Lender, delivers to Lender a non-consolidation opinion relating to such breach or violation), or (iii) any of the representations or covenants contained in Sections 3.32, 4.31(b), or Article 6 hereof are breached or violated;

(e) if any representation or warranty made herein, in the Guaranty or in the Environmental Indemnity or in any other guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender in connection with the Loan shall have been false or misleading;

(f) if (i) Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor shall commence any case, proceeding or other action (A) under any Creditors Rights Laws seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, liquidation

or dissolution, or (B) 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 Borrower or any managing member or general partner of Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against Borrower or any managing member or general partner of Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor any case, proceeding or other action of a nature referred to in clause (i) above (other than any case, action or proceeding already constituting an Event of Default by operation of the other provisions of this subsection) which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; (iii) there shall be commenced against Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor 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 (other than any case, action or proceeding already constituting an Event of Default by operation of the other provisions of this subsection) which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (iv) Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor shall take any action in furtherance of, in collusion with respect to, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; (v) Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; (vi) any of Borrower, Mortgage Borrower, Accommodation Pledgor, any SPE Component Entity, any Affiliated Manager, Sponsor or Guarantor is substantively consolidated with any other entity in connection with any proceeding under the Bankruptcy Code or any other Creditors Rights Laws involving Sponsor or its subsidiaries; or (vii) any other Bankruptcy Event occurs;

(g) if Mortgage Borrower shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to the Security Instrument;

(h) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for any Taxes not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(i) if any federal tax lien is filed against Mortgage Borrower, Borrower, Accommodation Pledgor, any SPE Component Entity, Sponsor, Guarantor or the Property and same is not discharged of record (by payment, bonding or otherwise) within thirty (30) days after same is filed (which such period will be deemed extended for so long as such tax lien is being contested pursuant to the terms and conditions of Section 4.6(b) hereof, as if the same were a lien for Taxes, but for no more than a period of ninety (90) days past the filing date thereof);

(j) if any litigation or similar proceeding is filed against Borrower or the Collateral which claims an amount in excess of ten percent (10%) of the then outstanding principal balance of the Loan, and such litigation or proceeding is not (A) fully covered by the Policies or (B) dismissed (or otherwise addressed to Lender's satisfaction in Lender's sole discretion) within sixty (60) days after the same is filed;

(k) if Borrower shall fail to deliver to Lender any financial reporting item required by this Agreement (including without limitation any of the items required by Section 4.11 hereof), on the date the same is due, and such failure continues for ten (10) days after written notice thereof from Lender;

(l) if Borrower shall fail to comply with any of its obligations under Section 4.15 hereof;

(m) if any default occurs under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, if any;

(n) [intentionally omitted];

(o) if Mortgage Borrower defaults under the Management Agreement or the Franchise Agreement beyond the expiration of applicable notice and grace periods, if any, thereunder or if the Management Agreement or the Franchise Agreement is canceled, terminated or surrendered, expires pursuant to its terms or otherwise ceased to be in full force and effect, unless, in each such case, Mortgage Borrower, contemporaneously with such cancellation, termination, surrender, expiration or cessation, enters into a Qualified Management Agreement with a Qualified Manager or a Replacement Franchise Agreement, as applicable, in accordance with the applicable terms and provisions hereof;

(p) if Borrower or Mortgage Borrower fail to appoint a replacement Manager upon the request of Lender and/or fails to comply with any limitations on instructing the Manager, each as required by and in accordance with, as applicable, the terms and provisions of, this Agreement, the Assignment of Management Agreement and the Security Instrument;

(q) if any representation and/or covenant herein relating to ERISA matters is breached;

(r) if (i) any Interest Rate Cap Agreement is terminated for any reason by Borrower or Counterparty or (ii) Borrower shall fail to observe, perform or discharge any of Borrower's obligations, covenants, conditions or agreements under the Interest Rate Cap Agreement and otherwise comply with the covenants set forth in Section 2.8 hereof;

- (s) Intentionally Omitted;
- (t) if Borrower shall, without Lender's prior written consent, take any action that, in accordance with the terms of the Loan Documents, requires Lender's consent;
- (u) there is any material deviation in the Construction from the Plans and Specifications, or from Legal Requirements, or the appearance or use of defective workmanship or materials in constructing the Improvements, and Borrower fails to remedy the same to comply with applicable Plans and Specifications or applicable Legal Requirements within thirty (30) days after Lender's written demand to do so;
- (v) (i) Substantial Completion does not occur by the Substantial Completion Date; (ii) Final Completion does not occur by the Final Completion Date; (iii) the Construction in accordance with the Loan Documents is prohibited, enjoined or delayed for a continuous period of more than sixty (60) days, or (v) utilities or other public services necessary for the full occupancy and utilization of the Property and the Improvements thereon are curtailed for a continuous period of more than thirty (30) days;
- (w) Borrower fails to achieve any of the Milestones by the applicable Milestone Date;
- (x) if Borrower or Guarantor fails to cure any Balancing Event within ten (10) days following notice to Borrower;
- (y) Any failure by any Borrower Party to perform within ten (10) days after Lender's notice of such failure to perform or, if such performance cannot reasonably be completed within ten (10) days, to diligently commence performance of any of their respective covenants or obligations under any of the Construction Contracts and/or Permits;
- (z) if a Mortgage Loan Event of Default shall occur or any other event or condition shall occur the effect of which is to accelerate or permit Mortgage Lender to accelerate all or any portion of the Mortgage Loan;
- (aa) with respect to any default or breach of any term, covenant or condition of this Agreement not specified in subsections (a) through [( )] above or not otherwise expressly specified as an Event of Default in this Agreement, if the same is not cured (i) within ten (10) days after the earlier of (1) Borrower's knowledge thereof or (2) notice from Lender (in the case of any default which can be cured by the payment of a sum of money) or (ii) for thirty (30) days after the earlier of (1) Borrower's knowledge thereof or (2) notice from Lender (in the case of any other default or breach); provided, that, with respect to any default or breach specified in subsection (ii), if the same cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure the same within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure the same, it being agreed that no such extension shall be for a period in excess of sixty (60) days.

**Section 10.2 Remedies.**

- (a) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 10.1(f) above with respect to Borrower, or any SPE Component Entity) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement, the Security Instrument, the Note and the other Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in the Collateral, including, without limitation, 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 this Agreement, the Security Instrument, the Note and the other Loan Documents against Borrower and the Collateral, including, without limitation, all rights or remedies available at law or in equity. Upon any Event of Default described in Section 10.1(f) above with respect to Borrower, or any SPE Component Entity, the Debt and all other obligations of Borrower under this Agreement, the Security Instrument, the Note and 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 the Security Instrument, the Note and the other Loan Documents to the contrary notwithstanding.
- (b) Upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement, the Security Instrument, the Note or 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 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 this Agreement, the Security Instrument, the Note or the other Loan Documents with respect to the Collateral. 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 applicable law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by applicable law, equity or contract or as set forth herein or in the Security Instrument, the Note or the other Loan Documents. 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.



(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to partially foreclose upon the Collateral in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, 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 upon the Collateral 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 upon the Collateral 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 Collateral shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(d) Notwithstanding anything to the contrary contained herein or in any other Loan Document, any amounts recovered from the Collateral and/or paid to or received by Lender may, after an Event of Default, be applied by Lender toward the Debt in such order, priority and proportions as Lender in its sole discretion shall determine.

(e) Intentionally Omitted.

(f) 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 or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Lender is authorized to appear in, defend, or bring any action or proceeding to protect its interest in the Collateral for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by applicable law), with interest as provided in this Section, 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 action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred until 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 the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

## ARTICLE 11

### INDEMNIFICATIONS

**Section 11.1 General 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 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) 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; (b) 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; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any applicable Legal Requirements; (e) 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, or management agreement; (f) the payment of any commission, charge or brokerage fee to anyone (other than a broker or other agent retained by Lender) which may be payable in connection with the funding of the Loan; and/or (g) the holding or investing of the funds on deposit in the Accounts or the performance of any work or the disbursement of funds in each case in connection with the Accounts. Any amounts payable to Lender by reason of the application of this Section 11.1 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 11.2 Mortgage and Intangible Tax 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 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 and/or recording of the Security Instrument, the Note or any of the other Loan Documents.

**Section 11.3 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, without limitation, reasonable 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 sole discretion) that any Indemnified Party may incur, directly or indirectly, as a result of a default under Sections 3.15 or 4.23 of this Agreement.

**Section 11.4 Duty to Defend, Legal 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, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to

defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole 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.

**Section 11.5 Expenses; Indemnity.**

(a) Borrower shall pay or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender, for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to the Loan Documents and any other documents or matters requested by Borrower, Mortgage Borrower or any Guarantor; (ii) the filing and recording fees and expenses, title insurance, UCC insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred, in creating and perfecting the liens in favor of Lender pursuant to the Loan Documents; (iii) 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 Lender, Borrower, the Loan Documents, the Property, the Collateral or any other security given for the Loan; (iv) enforcing any obligations of, or collecting any payments due from, Borrower or any Guarantor under the Loan Documents or with respect to the Property or the Collateral; (v) any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work out" or of any proceeding under the Bankruptcy Code or any other Creditors Rights Laws; (vi) protecting Lender's interest in the Collateral or any other security given for the Loan; and (vii) Lender's participation (including, without limitation, responding to any service of process, subpoena, or other request) in any litigation or other proceeding involving or related to any Borrower Party, the Loan or the Loan Documents and/or Lender's response to any other service of process, subpoena, or other request from any Governmental Authority involving or related to any Borrower Party, the Loan or the Loan Documents (including, without limitation, in each case, any legal fees incurred in connection therewith); 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, as determined by a final non appealable judgment of a court of competent jurisdiction. Any costs due and payable to Lender may be paid, at Lender's election in its sole discretion, from any amounts in any Account.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for any Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnified Party shall be designated a party thereto, or any settlement in furtherance of any of the foregoing), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any default or breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, the Loan Documents; (ii) the use or intended use of the proceeds of the Loan; (iii) any materials or information provided by or on behalf of Borrower, or contained in any documentation approved by Borrower; (iv) ownership of the Security Instrument, the Property, the Collateral or any interest therein, or receipt of any Rents; (v) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Collateral or any part thereof, or any liability asserted against such Indemnified Party with respect thereto; and (vi) the claims of any lessee of any portion of the Collateral or any Person acting through or under any lessee or otherwise arising under or as a consequence of any Lease (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to an 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, as determined by a final non appealable judgment of a court of competent jurisdiction. 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. The provisions of Section 11.5(a) and this Section 11.5(b) shall (A) survive any payment or prepayment of the Loan and any foreclosure or satisfaction of the Security Instrument and (B) apply equally in favor of the then-current Lender hereunder and any prior Lender hereunder.

**Section 11.6 Survival.** The obligations and liabilities of Borrower under this Article 11 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of an assignment in lieu of foreclosure of the Collateral.

**ARTICLE 12**

**EXCULPATION**

**Section 12.1 Exculpation.** The Loan is full recourse to Borrower.

**ARTICLE 13**

**FURTHER ASSURANCES**

**Section 13.1 Replacement Documents.** Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note, this Agreement or any of the other Loan Documents which is not of public record,

and, in the case of any such mutilation, upon surrender and cancellation of the Note, this Agreement or such other Loan Document, Borrower will issue, in lieu thereof, a replacement thereof, dated the date of the Note, this Agreement or such other Loan Document, as applicable, in the same principal amount thereof and otherwise of like tenor.

### **Section 13.2 Intentionally Omitted**

**Section 13.3 Further Acts, etc.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every 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 Borrower, on demand, will 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 Collateral. 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 without limitation, such rights and remedies available to Lender pursuant to this Section 13.3.

### **Section 13.4 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Agreement which deducts the Debt from the value of the Collateral for the purpose of taxation and which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Collateral, Borrower will 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 ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will 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 the Collateral, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Collateral, or any part thereof, for real estate tax purposes by reason of the Security Instrument or the Debt. If such claim, credit or deduction shall be required by applicable law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(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, the Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

## **ARTICLE 14**

### **WAIVERS**

**Section 14.1 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, the Security Instrument, the Note 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 sole 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.

**Section 14.2 Modification, Waiver in Writing.** Except as otherwise expressly provided herein, no modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, the Security Instrument, the Note and the other Loan Documents, 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 14.3 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 under this Agreement, the Security Instrument, the Note or the other Loan Documents, 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 Security Instrument, the Note

or the other Loan Documents, 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 Security Instrument, the Note and the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 14.4 Waiver of Trial by Jury.** BORROWER AND LENDER, BY ACCEPTANCE OF THIS AGREEMENT, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THIS AGREEMENT, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER.

**Section 14.5 Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Agreement specifically and expressly provides for the giving of notice by Lender to Borrower and (b) 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 Agreement does not specifically and expressly provide for the giving of notice by Lender to Borrower.

**Section 14.6 Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by applicable law or under this Agreement, the Security Instrument, the Note and 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. Lender agrees that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

**Section 14.7 Marshalling and Other Matters.** Borrower hereby waives, to the extent permitted by applicable Legal Requirements, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale under the Security Instrument of the Collateral 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 the Collateral under the Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Collateral subsequent to the date of the Security Instrument and on behalf of all persons to the extent permitted by applicable Legal Requirements.

**Section 14.8 Waiver of Statute of Limitations.** To the extent permitted by applicable Legal Requirements, Borrower hereby expressly waives and releases to the fullest extent permitted by applicable Legal Requirements, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its obligations hereunder, under the Note, Security Instrument or other Loan Documents.

**Section 14.9 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 14.10 Sole Discretion of Lender.** Wherever pursuant to this Agreement (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender, except as may be otherwise expressly and specifically provided herein.

## ARTICLE 15

### MISCELLANEOUS

**Section 15.1 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 shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth in this Agreement, the Security Instrument, the Note or 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 15.2 Reserved.**

**Section 15.3 Brokers.** Borrower agrees (i) to pay any and all fees imposed or charged by all brokers, mortgage bankers and advisors (each a "Broker") hired or contracted by any Borrower Party or their Affiliates in connection with the transactions contemplated by this Agreement and (ii) to indemnify and hold Lender harmless from and against any and

all claims, demands and liabilities for brokerage commissions, assignment fees, finder's fees or other compensation whatsoever arising from this Agreement or the making of the Loan which may be asserted against Lender by any Person. The foregoing indemnity shall survive the termination of this Agreement and the payment of the Debt. Borrower hereby represents and warrants that [the only Broker engaged by any Borrower Party in connection with the transactions contemplated by this Agreement is [\_\_\_\_\_]] [no Broker has been engaged by any Borrower Party in connection with the transactions contemplated by this Agreement]. Lender hereby agrees to pay any and all fees imposed or charged by any Broker hired solely by Lender. Borrower acknowledges and agrees that (a) any Broker is not an agent of Lender and has no power or authority to bind Lender, (b) Lender is not responsible for any recommendations or advice given to any Borrower Party by any Broker, (c) Lender and the Borrower Parties have dealt at arms-length with each other in connection with the Loan, (d) no fiduciary or other special relationship exists or shall be deemed or construed to exist among Lender and the Borrower Parties and (e) none of the Borrower Parties shall be entitled to rely on any assurances or waivers given, or statements made or actions taken, by any Broker which purport to bind Lender or modify or otherwise affect this Agreement or the Loan, unless Lender has, in its sole discretion, agreed in writing with any such Borrower Party to such assurances, waivers, statements, actions or modifications. Borrower acknowledges and agrees that Lender may, in its sole discretion, pay fees or compensation to any Broker in connection with or arising out of the closing and funding of the Loan. Such fees and compensation, if any, (i) shall be in addition to any fees which may be paid by any Borrower Party to such Broker and (ii) create a potential conflict of interest for Broker in its relationship with the Borrower Parties. Such fees and compensation, if applicable, may include a direct, one-time payment, servicing fees and/or incentive payments based on volume and size of financings involving Lender and such Broker.

**Section 15.4 Governing Law.** THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND DELIVERED TO LENDER BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, 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 CONFLICT OF LAWS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. 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. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5 1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

**Section 15.5 Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person, (b) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: [\_\_\_\_\_]

With a copy to: [\_\_\_\_\_]

If to Lender: [\_\_\_\_\_]

With a copy to:

Reed Smith LLP  
599 Lexington Avenue  
New York, New York 10022  
Attention: Randy Eckers, Esq.

or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

**Section 15.6 Headings.** The Article and/or Section headings 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 15.7 Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Legal Requirements, but if any provision of this Agreement shall be prohibited by or invalid under applicable Legal Requirements, 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 15.8 Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations 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 Creditors Rights Laws, 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 15.9 Cost of Enforcement.** In the event (a) that the Security Instrument is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, or (c) Lender exercises any of its other remedies under this Agreement, the Security Instrument, the Note and the other Loan Documents, Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, 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.

**Section 15.10 Exhibits Incorporated.** The Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 15.11 Offsets, Counterclaims and Defenses.** Any assignee of Lender's interest in and to this Agreement, the Security Instrument, 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 15.12 No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Lender intend that the relationships created under this Agreement, the Security Instrument, the Note and 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, or the Collateral other than that of mortgagee, beneficiary or lender.

(b) This Agreement, the Security Instrument, the Note and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement, the Security Instrument, the Note or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower 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) The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower 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 or the Collateral. Furthermore, each Borrower Party has obtained advice of counsel, accountants, and other professionals sufficient, in the judgment of such Borrower Party, to approve the Loan, the

Loan Documents, and any transaction related to the closing of the Loan (including, without limitation, allocations of funds and the organizational structure of Borrower as each of the same relate to tax matters affecting such Borrower Party and the constituent direct and indirect owners of Borrower), and no Borrower Party is relying on Lender or any counsel or other professionals engaged by Lender with respect thereto.

(d) Notwithstanding anything to the contrary contained herein, Lender is not undertaking the performance of (i) any obligations related to the Property (including, without limitation, under the Leases) or the Collateral; or (ii) any obligations with respect to any agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents to which any Borrower Party and/or the Property is subject.

(e) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Agreement, the Security Instrument, the Note or the other Loan Documents, including, without limitation, 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.

(f) Borrower recognizes and acknowledges that in accepting this Agreement, the Note, the Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the representations and warranties set forth in Article 3 of this Agreement without any obligation to investigate the Property or the Collateral and notwithstanding any investigation of the Property or the Collateral 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 Agreement, the Note, the Security Instrument and the other Loan Documents in the absence of the warranties and representations as set forth in Article 3 of this Agreement.

#### **Section 15.13 Disclosure.**

(a) Except as expressly set forth herein or otherwise expressly approved by Lender in writing (which approval shall not be unreasonably withheld, conditioned or delayed), Borrower shall not, and shall not permit any Borrower Party, or any of their respective Affiliates and/or agents to: (i) provide a copy of this Agreement or any of the other Loan Documents, or any portion of any of the foregoing, to any Unaffiliated Third Party; (ii) disclose any of the terms or provisions of this Agreement or any of the other Loan Documents to any Unaffiliated Third Party; or (iii) disclose any of the prospective parts of this Agreement or any of the other Loan Documents which were discussed in negotiations prior to the execution of this Agreement or such other Loan Documents to any Unaffiliated Third Party. In addition to all other rights and remedies available to Lender in accordance with applicable law, Lender shall be entitled to equitable and injunctive relief to prevent the unauthorized use or disclosure of the confidential information in violation of this Section 15.13.

(b) All news releases, publicity or advertising by any Borrower Party or any of their Affiliates and/or agents through any media intended to reach the general public which refers to this Agreement, the Note or the other Loan Documents or the financing evidenced by this Agreement, the Note or the other Loan Documents, to Lender or any of its Affiliates shall be subject to the prior written approval of Lender.

(c) Borrower agrees, on its behalf and on behalf of each Borrower Party and their respective Affiliates, that none of the foregoing shall publish, participate in the publication of, or direct others to make or publish, any statements, accounts or stories disparaging or denigrating the conduct or character of Lender. The foregoing includes, but is not limited to, a prohibition on posting or otherwise disclosing defamatory or disparaging statements about Lender on the internet or in any other paper or electronic media outlet, including but not limited to news organizations, blogs, websites, newspapers, external email or social media websites.

(d) The obligations and liabilities of each Borrower Party, their Affiliates, and agents under this Section 15.13 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of an assignment in lieu of foreclosure of the Collateral.

**Section 15.14 Limitation of Liability.** No claim may be made by Borrower, or any other Person against Lender or its Affiliates, directors, officers, employees, attorneys or agents of any of such Persons for any special, indirect, consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any act, omission or event occurring in connection therewith; and Borrower hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

**Section 15.15 Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Agreement and the Security Instrument, the Note or 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 this Agreement, the Note, the Security Instrument and the other Loan Documents and this Agreement, the Note, the Security Instrument and the other 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 this Agreement, the Note, the Security Instrument and the other 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 15.16 Entire Agreement.** This Agreement, the Note, the Security Instrument 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, the Note, the Security Instrument and the other Loan Documents.

**Section 15.17 Liability.** If Borrower consists of more than one Person, the obligations and liabilities of each such Person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

**Section 15.18 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. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

**Section 15.19 Set-Off.** In addition to any rights and remedies of Lender provided by this Agreement and by law, Lender shall have the right in its sole discretion, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrower; provided, however, Lender may only exercise such right during the continuance of an Event of Default. Lender agrees promptly to notify Borrower after any such set-off and application made by Lender; provided, that, the failure to give such notice shall not affect the validity of such set-off and application.

**Section 15.20 Registered Form.** At the request of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "**Registrar**") acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, a register (the "**Register**") for the recordation of the names and addresses of Lender and any other lender, and the principal amounts (and stated interest) under the Loan Documents owing to Lender and each other lender pursuant to the terms of the Loan Documents from time to time, in a manner that shall cause the Loan to be considered to be in registered form for purposes of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRS Code. The entries in the Register shall be conclusive absent manifest error, and Borrower, Lender and other lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower, Lender and any other lender, at any reasonable time and from time to time upon reasonable prior notice. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and other Loan Documents. If the Registrar has not been appointed to maintain the Register, the transfer of the Note may be effected only by surrender of the Note and the reissuance by Borrower of the Note to the transferee.

**Section 15.21 Servicer.** At the option of Lender, the Loan may be serviced by a servicer (any such servicer, 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 servicing agreement (the "**Servicing Agreement**") between Lender and Servicer. Borrower shall be responsible for payment of all fees, costs and expenses due to Servicer under the Servicing Agreement and for payment of any "special servicing", "workout", and "liquidation" fees incurred pursuant to the Servicing Agreement in connection with any default or workout of the Loan.

**Section 15.22 Time is of the Essence.** Time is of the essence of each provision of this Agreement and the other Loan Documents.

**Section 15.23 Secondary Market Provisions.**

(a) **Sale of Loan/Participation.** Lender may sell, transfer or assign all or any portion of its interest or one or more participation interests in the Loan, the Loan Documents, the Guaranty, if any, and the Environmental Indemnity at any time and from time to time, including, without limitation, its rights and obligations as servicer of the Loan. Lender may issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement, including



depositing the Loan Documents, the Guaranty, if any, and the Environmental Indemnity with a trust that may issue securities (the “Securities”). Lender may forward to each purchaser, transferee, assignee, servicer, participant, or investor in the Loan or in the Securities (collectively, the “Investor”) or any prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Loan, Borrower, any Borrower Party and the Property, whether furnished by Borrower, any Borrower Party or otherwise, as Lender determines to be necessary or desirable. Borrower agrees to indemnify (i) Lender, any Investor, and their respective successors and/or assigns for any Losses that arise out of or are based upon the omission or alleged omission to state in the materials to be provided pursuant to this Section 15.23 (such materials, individually or collectively as the context shall require, the “Disclosures”) a material fact required to be stated in the Disclosures in order to make the statements in the Disclosures, in light of the circumstances under which they were made not misleading and (ii) reimburse Lender, any Investors, and/or their respective successors and/or assigns for any legal or other expenses reasonably incurred in connection with defending or investigating such Losses.

(b) **Splitting of Loan.** Lender, without in any way limiting Lender’s other rights hereunder, in its sole and absolute discretion, shall have the right to divide the Loan into two or more tranches which may be evidenced by two or more notes, which notes may be pari passu or senior/subordinate, provided that (i) the aggregate principal amount of the notes immediately following such division shall equal the outstanding principal balance of the Loan and (ii) the weighted average interest rate of the Loan immediately following such division shall equal the interest rate which was applicable to the Loan immediately prior to such division and such splitting shall not increase Borrower’s liabilities or obligations under the Loan Documents or decrease Borrower’s rights under the Loan Documents other than to a de-minimis extent. Borrower shall cooperate with reasonable requests of Lender in order to divide the Loan and shall execute and deliver such documents as shall reasonably be required by Lender in connection therewith, including, without limitation, new notes to replace the original Note, all in form and substance satisfactory to Lender, provided that such documents shall contain terms, provisions and clauses (x) no less favorable to Borrower than those contained herein and in the Note, and (y) which do not increase Borrower’s obligations hereunder or decrease Borrower’s rights under the Loan Documents. If Lender redefines the interest rate, the amount of interest payable under the modified notes, in the aggregate, shall at all times equal the amount of interest which would have been payable under the Note at the Interest Rate, provided, however, Borrower acknowledges that if Lender exercises its rights under this Section 15.23(b), the amount of interest payable may increase as a result of the application of funds paid to Lender after the occurrence of an Event of Default or any casualty or condemnation of all or any part of the Property.

(c) **Cooperation.** The transactions contemplated by this Section 15.23 shall be at Borrower’s sole cost and expense. Borrower will cooperate with Lender and prospective Investors in furnishing such information and providing such other assistance, reports and legal opinions as Lender may reasonably request in connection with any such transaction. In addition, Borrower acknowledges that Lender may release or disclose to prospective Investors originals or copies of the Loan Documents, the Guaranty, if any, the Environmental Indemnity, title information, engineering reports, financial statements, operating statements, appraisals, Leases, rent rolls, and all other materials, documents and information in Lender’s possession or which Lender is entitled to receive under the Loan Documents, the Guaranty, if any, and the Environmental Indemnity with respect to the Loan, Borrower, any Borrower Party or the Property. Borrower shall also furnish to prospective Investors any and all information concerning the Property, the Leases, the financial condition of Borrower or any Borrower Party as may be requested by Lender, any prospective Investor in connection with any sale, transfer or participation interest. Any non-public documents and information pertaining to the Loan, Borrower or Borrower Party that are clearly marked by Borrower or Borrower Party as “confidential” shall be handled by Lender in accordance with Lender’s then-current privacy and confidentiality policies and protocols. In the event Borrower fails to execute and deliver such documents to Lender within ten (10) days following such request by 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 such transactions, Borrower ratifying all that such attorney shall do by virtue thereof.

## ARTICLE 16

### ADDITIONAL PROVISIONS.

#### **Section 16.1 Mortgage Loan Notice.**

(a) Promptly after receipt (but no more than five (5) Business Days after receipt), Borrower will deliver (or cause Mortgage Borrower to deliver) to Lender a true, correct and complete copy of all material notices (including, without limitation, any notice of a Mortgage Loan Event of Default or any other default under the Mortgage Loan Documents), demands, requests or material correspondence (including electronically transmitted items) received from Mortgage Lender by Mortgage Borrower or any guarantor under the Mortgage Loan Documents.

(b) Unless otherwise delivered to Lender pursuant to the provisions of Section 4.13 hereof, Borrower will deliver (or cause Mortgage Borrower to deliver) to Lender all of the financial statements and material reports, certificates and related items delivered or required to be delivered by Mortgage Borrower to Mortgage Lender under the Mortgage Loan Documents as and when due under the Mortgage Loan Documents.

**Section 16.2 Mortgage Loan Estoppels.** After written request by Lender made no more than one time in any calendar year (unless and Event of Default is continuing), Borrower shall (or shall cause Mortgage Borrower to) from time to time, obtain from Mortgage Lender such estoppel certificates with respect to the status of the Mortgage Loan and

compliance by Mortgage Borrower with the terms of the Mortgage Loan Documents as may reasonably be requested by Lender.

**Section 16.3 Mortgage Intercreditor.** Borrower hereby acknowledges and agrees that the Intercreditor Agreement is solely for the benefit of Lender and Mortgage Lender, and that neither Borrower nor Mortgage Borrower shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights thereunder, or be entitled to rely on any of the provisions contained therein. Lender and Mortgage Lender have no obligation to disclose to Borrower or Mortgage Borrower the contents of the Intercreditor Agreement. Borrower's obligations under the Loan Documents are and will be independent of the Intercreditor Agreement and shall remain unmodified by the terms and provisions thereof. Lender and Mortgage Lender may amend, modify, cancel, terminate, supplement or waive, in any respect, the Intercreditor Agreement at any time and without notice to, or the consent of, Borrower, Mortgage Borrower or any other Person.

**Section 16.4 Direction of Mortgage Borrower.** Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any other Loan Documents to the effect that (a) Borrower shall cause, direct, permit or allow Mortgage Borrower to act or to refrain from acting in any manner or (b) Borrower shall cause to occur or not to occur, or otherwise be obligated in any manner with respect to, any matters pertaining to Mortgage Borrower, or (c) other similar effect, such clause or provision, in each case, is intended to mean, and shall be construed as meaning, with respect to Borrower, and to the fullest extent permitted by applicable law, the power (whether direct or indirect) of Borrower to direct Mortgage Borrower (through ownership of voting securities or partnership or limited liability company or other ownership interests), to bring about or effect a desired result.

**Section 16.5 Notices from Mortgage Lender.** Borrower and Lender hereby acknowledge and agree that Lender may conclusively rely on any notice delivered by Mortgage Lender without any inquiry into the validity thereof, including, without limitation, a notice from Mortgage Lender that a Mortgage Loan Event of Default has occurred or is continuing.

**Section 16.6 No Modification or Acquisition of Mortgage Loan.** None of Borrower, Mortgage Borrower, Accommodation Pledgor or Guarantor shall modify, amend, waive or terminate any of the Mortgage Loan Documents, in each case, without obtaining the prior written consent of Lender. No Borrower Party shall acquire or agree to acquire the Mortgage Loan or any portion thereof or interest therein, via purchase, transfer, exchange or otherwise, and any breach or attempted breach of this provision shall constitute an Event of Default.

**Section 16.7 Certain Payments From Mortgage Lender.** Lender has advised Borrower that, pursuant to the Intercreditor Agreement, Mortgage Lender may be required in certain circumstances to turn over to Lender certain payments received by Mortgage Lender from Mortgage Borrower or a Guarantor. If Mortgage Lender turns over any such payments (or any portion thereof) to Lender, then Lender shall have the option to apply such amounts received from Mortgage Lender to any amounts then due and payable to Lender pursuant to the Guaranty, this Agreement or the other Loan Documents, and any balance shall, at Lender's election in its sole discretion, continue to be held by Lender and thereafter applied to amounts that may thereafter become due and payable to Lender pursuant to any of the foregoing and/or thereafter returned by Lender to Mortgage Lender.

**Section 16.8 Mortgage Loan Separate.** Borrower acknowledges and agrees that the Mortgage Loan is a separate and distinct financing from the Loan, and is made separately by Mortgage Lender to Mortgage Borrower, a separate legal entity, as the obligor thereunder. Borrower acknowledges and agrees that no exercise of any rights or remedies by Mortgage Lender under the Mortgage Loan shall give rise to any defense of Borrower to the rights and remedies of Lender under the Loan pursuant to the Loan Documents.]

[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:**

[Signature pages sent separately]

**LENDER:**

[Signature pages sent separately]

## EXHIBIT [ ]

### SPECIAL PURPOSE ENTITY REQUIREMENTS

Borrower covenants and agrees that:

- (a) Borrower has not and will not:
  - (i) engage in any business or activity other than the ownership of the Collateral, and activities incidental thereto; Borrower will continue to engage in the businesses now conducted by it as and to the extent the same are necessary for the ownership of the Collateral.
  - (ii) acquire or own any assets other than (A) the Collateral, and (B) such incidental Personal Property as may be necessary for the ownership of the Collateral;
  - (iii) incur any Indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt;
  - (iv) commingle its funds or assets with the funds or assets of any other Person, or maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
  - (v) use the stationery, invoices or checks of any other Person as its own or fail to allocate shared expenses (including, without limitation, shared office space);
  - (vi) fail to maintain a sufficient number of employees in light of its contemplated business operations or fail to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds (in each case to the extent there exists sufficient cash flow from the Collateral to do so, and provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower);
  - (vii) fail to (A) hold itself out to the public and identify itself, in each case, as a legal entity separate and distinct from any other Person and not as a division or part of any other Person, (B) correct any known misunderstanding regarding its separate identity or (C) hold its assets and conduct its business solely in its own name;
  - (viii) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents (provided, that, such organizational documents may be amended or modified to the extent that, in addition to the satisfaction of the requirements related thereto set forth therein, Lender's prior written consent);
  - (ix) merge into or consolidate with any Person, or divide, dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
  - (x) have any obligation to indemnify any of its officers, directors, managers, members, shareholders or partners, as the case may be, unless such obligation is fully subordinated to the Debt and will not constitute a claim against Borrower if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;
  - (xi) own any subsidiary, or make any investment in, any Person (other than (A) with respect to Borrower, in Accommodation Pledgor and (B) with respect to any SPE Component Entity, in Borrower)
  - (xii) fail to file its own tax returns (to the extent Borrower is required to file any such tax returns pursuant to applicable Legal Requirements) or file a consolidated federal income tax return with any other Person;
  - (xiii) fail to maintain all of its books, records, financial statements and bank accounts separate from those of any other Person (including, without limitation, any Affiliates). Borrower's assets have not and will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower has maintained and will maintain its books, records, resolutions and agreements as official records;
  - (xiv) enter into any contract or agreement with any partner, member, shareholder, principal or Affiliate, except, in each case, upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;
  - (xv) assume or guaranty or otherwise become obligated for the debts of any other Person, hold itself out to be responsible for, or have its credit available to satisfy the debts or obligations of, any other Person, or otherwise pledge its assets for the benefit of any other Person;
  - (xvi) except as provided in the Loan Documents, have any of its obligations guaranteed by any Affiliate;

(xvii) make any loans or advances to any Person;

(xviii) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (to the extent there exists sufficient cash flow from the Collateral to do so, and provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower);

(xix) fail to consider the interests of Borrower's creditors in connection with all company actions;

(xx) without the prior unanimous written consent of all of its partners, shareholders or members, as applicable, and the prior unanimous written consent of its board of directors or managers, as applicable[, and the prior written consent of each Independent Director (as defined below), regardless of whether such Independent Director is engaged at the Borrower or SPE Component Entity level,] (A) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (B) seek or consent to the appointment of a receiver, liquidator or any similar official, (C) take any action that might cause such entity to become insolvent, (D) make an assignment for the benefit of creditors or (E) take any Material Action with respect to Borrower or any SPE Component Entity [(provided, that, none of any member, shareholder or partner (as applicable) of Borrower or any SPE Component Entity or any board of directors or managers (as applicable) of Borrower or any SPE Component Entity may vote on or otherwise authorize the taking of any of the foregoing actions unless, in each case, at least [one (1) / two (2)] Independent Director[s] [is/are] then serving in such capacity in accordance with the terms of the applicable organizational documents and [each of] such Independent Director[s] [has / have] consented to such foregoing action)];

(xxi) acquire obligations or securities of its partners, members, shareholders or other Affiliates, as applicable (other than, with respect to Borrower, its ownership in Accommodation Pledgor);

(xxii) permit any Affiliate or constituent party independent access to its bank accounts;

(xxiii) identify its partners, members, shareholders or other Affiliates, as applicable, as a division or part of it; or

(xxiv) conduct its business and activities in such a way as to cause any of the assumptions made with respect to Borrower and its principals in any Non-Consolidation Opinion or in any New Non-Consolidation Opinion to be violated.

(b) If Borrower is a partnership or limited liability company (other than a Springing Member LLC), each general partner (in the case of a partnership) and managing member (in the case of a limited liability company) of Borrower, as applicable, shall be a corporation or a Springing Member LLC (each an "**SPE Component Entity**") whose sole asset is its interest in Borrower. Each SPE Component Entity (i) will at all times comply with each of the covenants, terms and provisions contained in clauses (a)(iv) - (xxiv) of this Exhibit [ ] and, if such SPE Component Entity is a Springing Member LLC, clauses (c) and (d) of this Exhibit [ ], as if such representation, warranty or covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in Borrower; (iii) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (iv) will at all times continue to own no less than a 0.5% direct equity ownership interest in Borrower; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (vi) will cause Borrower to comply with the provisions of this Exhibit.

(c) In the event Borrower or the SPE Component Entity is a Springing Member LLC, the limited liability company agreement of Borrower or the SPE Component Entity (as applicable) (the "**LLC Agreement**") shall provide that (i) upon the occurrence of any event that causes the last remaining member of Borrower or the SPE Component Entity (as applicable) ("**Member**") to cease to be the member of Borrower or the SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or the SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or the SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), [any natural person duly designated under the applicable organizational documents][any person acting as Independent Director of Borrower or the SPE Component Entity (as applicable)] shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or the SPE Component Entity (as applicable) automatically be admitted to Borrower or the SPE Component Entity (as applicable) as a member with a 0% economic interest ("**Special Member**") and shall continue Borrower or the SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or the SPE Component Entity (as applicable) or transfer its rights as Special Member unless [(A) a successor Special Member has been admitted to Borrower or the SPE Component Entity (as applicable) as a Special Member in accordance with requirements of Delaware law [and (B) after giving effect to such resignation or transfer, there remains at least [one (1) / two (2)] Independent Director[s] of the SPE Component Entity or Borrower (as applicable) in accordance with clauses (e) and (f) below]. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or the SPE Component Entity (as applicable) upon the admission to Borrower or the SPE Component Entity (as applicable) of the first substitute member, (ii) Special Member shall be a member of Borrower or the SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or the SPE Component Entity (as applicable) and has no right to receive any distributions of the assets of Borrower or the SPE Component Entity (as applicable), (iii) pursuant to the applicable provisions of the limited liability company act of the State of Delaware (the "**Act**"), Special Member shall not be required to make any capital contributions to Borrower or the SPE Component

Entity (as applicable) and shall not receive a limited liability company interest in Borrower or the SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or the SPE Component Entity (as applicable) and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or the SPE Component Entity (as applicable) including, without limitation, the merger, division, consolidation or conversion of Borrower or the SPE Component Entity (as applicable)]; provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement]. In order to implement the admission to Borrower or the SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or the SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or the SPE Component Entity (as applicable)], but Special Member may serve as an Independent Director of Borrower or the SPE Component Entity (as applicable)].

(d) The LLC Agreement shall further provide that (i) upon the occurrence of any event that causes the Member to cease to be a member of Borrower or the SPE Component Entity (as applicable) to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or the SPE Component Entity (as applicable) agree in writing (A) to continue Borrower or the SPE Component Entity (as applicable) and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or the SPE Component Entity (as applicable) effective as of the occurrence of the event that terminated the continued membership of Member in Borrower or the SPE Component Entity (as applicable), (ii) any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower or the SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or the SPE Component Entity (as applicable) shall continue without dissolution and (iii) each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or the SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or the SPE Component Entity (as applicable).

(e) **[DELETE CLAUSE (E) IF NO I.D. IS REQUIRED:** The organizational documents of Borrower (to the extent Borrower is a corporation or a Springing Member LLC) or the SPE Component Entity, as applicable, shall provide that at all times there shall be at least [two / one] duly appointed independent director[s] or manager[s] of such entity (each, an “**Independent Director**”) who [each] shall (I) not have been at the time of each such individual’s initial appointment, and shall not have been at any time during the preceding five years, and shall not be at any time while serving as Independent Director, either (i) a shareholder (or other equity owner) of, or an officer, director (other than in its capacity as Independent Director), partner, member or employee of, Borrower or any of its respective shareholders, partners, members, subsidiaries or Affiliates, (ii) a customer of, or supplier to, or other Person who derives any of its purchases or revenues from its activities with, Borrower or any of its respective shareholders, partners, members, subsidiaries or Affiliates, (iii) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, member, employee supplier, customer or other Person, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person, (II) shall have, at the time of their appointment, had at least three (3) years’ experience in serving as an independent director and (III) be employed by, in good standing with and engaged by Borrower in connection with, in each case, an Acceptable ID Provider (defined below).]

(f) **[DELETE CLAUSE (F) IF NO I.D. IS REQUIRED:** The organizational documents of each Borrower and the SPE Component Entity shall further provide that (I) the board of directors or managers of Borrower and the SPE Component Entity and the constituent equity owners of such entities (constituent equity owners, the “**Constituent Members**”) shall not take any action set forth in clause (a)(xx) of this Exhibit [ ] or any other action which, under the terms of any organizational documents of Borrower or the SPE Component Entity, requires the vote of the Independent Director[s] unless, in each case, at the time of such action there shall be at least [one/two] Independent Director[s] engaged as provided by the terms hereof and [each] such Independent Director votes in favor of or otherwise consent to such action; (II) any resignation, removal or replacement of any Independent Director shall not be effective without (1) prior written notice to Lender (which such prior written notice must be given on the earlier of five (5) days or three (3) Business Days prior to the applicable resignation, removal or replacement) and (2) evidence that the replacement Independent Director satisfies the applicable terms and conditions hereof and of the applicable organizational documents (which such evidence must accompany the aforementioned notice); (III) to the fullest extent permitted by applicable law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Director[s] shall consider only the interests of the Constituent Members and Borrower and any SPE Component Entity (including Borrower’s and any SPE Component Entity’s respective creditors) in acting or otherwise voting on the matters provided for herein and in Borrower’s and SPE Component Entity’s organizational documents (which such fiduciary duties to the Constituent Members and Borrower and any SPE Component Entity (including Borrower’s and any SPE Component Entity’s respective creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in Borrower or SPE Component Entity (as applicable) exclusive of (x) all other interests (including, without limitation, all other interests of the Constituent Members), (y) the interests of other Affiliates of the Constituent Members, Borrower and SPE Component Entity and (z) the interests of any group of Affiliates of which the Constituent Members, Borrower or SPE Component Entity is a part)); (IV) other than as provided in subsection (III) above, the Independent Director[s] shall not have any fiduciary duties to any Constituent Members, any directors of Borrower or SPE Component Entity or any other Person; (V) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (VI) to the fullest extent permitted by applicable law, including Section 18 1101(e) of the Act, an Independent Director shall not be liable to Borrower, SPE

Component Entity, any Constituent Member or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.]

(g) **[DELETE CLAUSE (G) IF NO I.D. IS REQUIRED:** Notwithstanding the foregoing, no Independent Director of Borrower or any SPE Component Entity may also serve as an Independent Director (as defined in the Mortgage Loan Agreement) of Mortgage Borrower or any special purpose component entity of Mortgage Borrower.]

(h) **[USE IF SECOND-TIER SPE REQUIREMENT WAIVED:** Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, it is acknowledged and agreed that in connection with the closing of the Loan, Lender has waived the requirements set forth in Sections (b), (c) and (d) above of this Exhibit [ ], and that no SPE Component Entity exists hereunder (provided that such waiver shall not prevent Lender from requiring compliance with such Sections in connection with an assumption of the Loan pursuant to the terms and conditions of Section 6.2 hereof).

**[“Acceptable ID Provider”** shall mean (i) any of the following: CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company and Lord Securities Corporation and (ii) any other national provider of Independent Directors that is approved in writing by Lender.]

## **EXHIBIT D**



**Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

We use various financial instruments, including interest swap contracts, to reduce the interest rate risk related to our debt. We also use foreign currency forwards to manage and reduce the foreign currency exchange rate risk associated with our foreign currency denominated receivables and payables, forecasted royalties, forecasted earnings and cash flows of foreign subsidiaries and other transactions.

We are exclusively an end user of these instruments, which are commonly referred to as derivatives. We do not engage in trading, market making or other speculative activities in the derivatives markets. More detailed information about these financial instruments is provided in Note 13 - Fair Value to the Consolidated Financial Statements contained in Part IV of this report. Our principal market exposures are interest rate and currency exchange rate risks.

We assess our exposures to changes in interest rates utilizing a sensitivity analysis. The sensitivity analysis measures the potential impact in earnings, fair values and cash flows based on a hypothetical 10% change (increase and decrease) in interest rates. Our variable-rate borrowings, which include our term loan, a portion of which has been swapped to a fixed interest rate, and any borrowings we make under our revolving credit facility, expose us to risks caused by fluctuations in the applicable interest rates. The total outstanding balance of such variable-rate borrowings, net of swaps, was \$583 million as of December 31, 2023. A hypothetical 10% change in our effective weighted average interest rate on our variable-rate borrowings would result in a \$3 million increase or decrease to our annual long-term debt interest expense, and a one-point change in the underlying interest rates would result in approximately a \$6 million increase or decrease in our annual interest expense.

The fair values of cash and cash equivalents, trade receivables, accounts payable and accrued expenses and other current liabilities approximate their carrying values due to the short-term nature of these assets and liabilities.

We have foreign currency rate exposure to exchange rate fluctuations worldwide, particularly with respect to the Canadian Dollar, Chinese Yuan, Euro, Brazilian Real, British Pound and Argentine Peso. We anticipate that such foreign currency exchange rate risk will remain a market risk exposure for the foreseeable future.

We use a current market pricing model to assess the changes in the value of our foreign currency derivatives used by us to hedge underlying exposure that primarily consists of our non-functional-currency current assets and liabilities. The primary assumption used in these models is a hypothetical 10% weakening or strengthening of the U.S. dollar against all our currency exposures as of December 31, 2023. The gains and losses on the hedging instruments are largely offset by the gains and losses on the underlying assets, liabilities or expected cash flows. As of December 31, 2023, the absolute notional amount of our outstanding foreign exchange hedging instruments was \$153 million. We have determined through such analyses, that a hypothetical 10% change in foreign currency exchange rates would have resulted in approximately a \$1 million increase or decrease to the fair value of our outstanding forward foreign currency exchange contracts, which would generally be offset by an opposite effect on the underlying exposure being economically hedged.

Argentina is considered to be a highly inflationary economy. As of December 31, 2023, we had total net assets of \$1 million in Argentina.

Our total market risk is influenced by a wide variety of factors including the volatility present within the markets and the liquidity of the markets. There are certain limitations inherent in the sensitivity analyses presented. While probably the most meaningful analysis, these “shock tests” are constrained by several factors, including the necessity to conduct the analysis based on a single point in time and the inability to include the complex market reactions that normally would arise from the market shifts modeled.

**Item 8. Financial Statements and Supplementary Data.**

The financial statements required to be filed pursuant to this Item 8 are appended to this Annual Report on Form 10-K. A list of the financial statements filed herewith is found in Part IV, Item 15 commencing on page F-1 hereof.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

Not applicable.

**Item 9A. Controls and Procedures.**

*Disclosure Controls and Procedures.* Our management, with the participation of our principal executive and principal financial officers, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) as of the end of the period covered by this report. Based on such evaluation, our principal executive and principal financial officers have concluded that, as of the end of such period, our disclosure controls and procedures were effective and operating to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure.

*Management’s Report on Internal Control Over Financial Reporting.* Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) under the Exchange Act. Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2023. In making this assessment, management used the criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, our management believes that, as of December 31, 2023, our internal control over financial reporting is effective. Our independent registered public accounting firm has issued an attestation report on the effectiveness of our internal control over financial reporting, which is included within their audit opinion on page F-2.

There have been no changes in our internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) during the most recent fiscal quarter to which this report relates that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

**Item 9B. Other Information.**

None.

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.**

Not Applicable.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
Wyndham Hotels & Resorts, Inc.

### Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Wyndham Hotels & Resorts, Inc. and subsidiaries (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of income, comprehensive income, equity, and cash flows, for each of the three years in the period ended December 31, 2023, and the related notes (collectively referred to as the "financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

### Basis for Opinions

The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying *Management's Report on Internal Control over Financial Reporting*. Our responsibility is to express an opinion on these financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the financial statements included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures to respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

### Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

**Deferred Revenues and Liability – Wyndham Rewards Loyalty Program – Refer to Notes 2 and 3 to the financial statements**

*Critical Audit Matter Description*

The Company operates the Wyndham Rewards loyalty program under which members earn points that can be redeemed for free nights or other rewards. Wyndham Rewards members primarily accumulate points by staying at a participating hotel, club resort, or vacation rental or by making purchases with their Wyndham Rewards co-branded credit card. Revenues related to the issuance of loyalty points are recognized net of redemptions over time based upon loyalty point redemption patterns, including an estimate of loyalty points that will expire or will never be redeemed. In addition, the Company records a liability for estimated future redemption costs of outstanding loyalty points.

The Company estimates the value of the deferred revenues and related liability (collectively referred to as the “liability”) related to the loyalty program based on (i) an estimated cost per point and (ii) an estimated redemption rate of the overall points earned, which is determined with the assistance of a third-party actuarial firm through historical experience, current trends and the use of an actuarial analysis, and includes an estimate of the points that will expire or will never be redeemed. Changes in the estimated cost per point and/or the estimated redemption rate used in the determination of the liability could result in a material change to the amount of liability reported.

We identified the estimated cost per point and the estimated redemption rate used in the determination of the liability as a critical audit matter because of the high degree of auditor judgment and an increased extent of effort, including the involvement of our actuarial specialists, when performing audit procedures to evaluate the reasonableness of management’s estimates and assumptions related to the selection of the estimated cost per point and the estimated redemption rate.

*How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to the estimated cost per point and estimated redemption rate used in the determination of the liability included the following, among others:

- We tested the effectiveness of the controls related to the liability, including those over the estimate of the cost per point and the estimate of the redemption rate.
- We evaluated the assumptions used by management to estimate the cost per point by:
  - Testing the underlying data that served as the inputs for the historical cost per point, including historical redemptions.
  - Discussing with management the assumptions used in the Company’s estimated future cost per point and evaluating the reasonableness by comparing the projections to (1) forecasted information included in industry reports, and (2) trends in Wyndham Rewards member behavior.
  - Comparing management’s prior-year estimated cost per point to actual redemptions during the current year to identify potential bias in the determination of the liability.
  - Evaluating whether the assumptions used by management to estimate the cost per point were consistent with evidence obtained in other areas of the audit.
- We evaluated the assumptions used by management to estimate the redemption rate by:
  - Testing the underlying data that served as the inputs for the actuarial analysis of the estimated redemption rate, including earnings and redemptions.
  - Evaluating whether any approved changes to the Wyndham Rewards loyalty program have been appropriately considered in the actuarial analysis of the estimated redemption rate.
  - Comparing management’s prior-year estimated redemption rate to actual redemptions during the current year to identify potential bias in the determination of the liability.
- With the assistance of our actuarial specialists, we developed a range of independent estimates of the liability, utilizing the same underlying data tested above, and compared our estimates to management’s estimates.

/s/ Deloitte & Touche LLP  
New York, New York  
February 15, 2024

We have served as the Company’s auditor since 2017.

**WYNDHAM HOTELS & RESORTS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(In millions, except per share amounts)

	Year Ended December 31,		
	2023	2022	2021
<b>Net revenues</b>			
Royalties and franchise fees	\$ 532	\$ 512	\$ 461
Marketing, reservation and loyalty	578	544	468
Management and other fees	14	57	117
License and other fees	112	100	79
Other	148	141	120
Fee-related and other revenues	1,384	1,354	1,245
Cost reimbursements	13	144	320
Net revenues	1,397	1,498	1,565
<b>Expenses</b>			
Marketing, reservation and loyalty	569	524	450
Operating	94	106	132
General and administrative	130	123	113
Cost reimbursements	13	144	320
Depreciation and amortization	76	77	95
Transaction-related, net	11	—	—
Separation-related	1	1	3
Gain on asset sale, net	—	(35)	—
Impairments, net	—	—	6
Total expenses	894	940	1,119
<b>Operating income</b>	503	558	446
Interest expense, net	102	80	93
Early extinguishment of debt	3	2	18
<b>Income before income taxes</b>	398	476	335
Provision for income taxes	109	121	91
<b>Net income</b>	\$ 289	\$ 355	\$ 244
<b>Earnings per share</b>			
Basic	\$ 3.43	\$ 3.93	\$ 2.61
Diluted	3.41	3.91	2.60

See Notes to Consolidated Financial Statements.

**WYNDHAM HOTELS & RESORTS, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(In millions)**

	<b>Year Ended December 31,</b>		
	<b>2023</b>	<b>2022</b>	<b>2021</b>
<b>Net income</b>	\$ 289	\$ 355	\$ 244
<b>Other comprehensive income/(loss), net of tax</b>			
Foreign currency translation adjustments	12	(5)	—
Unrealized (losses)/gains on cash flow hedges	(31)	58	37
<b>Other comprehensive (loss)/income, net of tax</b>	(19)	53	37
<b>Comprehensive income</b>	<u>\$ 270</u>	<u>\$ 408</u>	<u>\$ 281</u>

See Notes to Consolidated Financial Statements.

**WYNDHAM HOTELS & RESORTS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In millions, except per share amounts)

	December 31, 2023	December 31, 2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 66	\$ 161
Trade receivables, net	241	234
Prepaid expenses	27	59
Other current assets	39	91
<b>Total current assets</b>	<b>373</b>	<b>545</b>
Property and equipment, net	88	99
Goodwill	1,525	1,525
Trademarks, net	1,232	1,232
Franchise agreements and other intangibles, net	347	374
Other non-current assets	468	348
<b>Total assets</b>	<b>\$ 4,033</b>	<b>\$ 4,123</b>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Current portion of long-term debt	\$ 37	\$ 20
Accounts payable	32	39
Deferred revenues	91	83
Accrued expenses and other current liabilities	299	264
<b>Total current liabilities</b>	<b>459</b>	<b>406</b>
Long-term debt	2,164	2,057
Deferred income taxes	325	345
Deferred revenues	167	164
Other non-current liabilities	172	189
<b>Total liabilities</b>	<b>3,287</b>	<b>3,161</b>
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Preferred stock, \$0.01 par value, authorized 6.0 shares, none issued and outstanding	—	—
Common stock, \$0.01 par value, 102.1 and 101.6 issued at December 31, 2023 and 2022	1	1
Treasury stock, at cost – 20.7 and 15.2 shares at December 31, 2023 and 2022	(1,361)	(964)
Additional paid-in capital	1,599	1,569
Retained earnings	488	318
Accumulated other comprehensive income	19	38
<b>Total stockholders' equity</b>	<b>746</b>	<b>962</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 4,033</b>	<b>\$ 4,123</b>

See Notes to Consolidated Financial Statements.



**WYNDHAM HOTELS & RESORTS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In millions)

	Year Ended December 31,		
	2023	2022	2021
<b>Operating activities</b>			
Net income	\$ 289	\$ 355	\$ 244
Adjustments to reconcile net income to net cash provided by/(used in) operating activities:			
Depreciation and amortization	76	77	95
Provision for/(recovery of) doubtful accounts	3	(2)	21
Impairments, net	—	—	6
Deferred income taxes	(17)	(39)	(1)
Stock-based compensation	39	33	28
Gain on asset sale, net	—	(35)	—
Loss on early extinguishment of debt	3	2	18
Net change in assets and liabilities:			
Trade receivables	(10)	16	25
Prepaid expenses	5	(6)	(9)
Other current assets	37	(3)	(45)
Accounts payable, accrued expenses and other current liabilities	(4)	14	39
Deferred revenues	10	22	16
Payments of development advance notes	(73)	(52)	(32)
Proceeds from development advance notes	1	4	2
Other, net	17	13	19
<b>Net cash provided by operating activities</b>	<b>376</b>	<b>399</b>	<b>426</b>
<b>Investing activities</b>			
Property and equipment additions	(37)	(39)	(37)
Acquisition of hotel brand	—	(44)	—
Loan advances	(29)	—	—
Loan repayments	—	—	3
Proceeds from asset sales, net	—	263	—
Other, net	—	(1)	—
<b>Net cash (used in)/provided by investing activities</b>	<b>(66)</b>	<b>179</b>	<b>(34)</b>
<b>Financing activities</b>			
Proceeds from borrowings	1,378	400	45
Principal payments on long-term debt	(1,245)	(404)	(574)
Finance lease payments	(5)	(5)	(5)
Debt issuance costs	(10)	(4)	—
Dividends to stockholders	(118)	(116)	(82)
Repurchases of common stock	(393)	(448)	(107)
Exercise of stock options	—	4	17
Net share settlement of incentive equity awards	(9)	(11)	(7)
<b>Net cash used in financing activities</b>	<b>(402)</b>	<b>(584)</b>	<b>(713)</b>
Effect of changes in exchange rates on cash, cash equivalents and restricted cash	(3)	(4)	(1)
Net (decrease) in cash, cash equivalents and restricted cash	(95)	(10)	(322)
Cash, cash equivalents and restricted cash, beginning of period	161	171	493
Cash, cash equivalents and restricted cash, end of period	<u>\$ 66</u>	<u>\$ 161</u>	<u>\$ 171</u>

See Notes to Consolidated Financial Statements.

**WYNDHAM HOTELS & RESORTS, INC.**  
**CONSOLIDATED STATEMENTS OF EQUITY**  
(In millions)

	Common Shares Outstanding	Common Stock	Treasury Stock	Additional Paid-in Capital	Retained Earnings/(Accumulated Deficit)	Accumulated Other Comprehensive Income/(Loss)	Total Equity
<b>Balance as of December 31, 2020</b>	93	\$ 1	\$ (408)	\$ 1,504	\$ (82)	\$ (52)	\$ 963
Net income	—	—	—	—	244	—	244
Other comprehensive income	—	—	—	—	—	37	37
Dividends	—	—	—	—	(83)	—	(83)
Repurchase of common stock	(2)	—	(110)	—	—	—	(110)
Net share settlement of incentive equity awards	—	—	—	(7)	—	—	(7)
Change in deferred compensation	—	—	—	28	—	—	28
Exercise of stock options	—	—	—	17	—	—	17
Issuance of shares for restricted stock units vesting	1	—	—	—	—	—	—
Other	—	—	(1)	1	—	—	—
<b>Balance as of December 31, 2021</b>	92	1	(519)	1,543	79	(15)	1,089
Net income	—	—	—	—	355	—	355
Other comprehensive income	—	—	—	—	—	53	53
Dividends	—	—	—	—	(116)	—	(116)
Repurchase of common stock	(6)	—	(445)	—	—	—	(445)
Net share settlement of incentive equity awards	—	—	—	(11)	—	—	(11)
Change in deferred compensation	—	—	—	33	—	—	33
Exercise of stock options	—	—	—	4	—	—	4
<b>Balance as of December 31, 2022</b>	86	1	(964)	1,569	318	38	962
Net income	—	—	—	—	289	—	289
Other comprehensive loss	—	—	—	—	—	(19)	(19)
Dividends	—	—	—	—	(119)	—	(119)
Repurchase of common stock	(5)	—	(397)	—	—	—	(397)
Net share settlement of incentive equity awards	—	—	—	(9)	—	—	(9)
Change in deferred compensation	—	—	—	38	—	—	38
Other	—	—	—	1	—	—	1
<b>Balance as of December 31, 2023</b>	81	\$ 1	\$ (1,361)	\$ 1,599	\$ 488	\$ 19	\$ 746

See Notes to Consolidated Financial Statements.

**WYNDHAM HOTELS & RESORTS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unless otherwise noted, all amounts are in millions, except share and per share amounts)**

**1. BASIS OF PRESENTATION**

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Wyndham Hotels & Resorts, Inc. (collectively with its consolidated subsidiaries, “Wyndham Hotels” or the “Company”) is a leading global hotel franchisor, licensing its renowned hotel brands to hotel owners in over 95 countries around the world.

The Consolidated Financial Statements have been prepared on a stand-alone basis. The Consolidated Financial Statements include the Company’s assets, liabilities, revenues, expenses and cash flows and all entities in which it has a controlling financial interest. The accompanying Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”). All intercompany balances and transactions have been eliminated in the Consolidated Financial Statements.

In presenting the Consolidated Financial Statements, management makes estimates and assumptions that affect the amounts reported and related disclosures. Estimates, by their nature, are based on judgment and available information. Accordingly, actual results could differ from those estimates. In management’s opinion, the Consolidated Financial Statements contain all normal recurring adjustments necessary for a fair presentation of annual results reported.

***Business Description***

Wyndham Hotels’ primary segment is hotel franchising which principally consists of licensing the Company’s lodging brands and providing related services to third-party hotel owners and others.

In the first quarter of 2023, the Company changed the composition of its reportable segments to reflect the recent changes in its Hotel Management segment due to the exit from the select-service management business, the sale of its two owned hotels and the exit from substantially all of its U.S. full-service management business in 2022. The remaining hotel management business, which is predominately the full-service international managed business, no longer meets the quantitative thresholds to be considered a reportable segment and as a result, the Company has aggregated, on a prospective basis, such management business within its Hotel Franchising segment.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

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***Principles of Consolidation***

When evaluating an entity for consolidation, the Company first determines whether an entity is within the scope of the guidance for consolidation of variable interest entities (“VIEs”) and if it is deemed to be a VIE. If the entity is considered to be a VIE, the Company determines whether it would be considered the entity’s primary beneficiary. The Company consolidates those VIEs for which it has determined that it is the primary beneficiary. The Company will consolidate an entity not deemed a VIE upon a determination that it has a controlling financial interest. For entities where the Company does not have a controlling financial interest, the investments in such entities are classified as available-for-sale securities or accounted for using the equity method, as appropriate.

***Use of Estimates and Assumptions***

The preparation of the Consolidated Financial Statements requires the Company to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities in the Consolidated Financial Statements and accompanying notes. Although these estimates and assumptions are based on the Company’s knowledge of current events and actions it may undertake in the future, actual results may ultimately differ from estimates and assumptions.

***Revenue Recognition***

The principal source of revenues from franchising hotels is ongoing royalty, marketing and reservation fees, which are typically a percentage of gross room revenues of each franchised hotel. For a more detailed description of revenue recognition see Note 3 - Revenue Recognition.

### *Loyalty Program*

The Company operates the Wyndham Rewards loyalty program. Loyalty members primarily accumulate points by staying in hotels operated under one of the Company's brands. Wyndham Rewards members may also accumulate points by purchasing everyday services and products with their Wyndham Rewards co-branded credit card.

The Company earns revenue from these programs (i) when a member stays at a participating hotel or club resort or vacation rental from a fee charged by the Company to the property owner or manager, which is based upon a percentage of room revenues generated from such stay which the Company recognizes, net of redemptions, over time based upon loyalty point redemption patterns, including an estimate of loyalty points that will expire or will never be redeemed, and (ii) based upon a percentage of the member's spending on the Wyndham Rewards co-branded credit cards for which revenues are paid to the Company by a third-party issuing bank which the Company primarily recognizes over time based upon the redemption patterns of the loyalty points earned under the program, including an estimate of loyalty points that will expire or will never be redeemed.

As members earn points through the loyalty program, the Company records a liability for the estimated future redemption costs, which is calculated based on (i) an estimated cost per point and (ii) an estimated redemption rate of the overall points earned, which is determined with the assistance of a third-party actuarial firm through historical experience, current trends and the use of an actuarial analysis. The Company estimates the value of the future redemption obligations by projecting the timing of future point redemptions based on historical levels, including an estimate of the points that will expire or never be redeemed, and an estimate of the points members will eventually redeem. The recorded liability related to the program totals \$117 million and \$118 million as of December 31, 2023 and 2022, respectively, of which \$75 million and \$74 million, respectively, are included in accrued expenses and other current liabilities, and \$42 million and \$44 million, respectively, are included in other non-current liabilities on the Company's Consolidated Balance Sheets.

### *Cash and Cash Equivalents*

The Company considers highly-liquid investments purchased with an original maturity of three months or less to be cash equivalents.

### *Valuation of Accounts Receivable*

The Company measures the expected credit losses of its receivables on a collective (pool) basis which aggregates receivables with similar risk characteristics and uses historical collection attrition rates for ten years to estimate its expected credit losses. For a more detailed description of the valuation of accounts receivable see Note 5 - Accounts Receivable.

### *Advertising Expense*

Advertising costs are expensed in the period incurred. Advertising expenses, which are primarily recorded within marketing and reservation expenses on the Consolidated Statements of Income, were \$127 million, \$124 million and \$85 million in 2023, 2022 and 2021, respectively.

### *Property and Equipment*

Property and equipment (including leasehold improvements) are recorded at cost and presented net of accumulated depreciation and amortization. Depreciation, recorded as a component of depreciation and amortization on the Consolidated Statements of Income, is calculated utilizing the straight-line method over the lesser of the lease terms or estimated useful lives of the related assets. Amortization of leasehold improvements, also recorded as a component of depreciation and amortization, is calculated utilizing the straight-line method over the lesser of the estimated benefit period of the related assets or the lease terms. Useful lives are generally up to 20 years for leasehold improvements and from three to seven years for furniture, fixtures and equipment.

The Company capitalizes the costs of software developed for internal use in accordance with the guidance for accounting for costs of computer software developed or obtained for internal use. Capitalization of software developed for internal use commences during the development phase of the project. The Company amortizes software developed or obtained for internal use on a straight-line basis over its estimated useful life, which is generally three to five years. Such amortization commences when the software is substantially ready for its intended use.

The net carrying value of software developed or obtained for internal use was \$47 million and \$56 million as of December 31, 2023 and 2022, respectively. Depreciation expense on capitalized software developed or obtained for

internal use was \$40 million, \$37 million and \$33 million for the twelve months ended December 31, 2023, 2022 and 2021, respectively, which is reported within depreciation and amortization on the Consolidated Statements of Income.

#### ***Impairment of Long-Lived Assets***

Goodwill is reviewed annually (during the fourth quarter of each year subsequent to completing the Company's annual forecasting process), or more frequently if circumstances indicate that the value of goodwill may be impaired, to the reporting units' carrying values as required by the guidance. This is done either by performing a qualitative assessment or utilizing the one-step impairment test, with an impairment being recognized only where the fair value is less than carrying value. In any given year, the Company can elect to perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is in excess of its carrying value. If it is not more likely than not that the fair value is in excess of the carrying value, or the Company elects to bypass the qualitative assessment, the Company would use the one-step impairment test. The qualitative factors evaluated include macroeconomic conditions, industry and market considerations, cost factors, overall financial performance, its historical share price as well as other industry-specific considerations. The Company performed its annual quantitative assessment for impairment on each reporting unit's goodwill as of October 1, 2023 and determined that no impairments existed and that it was more likely than not that the fair value of its reporting units continued to substantially exceed their carrying values.

The Company also determines whether the carrying values of other indefinite-lived intangible assets are impaired on an annual basis or more frequently if indicators of potential impairment exist. Application of the other indefinite-lived intangible assets impairment test requires judgment in the assumptions used to determine fair value. The fair value of each other indefinite-lived intangible asset is estimated using a discounted cash flow methodology. This analysis requires significant judgments, including estimation of future cash flows, which are dependent on internal forecasts, discount rates and to a lesser extent, estimation of long-term rates of growth. The estimates used to calculate the fair value of other indefinite-lived intangible assets change from year to year based on operating results and market conditions. Changes in these estimates and assumptions could materially affect the determination of fair value and the other indefinite-lived intangible assets' impairment. The Company performed its annual quantitative assessment for impairment on its indefinite-lived intangible assets as of October 1, 2023 and determined that no impairments existed and that it was more likely than not that the fair value of its indefinite-lived intangible assets continued to exceed their carrying values.

The Company also evaluates the recoverability of each of its definite-lived intangible assets by performing a qualitative assessment to determine if circumstances indicate that impairment may have occurred. If such circumstances exist, the Company performs a quantitative assessment by comparing the respective carrying value of the assets to the expected future cash flows, on an undiscounted basis, to be generated from such assets.

The Company also evaluates the recoverability of its other long-lived assets, including property and equipment, if circumstances indicate impairment may have occurred, pursuant to guidance for impairment or disposal of long-lived assets. This analysis is performed by comparing the respective carrying values of the assets to the current and expected future cash flows, on an undiscounted basis, to be generated from such assets. If such analysis indicates that the carrying value of these assets is not recoverable, the carrying value of such assets is reduced to fair value.

#### ***Business Combinations***

The Company accounts for business combinations in accordance with the guidance for business combinations and related literature. Accordingly, the Company allocates the purchase price of acquired companies to the tangible and intangible assets acquired and liabilities assumed based upon their estimated fair values at the date of purchase. The difference between the purchase price and the fair value of the net assets acquired is recorded as goodwill.

In determining the fair values of assets acquired and liabilities assumed in a business combination, the Company uses various recognized valuation methods including present value modeling and referenced market values, where available. Further, the Company makes assumptions within certain valuation techniques including discount rates and timing of future cash flows. Valuations are performed by management or external valuation specialists under management's supervision, where appropriate. The Company believes that the estimated fair values assigned to the assets acquired and liabilities assumed are based on reasonable assumptions that marketplace participants would use. However, such assumptions are inherently uncertain and actual results could differ from those estimates.

#### ***Income Taxes***

The Company recognizes deferred tax assets and liabilities based on the differences between the financial statement carrying amounts and the tax basis of assets and liabilities using currently enacted tax rates. The Company regularly reviews

its deferred tax assets to assess their potential realization and establishes a valuation allowance for portions of such assets that the Company believes will not be ultimately realized. In performing this review, the Company makes estimates and assumptions regarding projected future taxable income, the expected timing of the reversals of existing temporary differences and the implementation of tax planning strategies. A change in these assumptions may increase or decrease the Company's valuation allowance resulting in an increase or decrease in its effective tax rate, which could materially impact the Company's results of operations.

For tax positions the Company has taken or expects to take in a tax return, it applies a more likely than not threshold, under which the Company must conclude a tax position is more likely than not to be sustained, based on the technical merits, assuming that the position will be examined by the appropriate taxing authority that has full knowledge of all relevant information, in order to recognize or continue to recognize the benefit. In determining the Company's provision for income taxes, the Company uses judgment, reflecting its estimates and assumptions, in applying the more likely than not threshold.

The Company accounts for the global intangible low-taxed income provisions under the period cost method.

#### ***Stock-Based Compensation***

In accordance with the guidance for stock-based compensation, the Company measures all employee stock-based compensation awards using a fair value method and records the related expense in its Consolidated Statements of Income.

The Company recognizes the cost of stock-based compensation awards to employees as they provide services, and the expense is recognized ratably over the requisite service period. The requisite service period is the period during which an employee is required to provide services in exchange for an award. Forfeitures are recorded upon the actual employee termination for each outstanding grant.

#### ***Derivative Instruments***

The Company uses derivative instruments as part of its overall strategy to manage its exposure to market risks primarily associated with fluctuations in interest rates and currency exchange rates. As a matter of policy, the Company does not use derivatives for trading or speculative purposes. All derivatives are recorded at fair value as either assets or liabilities. Changes in fair value of derivatives not designated as hedging instruments and of derivatives designated as fair value hedging instruments are recognized currently in operating income and interest expense, net in the Consolidated Statements of Income, based upon the nature of the hedged item. The effective portion of changes in fair value of derivatives designated as cash flow hedging instruments is recorded as a component of other comprehensive income. The ineffective portion is reported immediately in earnings as a component of operating or interest expense, based upon the nature of the hedged item. Amounts included in other comprehensive income are reclassified into earnings in the same period during which the hedged item affects earnings.

#### ***Accumulated Other Comprehensive Income/(Loss)***

Accumulated other comprehensive income ("AOCI") (loss) consists of accumulated foreign currency translation adjustments and unrealized gains or losses on the Company's cash flow hedges. Foreign currency translation adjustments exclude income taxes related to indefinite investments in foreign subsidiaries. Assets and liabilities of foreign subsidiaries having non-U.S.-dollar functional currencies are translated at exchange rates at the balance sheet dates. Revenues and expenses are translated at average exchange rates during the periods presented. The gains or losses resulting from translating foreign currency financial statements into U.S. dollars, net of hedging gains or losses and taxes, are included in AOCI on the Consolidated Balance Sheets.

#### ***Recently Issued Accounting Pronouncements***

In November 2023, the Financial Accounting Standards Board ("FASB") issued an accounting update, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which is intended to improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. The guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The guidance is to be applied retrospectively to all prior periods presented in the financial statements. Upon transition, the segment expense categories and amounts disclosed in the prior periods should be based on the significant segment expense categories identified and disclosed in the period of adoption. The Company is evaluating the potential impact of adopting this new guidance on our consolidated financial statements and related disclosures. The Company will adopt the guidance on January 1, 2024, as required.

In December 2023, the FASB issued an accounting update, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which modifies the rules on income tax disclosures to require entities to disclose (1) specific categories in the rate reconciliation, (2) the income or loss from continuing operations before income tax expense or benefit (separated between domestic and foreign) and (3) income tax expense or benefit from continuing operations (separated by federal, state and foreign). This update also requires entities to disclose their income tax payments to international, federal, state and local jurisdictions, among other changes. The guidance is effective for annual periods beginning after December 15, 2024. Early adoption is permitted for annual financial statements that have not yet been issued or made available for issuance. This update should be applied on a prospective basis, but retrospective application is permitted. The Company is currently evaluating the potential impact of adopting this new guidance on our consolidated financial statements and related disclosures. The Company will adopt the guidance on January 1, 2025, as required.

#### **Recently Adopted Accounting Pronouncements**

*Simplifying the Accounting for Income Taxes.* On December 18, 2019, the FASB issued guidance which simplifies the accounting standards for income taxes. The amendment clarifies and simplifies aspects of the accounting for income taxes to help promote consistent application of GAAP by eliminating certain exceptions to the general principles of ASC 740, *Income Taxes*. This guidance is effective for fiscal years beginning after December 15, 2020 and interim periods within those fiscal years, with early adoption permitted. The Company adopted the guidance on January 1, 2021, as required. There was no material impact on the Company's Consolidated Financial Statements and related disclosures as a result of adopting this new standard.

### **3. REVENUE RECOGNITION**

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The principal source of revenues from franchising hotels is ongoing royalty fees, which are typically a percentage of gross room revenues of each franchised hotel. The Company recognizes royalty fee revenues as and when the underlying sales occur. The Company also receives non-refundable initial franchise fees, which are recognized as revenues over the initial non-cancellable period of the franchise agreement, commencing when all material services or conditions have been substantially performed. This occurs when a hotel opens for business in the Company's system or when a franchise agreement is terminated after it has been determined that the hotel will not open. The Company's standard franchise agreement typically has a term of 10 to 20 years. Additionally, the Company recognizes occupancy taxes on a net basis.

The Company's franchise agreements also require the payment of marketing and reservation fees, which are intended to reimburse the Company for expenses associated with operating an international, centralized reservation system, e-commerce channels such as the Company's brand.com websites, as well as access to third-party distribution channels, such as online travel agents, advertising and marketing programs, global sales efforts, operations support, training and other related services. Marketing and reservation fees are recognized as revenue when the underlying sales occur. The Company is generally contractually obligated to spend the marketing and reservation fees it collects from franchisees, in accordance with the franchise agreements. Marketing and reservations costs are expensed as incurred, which may not occur in the same period as the recognition of marketing and reservation revenues.

The Company earns revenues from its Wyndham Rewards loyalty program when a member stays at a participating hotel, club resort or vacation rental. These revenues are derived from a fee the Company charges a franchised or managed hotel based upon a percentage of room revenues generated from a Wyndham Rewards member's stay. These fees are to reimburse the Company for expenses associated with member redemptions and activities that are related to the administering and marketing of the program. Revenues related to the loyalty program represent variable consideration and are recognized net of redemptions over time based upon loyalty point redemption patterns, which include an estimate of loyalty points that will expire or will never be redeemed.

The Company earns revenue from its Wyndham Rewards co-branded credit card program, which is primarily generated by cardholder spending and the enrollment of new cardholders. The advance payments received under the program are recognized as a contract liability. The program primarily contains two performance obligations: (i) brand performance services, for which revenue is recognized over the contract term on a straight-line basis, and (ii) issuance and redemption of loyalty points, for which revenue is recognized over time based upon the redemption patterns of the loyalty points earned under the program, including an estimate of loyalty points that will expire or will never be redeemed.

The Company provides management services for certain international hotels under management contracts. The Company's standard management agreement typically has a term of 10 to 20 years. The Company's management fees are comprised of base fees, which are typically a specified percentage of gross revenues from hotel operations, and, in some cases, incentive fees, which are typically a specified percentage of a hotel's gross operating profit. The base fees are recognized when the underlying sales occur and the management services are performed. Incentive fees are recognized when

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determinable, which is when the Company has met hotel operating performance metrics and the Company has determined that a significant reversal of revenues recognized will not occur.

The Company also recognizes reimbursable payroll costs for operational employees and other reimbursable costs at certain of the Company's managed hotels as revenue. Although these costs are funded by hotel owners, accounting guidance requires the Company to report these fees on a gross basis as both revenues and expenses.

The Company recognizes license and other revenues from Wyndham Worldwide ("former Parent"), now known as Travel + Leisure Co., for use of the "Wyndham" trademark and certain other trademarks.

In addition, the Company earned revenues from its previously two owned hotels (sold in 2022), which consisted primarily of (i) gross room rentals, (ii) food and beverage services and (iii) on-site spa, casino, golf and shop revenues. These revenues were recognized upon the completion of services.

#### *Deferred Revenues*

Deferred revenues, or contract liabilities, generally represent payments or consideration received in advance for goods or services that the Company has not yet provided to the customer. Deferred revenues as of December 31, 2023 and 2022 are as follows:

	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Deferred initial franchise fee revenues	\$ 145	\$ 143
Deferred loyalty program revenues	95	85
Deferred co-branded credit card program revenues	3	—
Deferred other revenues	15	19
<b>Total</b>	<b>\$ 258</b>	<b>\$ 247</b>

Deferred initial franchise fees represent payments received in advance from prospective franchisees upon the signing of a franchise agreement and are generally recognized to revenue within 13 years. Deferred loyalty revenues represent the portion of loyalty program fees charged to franchisees, net of redemption costs, that have been deferred and will be recognized over time based upon loyalty point redemption patterns. Deferred co-branded credit card program revenue represents payments received in advance from the Company's co-branded credit card partners, primarily for card member activity, which is typically recognized within one year.

#### *Performance Obligations*

A performance obligation is a promise in a contract to transfer a distinct good or service to a customer. The consideration received from a customer is allocated to each distinct performance obligation and recognized as revenue when, or as, each performance obligation is satisfied. The following table summarizes the Company's remaining performance obligations for the years set forth below:

	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>Thereafter</b>	<b>Total</b>
Initial franchise fee revenues	\$ 17	\$ 8	\$ 7	\$ 113	\$ 145
Loyalty program revenues	61	23	9	2	95
Co-branded credit card program revenues	3	—	—	—	3
Other revenues	10	1	—	4	15
<b>Total</b>	<b>\$ 91</b>	<b>\$ 32</b>	<b>\$ 16</b>	<b>\$ 119</b>	<b>\$ 258</b>

#### *Disaggregation of Net Revenues*

In the first quarter of 2023, the Company changed the composition of its reportable segments to reflect the recent changes in its Hotel Management segment due to the exit from the select-service management business, the sale of its two owned hotels and the exit from substantially all of its U.S. full-service management business in 2022. The remaining hotel management business, which is predominately the full-service international managed business, no longer meets the quantitative thresholds to be considered a reportable segment and as a result, the Company has aggregated, on a prospective basis, such management business within its Hotel Franchising segment.



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The table below presents a disaggregation of the Company's net revenues from contracts with customers by major services and products for each of the Company's segments:

	Year Ended December 31,		
	2023	2022	2021
<b>Hotel Franchising<sup>(a)</sup></b>			
Royalties and franchise fees	\$ 532	\$ 496	\$ 436
Marketing, reservation and loyalty	578	543	467
Management fees	14	—	—
License and other fees	112	100	79
Cost reimbursements	13	—	—
Other <sup>(b)</sup>	148	138	117
<b>Total Hotel Franchising</b>	<b>1,397</b>	<b>1,277</b>	<b>1,099</b>
<b>Hotel Management</b>			
Royalties and franchise fees	n/a	16	25
Marketing, reservation and loyalty	n/a	1	1
Owned hotel revenues	n/a	42	82
Management fees	n/a	15	35
Cost reimbursements	n/a	144	320
Other	n/a	3	3
<b>Total Hotel Management</b>	<b>n/a</b>	<b>221</b>	<b>466</b>
<b>Net revenues</b>	<b>\$ 1,397</b>	<b>\$ 1,498</b>	<b>\$ 1,565</b>

(a) For 2023, the Hotel Franchising segment includes the former Hotel Management segment, which is primarily comprised of the Company's remaining international full-service managed business.

(b) The Company's other revenues are primarily related to revenues from its co-branded credit card program and property management systems.

#### Capitalized Contract Costs

The Company incurs certain direct and incremental sales commissions costs in order to obtain hotel franchise and management contracts. Such costs are capitalized and subsequently amortized beginning upon hotel opening over the first non-cancellable period of the agreement. In the event an agreement is terminated prior to the end of the first non-cancellable period, any unamortized cost is immediately expensed. In addition, the Company also capitalizes costs associated with the sale and installation of property management systems to its franchisees, which are amortized over the remaining non-cancellable period of the franchise agreement. As of December 31, 2023 and 2022, capitalized contract costs were \$68 million and \$34 million, respectively, of which \$4 million for both periods was included in other current assets, and \$64 million and \$30 million, respectively, were included in other non-current assets on the Company's Consolidated Balance Sheets. In addition, as of December 31, 2022, capitalized contract costs of \$27 million were included in prepaid expenses on the Company's Consolidated Balance Sheet.

**4. EARNINGS PER SHARE**

The computation of basic and diluted earnings per share (“EPS”) is based on net income divided by the basic weighted average number of common shares and diluted weighted average number of common shares, respectively.

The following table sets forth the computation of basic and diluted EPS (in millions, except per-share data) for the years ended December 31:

	2023	2022	2021
Net income	\$ 289	\$ 355	\$ 244
Basic weighted average shares outstanding	84.4	90.3	93.4
Stock options and restricted stock units (“RSUs”) <sup>(a)</sup>	0.5	0.5	0.5
Diluted weighted average shares outstanding	<u>84.9</u>	<u>90.8</u>	<u>93.9</u>
<i>Earnings per share:</i>			
Basic	\$ 3.43	\$ 3.93	\$ 2.61
Diluted	3.41	3.91	2.60
<i>Dividends:</i>			
Cash dividends declared per share	\$ 1.40	\$ 1.28	\$ 0.88
Aggregate dividends paid to stockholders	\$ 118	\$ 116	\$ 82

(a) Diluted shares outstanding exclude shares related to stock options which were immaterial in 2023 and 0.4 million in 2022. Diluted shares outstanding exclude shares related to RSUs of 0.4 million and 0.2 million for 2023 and 2022, respectively. Such options and RSUs were excluded as their effect would have been anti-dilutive under the treasury stock method.

**Stock Repurchase Program**

The following table summarizes stock repurchase activity under the current stock repurchase program (in millions, except per share data):

	Shares	Cost	Average Price Per Share
As of December 31, 2022	15.2	\$ 964	\$ 63.32
For the twelve months ended December 31, 2023	5.5	397	72.25
As of December 31, 2023	<u>20.7</u>	<u>\$ 1,361</u>	<u>\$ 65.69</u>

The Company had \$443 million of remaining availability under its program as of December 31, 2023.

**5. ACCOUNTS RECEIVABLE****Allowance for Doubtful Accounts**

The Company generates trade receivables in the ordinary course of its business and provides for estimated bad debts on such receivables. The Company measures the expected credit losses of its receivables on a collective (pool) basis which aggregates receivables with similar risk characteristics and uses historical collection attrition rates for ten years to estimate its expected credit losses. As such, the Company measures the expected credit losses of its receivables by segment and geographical area. The Company provides an estimate of expected credit losses for its receivables immediately upon origination or acquisition and may adjust this estimate in subsequent reporting periods as required. When the Company determines that an account is not collectible, the account is written-off to the allowance for doubtful accounts. The Company also considers whether the historical economic conditions are comparable to current economic conditions. If current or expected future conditions differ from the conditions in effect when the historical experience was generated, the Company would adjust the allowance for doubtful accounts to reflect the expected effects of the current environment on the collectability of the Company’s trade receivables which may be material.

The following table sets forth the activity in the Company's allowance for doubtful accounts on trade accounts receivables for the years ended:

	December 31, 2023	December 31, 2022	December 31, 2021
Beginning balance	\$ 64	\$ 81	\$ 72
Provision for/(recovery of) doubtful accounts	3	(2)	21
Bad debt write-offs	(7)	(15)	(12)
Ending balance	<u>\$ 60</u>	<u>\$ 64</u>	<u>\$ 81</u>

**Notes Receivable**

As of December 31, 2023 and 2022, the Company had notes receivable of \$28 million and \$3 million, respectively, net of \$1 million allowance for both years, which is primarily included in other non-current assets on the Company's Consolidated Balance Sheets. For a significant portion of such notes receivable, the Company has received guarantees from the owners of these hotels. In addition, the Company had \$15 million and \$12 million of notes receivable, which is included in other current assets on the Company's Consolidated Balance Sheets as of December 31, 2023 and 2022, respectively, which are fully offset by a corresponding amount in deferred revenues.

**6. HOTEL BRAND ACQUISITION**

During September 2022, the Company completed the acquisition of the Vienna House hotel brand for a total purchase price of \$44 million. Vienna House's portfolio consisted of 41 franchised hotels across Europe, predominantly in Germany. This acquisition enables the Company to grow the Vienna House brand by leveraging its global scale and franchise expertise and is consistent with the Company's strategy to expand its brand portfolio and total system size.

The purchase price was allocated based on the fair value of the indefinite lived trademark and franchise agreements acquired, which have a 20 year life. The following table summarizes the fair value of the assets acquired in connection with Wyndham's acquisition of Vienna House:

	Amount
Franchise agreements	\$ 16
Trademark	28
<b>Total assets acquired</b>	<u>\$ 44</u>

This asset acquisition was assigned to the Company's Hotel Franchising segment. The results of operations of Vienna House have been included in the Consolidated Statements of Income since its date of acquisition. Such results were not material to the Company's results of operations for the three months and year ended December 31, 2022.

**7. PROPERTY AND EQUIPMENT, NET**

Property and equipment, net consisted of:

	As of December 31,	
	2023	2022
Leasehold improvements	29	30
Capitalized software	258	290
Furniture, fixtures and equipment	24	24
Finance leases	64	64
Construction in progress	13	9
	388	417
Less: Accumulated depreciation	300	318
	<u>\$ 88</u>	<u>\$ 99</u>

The Company recorded depreciation expense of \$49 million, \$46 million, and \$57 million during 2023, 2022 and 2021, respectively, related to property and equipment.

**8. INTANGIBLE ASSETS**

Intangible assets consisted of the following:

	<u>December 31, 2023</u>			<u>December 31, 2022</u>		
	<u>Gross Carrying Amount</u>			<u>Gross Carrying Amount</u>		
Goodwill	\$ 1,525			\$ 1,525		
	<u>December 31, 2023</u>			<u>December 31, 2022</u>		
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
<i>Unamortized intangible assets:</i>						
Trademarks			\$ 1,232			\$ 1,231
<i>Amortized intangible assets:</i>						
Franchise agreements	\$ 913	\$ 567	\$ 346	\$ 913	\$ 541	\$ 372
Management agreements	1	1	—	15	14	1
Trademarks	—	—	—	1	—	1
Other	1	—	1	1	—	1
	<u>\$ 915</u>	<u>\$ 568</u>	<u>\$ 347</u>	<u>\$ 930</u>	<u>\$ 555</u>	<u>\$ 375</u>

The changes in the carrying amount of goodwill by reporting unit are as follows:

	<u>Balance as of December 31, 2021</u>	<u>Adjustments to Goodwill</u>	<u>Balance as of December 31, 2023</u>
Hotel Franchising	\$ 1,441	\$ —	\$ 1,441
Hotel Management	84	—	84
Total	<u>\$ 1,525</u>	<u>\$ —</u>	<u>\$ 1,525</u>

Amortization expense relating to amortizable intangible assets was as follows for the years ended December 31:

	<u>2023</u>	<u>2022</u>	<u>2021</u>
Franchise agreements	\$ 26	\$ 26	\$ 27
Management agreements	1	5	11
Total <sup>(a)</sup>	<u>\$ 27</u>	<u>\$ 31</u>	<u>\$ 38</u>

(a) Included as a component of depreciation and amortization on the Consolidated Statements of Income.

Based on the Company's amortizable intangible assets as of December 31, 2023, the Company expects related amortization expense as follows:

	<u>Amount</u>
2024	\$ 27
2025	27
2026	26
2027	26
2028	25

In March 2022, the Company completed the exit of its select-service hotel management business and received an \$4 million termination fee, which under the terms of the agreement with CorePoint Lodging ("CPLG") effectively resulted in the sale of the rights to the management contracts that were acquired as part of the La Quinta Holdings purchase in 2018. The termination fee proceeds were completely offset by the write-off of the remaining balance of the related hotel

management contract intangible asset and thus resulted in a full recovery of such asset. The proceeds were reported in proceeds from asset sales, net on the Consolidated Statement of Cash Flows. The franchise agreements for these hotels remained in place at their stated fee structure.

## 9. FRANCHISING, MARKETING AND RESERVATION ACTIVITIES

Royalties and franchise fee revenues on the Consolidated Statements of Income include initial franchise fees of \$16 million, \$15 million and \$14 million in 2023, 2022 and 2021, respectively.

In accordance with its franchise agreements, the Company is generally contractually obligated to expend the marketing and reservation fees it collects from franchisees for the operation of an international, centralized, brand-specific reservation system and for marketing purposes such as advertising, promotional and co-marketing programs, and training for the respective franchisees.

### Development Advance Notes

The Company may, at its discretion, provide development advance notes to certain franchisees/hotel owners in order to assist them in converting to one of its brands, in building a new hotel to be flagged under one of its brands or in assisting in other franchisee expansion efforts. Provided the franchisee/hotel owner is in compliance with the terms of the franchise agreement, all or a portion of the development advance notes may be forgiven by the Company over the period of the franchise agreement. Otherwise, the related principal is due and payable to the Company. In certain instances, the Company may earn interest on unpaid franchisee development advance notes.

The Company's Consolidated Financial Statements include the following with respect to development advances:

#### Consolidated Balance Sheets:

	As of December 31,	
	2023	2022
Other non-current assets	\$ 228	\$ 144

During 2023, the Company made a non-cash reclass of \$29 million to development advance notes in connection with the execution of franchise agreements, of which \$25 million was from other current assets and \$4 million was from other non-current assets.

#### Consolidated Statements of Income:

	Year Ended December 31,		
	2023	2022	2021
Forgiveness of notes <sup>(a)</sup>	\$ 11	\$ 11	\$ 11
Interest and debt expense related to notes	1	1	1

(a) Amounts are recorded as a reduction of royalties and franchise fees and marketing, reservation and loyalty revenues on the Consolidated Statements of Income.

## 10. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consisted of:

	As of December 31,	
	2023	2022
Accrued loyalty program liabilities (Note 2)	\$ 75	\$ 74
Accrued taxes payable	64	38
Accrued payroll and related expenses	57	73
Accrued self-insurance liabilities	21	20
Due to former Parent (Note 18)	20	3
Accrued professional expenses	19	10
Accrued interest	10	9
Accrued legal settlements (Note 14)	7	8
Accrued marketing expenses	4	10
Operating lease liabilities (Note 19)	4	4
Other	18	15
	<u>\$ 299</u>	<u>\$ 264</u>

## 11. INCOME TAXES

The income tax provision consists of the following:

	Year Ended December 31,		
	2023	2022	2021
<b>Current</b>			
Federal	\$ 72	\$ 116	\$ 65
State	14	22	16
Foreign	40	22	11
	<u>126</u>	<u>160</u>	<u>92</u>
<b>Deferred</b>			
Federal	(6)	(30)	(5)
State	(4)	(9)	—
Foreign	(7)	—	4
	<u>(17)</u>	<u>(39)</u>	<u>(1)</u>
<b>Provision for income taxes</b>	<u>\$ 109</u>	<u>\$ 121</u>	<u>\$ 91</u>

Pretax income for domestic and foreign operations consisted of the following:

	Year Ended December 31,		
	2023	2022	2021
Domestic	\$ 332	\$ 432	\$ 312
Foreign	66	44	23
Pretax income	<u>\$ 398</u>	<u>\$ 476</u>	<u>\$ 335</u>

*Deferred Taxes*

Deferred income tax assets and liabilities are comprised of the following:

	As of December 31,	
	2023	2022
<i>Deferred income tax assets:</i>		
Accrued liabilities and deferred revenues	\$ 95	\$ 85
Tax credits <sup>(a)</sup>	9	7
Other comprehensive income and other	13	14
Provision for doubtful accounts	8	7
Net operating loss carryforward <sup>(b)</sup>	23	22
Valuation allowance <sup>(c)</sup>	(23)	(23)
Deferred income tax assets	<u>125</u>	<u>112</u>
<i>Deferred income tax liabilities:</i>		
Depreciation and amortization	412	417
Other comprehensive income and other	26	35
Deferred income tax liabilities	<u>438</u>	<u>452</u>
<b>Net deferred income tax liabilities</b>	<u>\$ 313</u>	<u>\$ 340</u>
<i>Reported in:</i>		
Other non-current assets	\$ 12	\$ 5
Deferred income taxes	325	345
<b>Net deferred income tax liabilities</b>	<u>\$ 313</u>	<u>\$ 340</u>

(a) As of December 31, 2023, the Company had \$ 9 million of foreign tax credits. The foreign tax credits expire no later than 2033.

(b) As of December 31, 2023, the Company's net operating loss carryforwards primarily relate to state net operating losses, which are due to expire at various dates, but no later than 2043.

(c) The valuation allowance of \$23 million as of December 31, 2023 relates to net operating loss carryforwards, certain deferred tax assets and foreign tax credits of \$ 12 million, \$2 million and \$9 million, respectively. The valuation allowance of \$23 million as of December 31, 2022 relates to net operating loss carryforwards, certain deferred tax assets and foreign tax credits of \$ 14 million, \$2 million and \$7 million, respectively. The valuation allowance will be reduced when and if the Company determines it is more likely than not that the related deferred income tax assets will be realized.

Although the one-time mandatory deemed repatriation tax during 2017 and the territorial tax system created as a result of U.S. tax reform generally eliminate U.S. federal income taxes on dividends from foreign subsidiaries, the Company continues to assert that all of the undistributed foreign earnings of \$84 million will be reinvested indefinitely as of December 31, 2023. In the event the Company determines not to continue to assert that all or part of its undistributed foreign earnings are permanently reinvested, such a determination in the future could result in the accrual and payment of additional foreign withholding taxes and U.S. taxes on currency transaction gains and losses, the determination of which is not practicable due to the complexities associated with the hypothetical calculation.

The Company's effective income tax rate differs from the U.S. federal statutory rate as follows for the years ended December 31:

	2023	2022	2021
Federal statutory rate	21.0 %	21.0 %	21.0 %
State and local income taxes, net of federal tax benefits	2.5	2.8	3.1
Taxes on foreign operations at rates different than U.S. federal statutory rates	2.6	1.9	2.0
Taxes on foreign income, net of tax credits	0.3	0.4	0.3
Nondeductible executive compensation	1.2	0.7	0.7
Foreign-derived intangible income	(0.8)	(0.5)	(0.2)
Valuation allowances	0.1	(0.6)	0.5
Other	0.5	(0.3)	(0.2)
	<u>27.4 %</u>	<u>25.4 %</u>	<u>27.2 %</u>

The effective income tax rate for 2023, 2022 and 2021 differs from the U.S. Federal income tax rate of 21% primarily due to state taxes and U.S. and foreign taxes, including withholding taxes on the Company's international operations.

The following table summarizes the activity related to the Company's unrecognized tax benefits as of December 31:

	2023	2022	2021
Beginning balance	\$ 8	\$ 7	\$ 9
Increases related to tax positions taken during a prior period	7	4	1
Increases related to tax positions taken during the current period	2	—	—
Decreases related to settlements with taxing authorities	(2)	—	—
Decreases as a result of a lapse of the applicable statute of limitations	(4)	(3)	(2)
Decreases related to tax positions taken during a prior period	—	—	(1)
Ending balance	<u>\$ 11</u>	<u>\$ 8</u>	<u>\$ 7</u>

The gross amount of the unrecognized tax benefits that, if recognized, would affect the Company's effective tax rate was \$1 million, \$8 million and \$7 million as of December 31, 2023, 2022 and 2021, respectively. The Company recorded both accrued interest and penalties related to unrecognized tax benefits as a component of provision for income taxes on the Consolidated Statements of Income. The amount of potential penalties and interest related to these unrecognized tax benefits recorded in the provision for income taxes were immaterial during 2023, 2022 and 2021. The Company had a liability for potential penalties of \$1 million as of December 31, 2023, 2022 and 2021, and potential interest of \$3 million as of December 31, 2023 and \$2 million as of December 31, 2022 and 2021. Such liabilities are reported as a component of accrued expenses and other current liabilities and other non-current liabilities on the Consolidated Balance Sheets.

The Company files income tax returns in the U.S. federal and state jurisdictions, as well as in foreign jurisdictions. With certain exceptions, the Company is no longer subject to federal income tax examinations for years prior to 2020. The 2018 through 2022 tax years generally remain subject to examination by many state tax authorities. In significant foreign jurisdictions, the 2016 through the 2022 tax years generally remain subject to examination by their respective tax authorities. The statute of limitations is scheduled to expire and current open examinations are expected to be resolved within 12 months of the reporting date in certain taxing jurisdictions, and the Company therefore believes that it is reasonably possible that the total amount of its unrecognized tax benefits could decrease by \$8 million to \$9 million, inclusive of interest and penalties.

The Company made cash income tax payments, net of refunds, of \$95 million, \$123 million and \$114 million during 2023, 2022 and 2021, respectively.

On August 16, 2022, the Inflation Reduction Act ("IRA") was signed into law in the United States. The IRA did not have a material impact on its financial results, including on its annual estimated effective tax rate or liquidity.



## 12. LONG-TERM DEBT AND BORROWING ARRANGEMENTS

The Company's indebtedness consisted of:

	As of December 31,			
	2023		2022	
	Amount	Weighted Average Rate <sup>(b)</sup>	Amount	Weighted Average Rate <sup>(b)</sup>
<b>Long-term debt: <sup>(a)</sup></b>				
\$750 million revolving credit facility (due April 2027)	\$ 160	7.30%	\$ —	
\$400 million term loan A (due April 2027)	384	6.82%	399	5.92%
\$1.6 billion term loan B (due May 2025)	—		1,139	3.70%
\$1.1 billion term loan B (due May 2030)	1,123	4.10%	—	
\$500 million 4.375% senior unsecured notes (due August 2028)	495	4.38%	494	4.38%
Finance leases	39	4.50%	45	4.50%
Total long-term debt	2,201	4.77%	2,077	3.79%
Less: Current portion of long-term debt	37		20	
<b>Long-term debt</b>	<b>\$ 2,164</b>		<b>\$ 2,057</b>	

(a) The carrying amount of the term loans and senior unsecured notes are net of deferred debt issuance costs of \$ 16 million and \$ 11 million as of December 31, 2023 and 2022, respectively. The carrying amount of the term loan B is net of unamortized discounts of \$5 million as of December 31, 2023.

(b) Weighted average interest rates are based on the stated interest rate for the year-to-date periods and include the effects from hedging.

### Maturities and Capacity

The Company's outstanding debt as of December 31, 2023 matures as follows:

	Long-Term Debt
Within 1 year	\$ 37
Between 1 and 2 years	45
Between 2 and 3 years	48
Between 3 and 4 years	485
Between 4 and 5 years	514
Thereafter	1,072
Total	<b>\$ 2,201</b>

As of December 31, 2023, the available capacity under the Company's revolving credit facility was as follows:

	Revolving Credit Facility
Total capacity	\$ 750
Less: Borrowings	160
Less: Letters of credit	9
Available capacity	<b>\$ 581</b>

### Long-Term Debt

#### \$750 million Revolving Credit Facility

In April 2022, the Company entered into the Third Amendment to the Credit Agreement dated May 30, 2018 ("Third Amendment") which amended its original five-year \$750 million revolver to extend the term to April 2027. The benchmark rate applicable to the revolver has changed from LIBOR to Secured Overnight Funding Rate ("SOFR"). The revolver is subject to an interest rate equal to, at the Company's option, either (i) a base rate plus a margin ranging from 0.50% to 1.00% or (ii) SOFR, plus a margin ranging from 1.50% to 2.00% and an additional 0.10% SOFR adjustment, in either case based

upon the total leverage ratio of the Company and its restricted subsidiaries. The revolver is subject to the same prepayment provisions and covenants applicable to the previous revolver.

During 2023, the Company borrowed \$160 million, net of repayments, on its revolving credit facility. Such borrowings are included within long-term debt on the Consolidated Balance Sheet.

*\$400 million Term Loan A Agreement*

The Third Amendment provides for a new senior secured term loan A facility (“Term Loan A”) in an aggregate principal amount of \$400 million maturing in April 2027, the proceeds of which were used to repay a portion of the existing Term Loan B facility in 2022. The Term Loan A is subject to an interest rate equal to, at the Company’s option, either (i) a base rate plus a margin ranging from 0.50% to 1.00% or (ii) SOFR, plus a margin ranging from 1.50% to 2.00% and an additional 0.10% SOFR adjustment, in either case based upon the total leverage ratio of the Company and its restricted subsidiaries. The Term Loan A is subject to the same prepayment provisions and covenants applicable to the existing Term Loan B. The Term Loan A is subject to quarterly principal payments as follows: (i) 0.0% per year of the initial principal amount during the first year, (ii) 5.0% per year of the initial principal amount payable in equal quarterly installments during the second and third years and (iii) 7.5% per year of the initial principal amount payable in equal quarterly installments during the fourth and fifth years, with final payments of all amounts outstanding, plus accrued interest, being due on the maturity date in April 2027.

*\$1.1 billion Term Loan B Agreement*

On May 25, 2023, the Company entered into a Fourth Amendment to the Credit Agreement dated May 30, 2018 (the “Fourth Amendment”), which, prior to giving effect to the Fourth Amendment, provided for senior secured credit facilities in an aggregate principal amount of \$2.35 billion, consisting of (i) a term loan B facility in an aggregate principal amount of \$1.6 billion maturing in May 2025 and (ii) a revolving credit facility in an aggregate principal amount of \$750 million maturing in April 2027. The Fourth Amendment provides for a new senior secured term loan B facility (the “New Term Loan B”) in an aggregate principal amount of \$1.14 billion maturing in May 2030, the proceeds of which were used to repay the existing Term Loan B facility. The interest rate per annum applicable to the New Term Loan B facility is equal to, at our option (a) Base Rate (as defined in the Credit Agreement), plus an applicable rate of 1.25% or (b) Term SOFR, inclusive of the SOFR Adjustment (defined as 0.10% per annum in the Credit Agreement), plus an applicable rate of 2.25%.

The Term SOFR with respect to the New Term Loan B is subject to a “floor” of 0.00%. The New Term Loan B is subject to the same prepayment provisions and covenants applicable to the existing Term Loan B facility, subject to customary exceptions and limitations. These provisions include a standard mandatory prepayment provisions including (i) 100% of the net cash proceeds from issuances or incurrence of debt by the Company or any of its restricted subsidiaries (other than with respect to certain permitted indebtedness); (ii) 100% (with step-downs to 50% and 0% based upon achievement of specified first-lien leverage ratios) of the net cash proceeds from certain sales or other dispositions of assets by the Company or any of its restricted subsidiaries in excess of a certain amount and subject to customary reinvestment provisions and certain other exceptions; and (iii) 50% (with step-downs to 25% and 0% based upon achievement of specified first-lien leverage ratios) of annual (commencing with the 2019 fiscal year) excess cash flow of the Company and its restricted subsidiaries, subject to customary exceptions and limitations.

The revolving credit facility and term loans (the “Credit Facilities”) are guaranteed, jointly and severally, by certain of the Company’s wholly-owned domestic subsidiaries and secured by a first-priority security interest in substantially all of the assets of the Company and those subsidiaries. The Credit Facilities were initially guaranteed by former Parent, which guarantee was released immediately prior to the consummation of the spin-off. The Credit Facilities contain customary covenants that, among other things, restrict, subject to certain exceptions, the Company and its restricted subsidiaries’ ability to grant liens on the Company and its restricted subsidiaries’ assets, incur indebtedness, sell assets, make investments, engage in acquisitions, mergers or consolidations and pay certain dividends and other restricted payments. The Credit Facilities require the Company to comply with financial maintenance covenants to be tested quarterly, consisting of a maximum first-lien leverage ratio.

Subject to customary conditions and restrictions, the Company may obtain incremental term loans and/or revolving loans in an aggregate amount not to exceed (i) the greater of \$650 million and 100% of EBITDA, plus (ii) the amount of all voluntary prepayments and commitment reductions under the Credit Facilities, plus (iii) additional amounts subject to certain leverage-based ratio tests.

The Credit Facilities also contain certain customary events of default, including, but not limited to: (i) failure to pay principal, interest, fees or other amounts under the Credit Facilities when due, taking into account any applicable grace period; (ii) any representation or warranty proving to have been incorrect in any material respect when made; (iii) failure to

perform or observe covenants or other terms of the Credit Facilities subject to certain grace periods; (iv) a cross-default and cross-acceleration with certain other material debt; (v) bankruptcy events; (vi) certain defaults under ERISA; and (vii) the invalidity or impairment of security interests.

The New Term Loan B is subject to equal quarterly amortization of principal of 0.25% of the initial principal amount, starting in the third quarter of 2023, the first full fiscal quarter after the closing date.

#### *4.375% Senior Unsecured Notes*

In August 2020, the Company issued \$500 million of senior unsecured notes, which mature in 2028 and bear interest at a rate of 4.375% per year, for net proceeds of \$492 million. Interest is payable semi-annually in arrears on February 15 and August 15 of each year, commencing on February 15, 2021.

#### *Finance Leases*

The Company's finance leases primarily consist of the lease of its corporate headquarters. In connection with the Company's separation from former Parent, it was assigned the lease for its corporate headquarters located in Parsippany, New Jersey from its former Parent, which resulted in the Company recording a finance lease obligation and asset.

#### *Deferred Debt Issuance Costs*

The Company classifies deferred debt issuance costs related to its revolving credit facility within other non-current assets on the Consolidated Balance Sheets. Such deferred debt issuance costs were \$3 million and \$4 million as of December 31, 2023 and 2022, respectively.

#### *Cash Flow Hedge*

The Company has pay-fixed/receive-variable interest rate swaps which hedge the interest rate exposure on \$1.1 billion of its outstanding variable-rate debt, effectively representing more than 97% of the outstanding term loan B, as of December 31, 2023. The interest rate swaps consist of \$600 million of swaps that expire in the second quarter of 2024 and have a weighted average fixed rate of 2.33% (plus applicable spreads) and \$500 million of swaps that expire in the fourth quarter of 2024 and have a weighted average fixed rate of 0.91% (plus applicable spreads). As a result of the Fourth Amendment, as well as the discontinuance of LIBOR as a benchmark interest rate, during the second quarter of 2023 the Company amended its interest rate swaps to align with the change in the benchmark interest rate of the underlying debt. As such, the variable rates of such swap agreements are based on one-month SOFR. During the third quarter of 2023, the Company entered into new pay-fixed/receive-variable interest rate swaps that hedges the interest rate exposure on \$600 million of its variable-rate debt with an effective date in the second quarter of 2024 and an expiration date in the second quarter of 2028. The fixed rate associated with the new swaps is 3.84% (plus applicable spreads). Additionally, during the fourth quarter of 2023, the Company entered into new pay-fixed/receive-variable interest rate swaps that hedges the interest rate exposure on \$200 million of its variable-rate debt with an effective date in the fourth quarter of 2024 and an expiration date in the fourth quarter of 2027. The fixed rate associated with the new swaps is 3.55% (plus applicable spreads). The aggregate fair value of these interest rate swaps was an asset of \$13 million and \$53 million as of December 31, 2023 and 2022, respectively, which was included within other non-current assets on the Consolidated Balance Sheets, respectively. The effect of interest rate swaps on interest expense, net on the Consolidated Statements of Income were \$36 million of income during 2023 and \$2 million and \$26 million of expense during 2022 and 2021, respectively.

There was no hedging ineffectiveness recognized in 2023, 2022 or 2021. The Company expects to reclassify approximately \$9 million of gains from AOCI to interest expense during the next 12 months.

#### *Interest Expense, Net*

The Company incurred interest expense of \$108 million, \$85 million and \$94 million in 2023, 2022 and 2021, respectively. Cash paid related to such interest was \$103 million, \$82 million and \$96 million for 2023, 2022 and 2021, respectively. Interest income was \$6 million, \$5 million and \$1 million for 2023, 2022 and 2021, respectively.

#### *Early Extinguishment of Debt*

The Company incurred non-cash early extinguishment of debt costs of \$3 million, \$2 million and \$18 million during 2023, 2022 and 2021 respectively. The 2023 amount relates to the refinancing of the Company's term loan B during the second quarter of 2023. The 2022 amount relates to the Third Amendment and \$400 million partial pay down of its term loan

B, as discussed above. The 2021 amount related to the redemption of its \$500 million 5.375% senior unsecured notes redeemed in 2021.

### 13. FAIR VALUE

The Company measures its financial assets and liabilities at fair value on a recurring basis and utilizes the fair value hierarchy to determine such fair values. Financial assets and liabilities carried at fair value are classified and disclosed in one of the following three categories:

Level 1: Quoted prices for identical instruments in active markets.

Level 2: Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value driver is observable.

Level 3: Unobservable inputs used when little or no market data is available. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, the level in the fair value hierarchy within which the fair value measurement falls has been determined based on the lowest level input (closest to Level 3) that is significant to the fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

The fair value of financial instruments is generally determined by reference to market values resulting from trading on a national securities exchange or in an over-the-counter market. In cases where quoted market prices are not available, fair value is based on estimates using present value or other valuation techniques, as appropriate. The carrying amounts of cash and cash equivalents, trade receivables, accounts payable and accrued expenses and other current liabilities approximate fair value due to the short-term maturities of these assets and liabilities. The carrying amounts and estimated fair values of all other financial instruments are as follows:

	December 31, 2023	
	Carrying Amount	Estimated Fair Value
<b>Debt</b>	\$ 2,201	\$ 2,195

The Company estimates the fair value of its debt using Level 2 inputs based on indicative bids from investment banks or quoted market prices with the exception of finance leases, which are estimated at carrying value.

#### *Financial Instruments*

Changes in interest rates and foreign exchange rates expose the Company to market risk. The Company uses cash flow hedges as part of its overall strategy to manage its exposure to market risks associated with fluctuations in interest rates and foreign currency exchange rates. As a matter of policy, the Company only enters into transactions that it believes will be highly effective at offsetting the underlying risk, and it does not use derivatives for trading or speculative purposes. The Company estimates the fair value of its derivatives using Level 2 inputs.

#### *Interest Rate Risk*

A portion of debt used to finance the Company's operations is exposed to interest rate fluctuations. The Company uses various hedging strategies and derivative financial instruments to create a desired mix of fixed and floating rate assets and liabilities. Derivative instruments currently used in these hedging strategies include interest rate swaps. The derivatives used to manage the risk associated with the Company's variable-rate debt are derivatives designated as cash flow hedges. See Note 12 - Long-Term Debt and Borrowing Arrangements for the impact of such cash flow hedges.

#### *Foreign Currency Risk*

The Company has foreign currency rate exposure to exchange rate fluctuations worldwide, particularly with respect to the Canadian Dollar, Chinese Yuan, Euro, Brazilian Real, British Pound and Argentine Peso. The Company uses foreign currency forward contracts at various times to manage and reduce the foreign currency exchange rate risk associated with its foreign currency denominated receivables and payables, forecasted royalties and forecasted earnings and cash flows of foreign subsidiaries and other transactions. The Company recognized losses from freestanding foreign currency exchange

contracts of \$3 million during 2023 and gains of \$2 million during 2022 and 2021. Such gains and losses are included in operating expenses in the Consolidated Statements of Income.

The Company accounts for certain countries as a highly inflationary economy, with its exposure primarily related to Argentina. The Company incurred foreign currency exchange losses related to Argentina of \$14 million, \$4 million and \$1 million during 2023, 2022 and 2021, respectively. Such losses are included in operating expenses in the Consolidated Statements of Income.

#### *Credit Risk and Exposure*

The Company is exposed to counterparty credit risk in the event of nonperformance by counterparties to various agreements and sales transactions. The Company manages such risk by evaluating the financial position and creditworthiness of such counterparties and often by requiring collateral in instances in which financing is provided. The Company mitigates counterparty credit risk associated with its derivative contracts by monitoring the amounts at risk with each counterparty to such contracts, periodically evaluating counterparty creditworthiness and financial position, and where possible, dispersing its risk among multiple counterparties.

#### *Market Risk*

The Company is subject to risks relating to the geographic concentration of its hotel properties, which may result in the Company's results of operations being more sensitive to local and regional economic conditions and other factors, including competition, natural disasters and economic downturns, than the Company's results of operations would be, absent such geographic concentrations. Local and regional economic conditions and other factors may differ materially from prevailing conditions in other parts of the world. Excluding cost-reimbursement revenues, which are offset by cost-reimbursement expense, revenues from transactions in the states of Texas and Florida as a percent of U.S. revenues were approximately 10% and 17%, respectively, during 2023, 10% and 24%, respectively, during 2022 and 10% and 18%, respectively, during 2021. Revenues in the state of Florida include license and other fees from the Company's former Parent. Excluding these revenues, revenues in the state of Florida as a percent of U.S. revenues were 7%, 16% and 12% during 2023, 2022 and 2021, respectively.

During 2021 CorePoint accounted for 20% of revenues. Excluding cost-reimbursement revenues, which are offset by cost-reimbursement expenses, CorePoint accounted for 8% during 2021. During the first quarter of 2022, CorePoint terminated its management contracts with the Company.

## **14. COMMITMENTS AND CONTINGENCIES**

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#### *Litigation*

The Company is involved, at times, in claims, legal and regulatory proceedings and governmental inquiries arising in the ordinary course of its business, including but not limited to: breach of contract, fraud and bad faith claims with franchisees in connection with franchise agreements and with owners in connection with management contracts, as well as negligence, breach of contract, fraud, employment, consumer protection and other statutory claims asserted in connection with alleged acts or occurrences at owned, franchised or managed properties or in relation to guest reservations and bookings. The Company may also at times be involved in claims, legal and regulatory proceedings and governmental inquiries relating to bankruptcy proceedings involving efforts to collect receivables from a debtor in bankruptcy, employment matters, claims of infringement upon third parties' intellectual property rights, claims relating to information security, privacy and consumer protection, fiduciary duty/trust claims, tax claims, environmental claims and landlord/tenant disputes. Along with many of its competitors, the Company and/or certain of its subsidiaries have been named as defendants in litigation matters filed in state and federal courts, alleging statutory and common law claims related to purported incidents of sex trafficking at certain franchised and managed hotel facilities. Many of these matters are in the pleading or discovery stages at this time. In certain matters, discovery has closed, and the parties are engaged in dispositive motion practice. As of December 31, 2023, the Company is aware of approximately 35 pending matters filed naming the Company and/or subsidiaries. Based upon the status of these matters, the Company has not made a determination as to the likelihood of any probable loss of any one of these matters and is unable to estimate a range of losses at this time.

The Company records an accrual for legal contingencies when it determines, after consultation with outside counsel, that it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In making such determinations, the Company evaluates, among other things, the degree of probability of an unfavorable outcome, and when it is probable that a liability has been incurred, its ability to make a reasonable estimate of loss. The Company reviews these accruals each reporting period and makes revisions based on changes in facts and circumstances, including changes to its strategy in dealing with these matters.

The Company believes that it has adequately accrued for such matters with reserves of \$7 million and \$8 million as of December 31, 2023 and 2022, respectively. The Company also had receivables of \$4 million and \$6 million as of December 31, 2023 and 2022, respectively, for certain matters which are covered by insurance and were included in other current assets on its Consolidated Balance Sheets. Litigation is inherently unpredictable and, although the Company believes that its accruals are adequate and/or that it has valid defenses in these matters, unfavorable results could occur. As such, an adverse outcome from such proceedings for which claims are awarded in excess of the amounts accrued, if any, could be material to the Company with respect to earnings and/or cash flows in any given reporting period. As of December 31, 2023, the potential exposure resulting from adverse outcomes of such legal proceedings could, in the aggregate, range up to approximately \$10 million in excess of recorded accruals. However, the Company does not believe that the impact of such litigation will result in a material liability to the Company in relation to its combined financial position or liquidity.

### Guarantees

#### Separation-Related Guarantees

The Company assumed one-third of certain contingent and other corporate liabilities of former Parent incurred prior to the spin-off, including liabilities of former Parent related to, arising out of or resulting from certain terminated or divested businesses, certain general corporate matters of former Parent and any actions with respect to the separation plan or the distribution made or brought by any third party.

#### Credit Support Provided and Other Indemnifications Relating to former Parent's Sale of its European Vacation Rentals Business

In May 2018, former Parent completed the sale of its European Vacation Rentals business to Compass IV Limited, an affiliate of Platinum Equity, LLC ("Buyer"). In connection with the sale of the European Vacation Rentals business, the Company provided certain post-closing credit support in the form of guarantees to help ensure that the business meets the requirements of certain credit card service providers, travel association and regulatory authorities. Such post-closing credit support may be enforced or called upon if the European vacation rentals business fails to meet its primary obligation to pay certain amounts when due. The European vacation rentals business has provided an indemnity to former Parent in the event that the post-closing credit support is enforced or called upon.

Pursuant to the terms of the Separation and Distribution Agreement that was entered into in connection with the Company's spin-off, the Company will assume one-third and former Parent will assume two-thirds of losses that may be incurred by former Parent or the Company in the event that these credit support arrangements are enforced or called upon by any beneficiary in respect of any indemnification claims made.

The table below summarizes the post-closing credit support guarantees related to the sale of the European Vacation Rentals business, the fair values of such guarantees and the receivables from its former Parent representing two-thirds of such guarantees as of December 31, 2023:

	Guarantees	Fair Value of Guarantees	Receivable from former Parent
Post-closing credit support at time of sale	\$ 81	\$ 39	\$ 26
Additional post-closing credit support	46	22	15
Total	\$ 127	\$ 61	\$ 41

The fair value of the guarantees was \$61 million as of December 31, 2023 and 2022 and were included in other non-current liabilities on the Consolidated Balance Sheets. In connection with these guarantees the Company had receivables from its former Parent of \$41 million as of December 31, 2023 and 2022, which were included in other non-current assets on its Consolidated Balance Sheets.

## 15. STOCK-BASED COMPENSATION

The Company has a stock-based compensation plan available to grant non-qualified stock options, incentive stock options, stock-settled appreciation rights ("SSARs"), RSUs, performance-vesting restricted stock units ("PSUs") and/or other stock-based awards to key employees and non-employee directors. Under the Wyndham Hotels & Resorts, Inc. 2018 Equity and Incentive Plan ("Stock Plan"), which became effective on May 14, 2018, a maximum of 10.0 million shares of common stock may be awarded. As of December 31, 2023, 4.8 million shares remained available.

During 2023, the Company granted incentive equity awards totaling \$30 million to key employees and senior officers in the form of RSUs. The RSUs generally vest ratably over a period of four years based on continuous service. Additionally, the Company approved incentive equity awards to key employees and senior officers in the form of PSUs with a maximum grant value of \$19 million. The PSUs generally cliff vest on the third anniversary of the grant date based on continuous service with the number of shares earned (0% to 200% of the target award) dependent upon the extent to which the Company achieves certain performance metrics.

***Incentive Equity Awards Granted by the Company***

The activity related to the Company's incentive equity awards for the year ended December 31, 2023 consisted of the following:

	RSUs		PSUs	
	Number of RSUs	Weighted Average Grant Price	Number of PSUs	Weighted Average Grant Price
Balance as of December 31, 2022	1.0	\$ 67.90	0.3	\$ 69.82
Granted <sup>(a)</sup>	0.4	77.10	0.3 <sup>(b)</sup>	77.45
Vested	(0.4)	63.62	—	—
Canceled	—	—	(0.1)	53.40
Balance as of December 31, 2023	1.0 <sup>(c)</sup>	\$ 72.80	0.5 <sup>(d)</sup>	\$ 76.56

(a) Represents awards granted by the Company primarily in March 2023.

(b) Represents awards granted by the Company at the maximum achievement level of 200% of target payout. Actual shares that may be issued can range from 0% to 200% of target.

(c) RSUs outstanding as of December 31, 2023 have an unrecognized compensation expense of \$ 47 million, which is expected to be recognized over a weighted average period of 2.5 years.

(d) PSUs outstanding as of December 31, 2023 have an aggregate maximum potential unrecognized compensation expense of \$ 22 million, which may be recognized over a weighted average period of 1.9 years based on attainment of targets.

There were no stock options granted in 2023 or 2022. The activity related to stock options for the year ended December 31, 2023 consisted of the following:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (in millions)
Outstanding as of December 31, 2022	1.0	\$ 55.90		
Granted	—	—		
Exercised	—	—		
Canceled	—	—		
Outstanding as of December 31, 2023	1.0	\$ 55.89	2.7	\$ 25
Unvested as of December 31, 2023	0.2 <sup>(a)</sup>	\$ 56.47	2.4	\$ 4
Exercisable as of December 31, 2023	0.8	\$ 55.79	2.7	\$ 21

(a) Unvested options as of December 31, 2023 are expected to vest over time and have an aggregate unrecognized compensation expense of \$ 1 million, which will be recognized over a weighted average period of 0.9 years.

The fair value of stock options granted by the Company were estimated on the date of the grant using the Black-Scholes option-pricing model with the relevant assumptions outlined in the table below. Expected volatility is based on both historical and implied volatilities of the stock of comparable companies over the estimated expected life of the options. The expected life represents the period of time the options are expected to be outstanding. The risk-free interest rate is based on yields on U.S. Treasury strips with a maturity similar to the estimated expected life of the options. The projected dividend yield was based on the Company's anticipated annual dividend divided by the price of the Company's stock on the date of the grant.

	<b>2021</b>
Grant date fair value	\$19.58
Grant date strike price	\$65.21
Expected volatility	40.18%
Expected life	4.25 years
Risk-free interest rate	0.40%
Projected dividend yield	0.98%

#### *Stock-Based Compensation Expense*

Stock-based compensation expense was \$39 million, \$33 million and \$28 million for 2023, 2022 and 2021, respectively.

## **16. SEGMENT INFORMATION**

The reportable segments presented below represent the Company's operating segments for which separate financial information is available and is utilized on a regular basis by its chief operating decision maker to assess performance and allocate resources. In identifying its reportable segments, the Company also considers the nature of services provided by its operating segments. Management evaluates the operating results of each of its reportable segments based upon net revenues and "adjusted EBITDA", which is defined as net income/(loss) excluding net interest expense, depreciation and amortization, early extinguishment of debt charges, impairment charges, restructuring and related charges, contract termination costs, separation-related items, transaction-related items (acquisition-, disposition-, or debt-related), (gain)/loss on asset sales, foreign currency impacts of highly inflationary countries, stock-based compensation expense, income taxes and development advance notes amortization. The Company believes that adjusted EBITDA is a useful measure of performance for its segments which, when considered with U.S. GAAP measures, allows a more complete understanding of its operating performance. The Company uses this measure internally to assess operating performance, both absolutely and in comparison to other companies, and to make day to day operating decisions, including in the evaluation of selected compensation decisions. The Company's presentation of adjusted EBITDA may not be comparable to similarly titled measures used by other companies.

In the first quarter of 2023, the Company changed the composition of its reportable segments to reflect the recent changes in its Hotel Management segment due to the exit from the select-service management business, the sale of its two owned hotels and the exit from substantially all of its U.S. full-service management business. The remaining hotel management business, which is predominately the full-service international managed business, no longer meets the quantitative thresholds to be considered a reportable segment and as a result, the Company has aggregated, on a prospective basis, such management business within its Hotel Franchising segment.



	Hotel Franchising	Hotel Management	Corporate and Other (a)	Total
<b>Year Ended or as of December 31, 2023</b>				
Net revenues	\$ 1,397	n/a	\$ —	\$ 1,397
Adjusted EBITDA	727	n/a	(68)	659
Depreciation and amortization	66	n/a	10	76
Segment assets	3,880	n/a	153	4,033
Capital expenditures	33	n/a	4	37
<b>Year Ended or as of December 31, 2022</b>				
Net revenues	\$ 1,277	\$ 221	\$ —	\$ 1,498
Adjusted EBITDA	679	37	(66)	650
Depreciation and amortization	63	5	9	77
Segment assets	3,711	113	299	4,123
Capital expenditures	33	—	6	39
<b>Year Ended or as of December 31, 2021</b>				
Net revenues	\$ 1,099	\$ 466	\$ —	\$ 1,565
Adjusted EBITDA	592	57	(59)	590
Depreciation and amortization	60	26	9	95
Segment assets	3,575	394	300	4,269
Capital expenditures	30	4	3	37

(a) Includes the elimination of transactions between segments.

Provided below is a reconciliation of net income to adjusted EBITDA.

	Year Ended December 31,		
	2023	2022	2021
Net income	\$ 289	\$ 355	\$ 244
Provision for income taxes	109	121	91
Depreciation and amortization	76	77	95
Interest expense, net	102	80	93
Early extinguishment of debt	3	2	18
Stock-based compensation expense	39	33	28
Development advance notes amortization	15	12	11
Transaction-related expenses, net	11	—	—
Separation-related expenses	1	1	3
Gain on asset sale, net	—	(35)	—
Impairments, net	—	—	6
Foreign currency impact of highly inflationary countries	14	4	1
Adjusted EBITDA	\$ 659	\$ 650	\$ 590

The geographic segment information provided below is classified based on the geographic location of the Company's subsidiaries.

	United States	All Other Countries <sup>(a)</sup>	Total
<b>Year Ended or As of December 31, 2023</b>			
Net revenues	\$ 1,142	\$ 255	\$ 1,397
Net long-lived assets	3,002	190	3,192
<b>Year Ended or As of December 31, 2022</b>			
Net revenues	\$ 1,271	\$ 227	\$ 1,498
Net long-lived assets	3,126	104	3,230
<b>Year Ended or As of December 31, 2021</b>			
Net revenues	\$ 1,366	\$ 199	\$ 1,565
Net long-lived assets	3,199	107	3,306

(a) Includes U.S. territories.

## 17. OTHER EXPENSES AND CHARGES

### *Transaction-Related, Net*

The Company recognized transaction-related expenses of \$11 million during the year ended December 31, 2023 related to costs associated with (i) an unsolicited exchange offer from Choice Hotels International, Inc to acquire all outstanding shares of the Company's stock and (ii) the refinancing of the Company's term loan B.

### *Separation-Related*

The Company incurred separation-related costs associated with its spin-off from former Parent of \$ million during 2023 and 2022 and \$3 million during 2021, which primarily consisted of legal and tax-related costs.

### *Gain on Asset Sale, Net*

In March 2022, the Company completed the sale of its Wyndham Grand Bonnet Creek Resort for gross proceeds of \$21 million (\$118 million, net of transaction costs) and recognized a \$35 million gain, net of transaction costs, for the year ended December 31, 2022. Such amounts were attributable to the Company's hotel management business and were reported within gain on asset sale, net on the Consolidated Statement of Income. Additionally, the Company entered into a 20 year franchise agreement with the buyer.

In May 2022, the Company completed the sale of its Wyndham Grand Rio Mar Resort for gross proceeds of \$2 million (\$61 million, net of transaction costs). There was no gain or loss on the sale. Additionally, the Company entered into a 20 year franchise agreement with the buyer.

### *Impairments, Net*

During the fourth quarter of 2021, the Company's Board approved a plan to sell its two owned hotels. As a result of the Board approval, the Company evaluated the recoverability of its owned hotels long-lived assets and in the fourth quarter of 2021, the Company recorded a \$6 million impairment charge which was reported within impairments, net on the Consolidated Statement of Income.

## 18. TRANSACTIONS WITH FORMER PARENT

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The Company has a number of arrangements with its former Parent for services provided between both parties as described below.

### *License Agreement and Other Agreements with Former Parent*

In connection with the Company's spin-off, the Company and former Parent entered into long-term exclusive license agreements to retain former Parents' affiliations with one of the hospitality industry's top-rated loyalty programs, Wyndham Rewards, as well as to continue to collaborate on inventory-sharing and customer cross-sell initiatives.

In connection with the Company's license, development and non-competition agreement, the Company recorded license fees from former Parent in the amounts of \$90 million, \$83 million and \$65 million during 2023, 2022 and 2021, respectively. Further, the Company recorded revenues of \$15 million, \$10 million and \$9 million during 2023, 2022 and 2021, respectively, for activities associated with the Wyndham Rewards program. The Company also recorded license fees from a former affiliate of \$7 million during 2023 and 2022 and \$5 million during 2021. Such fees are recorded within license and other fees on the Consolidated Statements of Income.

### *Transfer of Former Parent Liabilities and Issuances of Guarantees to Former Parent and Affiliates*

Upon the distribution of the Company's common stock to former Parent stockholders, the Company entered into certain guarantee commitments with its former Parent. These guarantee arrangements relate to certain former Parent contingent tax and other corporate liabilities. The Company assumed and is responsible for one-third of such contingent liabilities while its former Parent is responsible for the remaining two-thirds. The amount of liabilities assumed by the Company in connection with the spin-off was \$20 million as of December 31, 2023 and 2022, of which \$20 million and \$3 million, respectively were included within accrued expenses and other current liabilities and \$17 million in 2022 was included within other non-current liabilities on its Consolidated Balance Sheets. In addition, the Company had \$3 million of receivables due from former Parent as of both December 31, 2023 and 2022 which were included within current assets on its Consolidated Balance Sheets.

### *Former Parent's Sale of its European Vacation Rentals Business*

In connection with the sale of the European Vacation Rentals business, the Company was entitled to one-third of the excess of net proceeds from the sale above a pre-set amount. During 2019, the Buyer notified former Parent of certain proposed post-closing adjustments of approximately \$44 million which could serve to reduce the net consideration received from the sale of the European Vacation Rentals business. On December 13, 2021, former Parent entered into a settlement agreement, contingent upon regulatory approval, to settle the post-closing adjustment claims for \$7 million which was split one-third and two-thirds between the Company and former Parent, respectively. The Company had a \$2 million reserve for such settlement as of December 31, 2021. During the third quarter of 2022, the settlement was approved by the regulatory authority and as a result, the Company paid \$2 million for its obligation of the settlement and all claims on the Company were dismissed.

**19. LEASES**

The Company leases property and equipment under finance and operating leases. For leases with terms greater than one year, the Company records the related asset and obligation at the present value of lease payments over the term. The Company does not separate lease and non-lease components of equipment leases.

The table below presents the lease-related assets and liabilities recorded on the Consolidated Balance Sheets.

	Classification on the Balance Sheets	December 31, 2023	December 31, 2022
<b>Assets</b>			
Operating lease assets	Other non-current assets	\$ 10	\$ 11
Finance lease assets	Property and equipment, net	22	26
Total lease assets		<u>\$ 32</u>	<u>\$ 37</u>
<b>Liabilities</b>			
<b>Current</b>			
Operating lease liabilities	Accrued expenses and other current liabilities	\$ 4	\$ 4
Finance lease liabilities	Current portion of long-term debt	6	5
<b>Non-current</b>			
Operating lease liabilities	Other non-current liabilities	6	7
Finance lease liabilities	Long-term debt	33	40
Total lease liabilities		<u>\$ 49</u>	<u>\$ 56</u>

The table below presents the remaining lease term and discount rates for finance and operating leases.

	December 31, 2023	December 31, 2022
<b>Weighted-average remaining lease term</b>		
Operating leases	3.6 years	4.1 years
Finance leases	5.7 years	6.7 years
<b>Weighted-average discount rate</b>		
Operating leases	4.9 %	4.2 %
Finance leases	4.3 %	4.3 %

**Undiscounted Cash Flows**

The table below reconciles the undiscounted cash flows for each of the first five years and total of the remaining years to the finance lease liabilities and operating lease liabilities recorded on the Company's Consolidated Balance Sheet as of December 31, 2023.

	Operating Leases	Finance Leases
2024	\$ 4	7
2025	2	8
2026	2	8
2027	1	8
2028	1	8
Thereafter	1	5
Total minimum lease payments	11	44
Less: amount of lease payments representing interest	1	5
Present value of future minimum lease payments	10	39
Less: current obligations under leases	4	6
Long-term lease obligations	<u>\$ 6</u>	<u>\$ 33</u>

**Other Information**

The Company recorded the following related to leases on the Consolidated Financial Statements:

*Consolidated Statements of Cash Flows:*

	Year Ended December 31,		
	2023	2022	2021
<b>Operating activities</b>			
Cash payments related to operating and finance leases	\$ 6	\$ 6	\$ 7
<b>Financing activities</b>			
Cash payments related to finance leases	5	5	5

*Consolidated Statements of Income:*

	Year Ended December 31,		
	2023	2022	2021
<b>Operating lease expense</b>	\$ 4	\$ 4	\$ 4
<b>Finance lease expense</b>			
Amortization of right-of-use assets	4	4	4
Interest expense	2	2	2

**20. ACCUMULATED OTHER COMPREHENSIVE INCOME/(LOSS)**

The components of AOCI are as follows:

Net of Tax	Foreign Currency		Cash Flow Hedges	Accumulated Other Comprehensive Income/(Loss)
	Translation Adjustments			
Balance as of December 31, 2020	\$ 2	\$ (54)	\$ (52)	
Period change	—	37	37	
Balance as of December 31, 2021	\$ 2	\$ (17)	\$ (15)	
Period change	(5)	58	53	
Balance as of December 31, 2022	\$ (3)	\$ 41	\$ 38	
Period change	12	(31)	(19)	
Balance as of December 31, 2023	\$ 9	\$ 10	\$ 19	

## GUARANTY OF PERFORMANCE

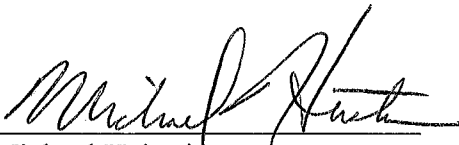
For value received, WYNDHAM HOTELS & RESORTS, INC., a Delaware corporation, located at 22 Sylvan Way, Parsippany, New Jersey 07054, USA, absolutely and unconditionally guarantees the performance by its indirect subsidiary, HAWTHORN SUITES FRANCHISING, INC., a Georgia corporation, with its registered office located at 22 Sylvan Way, Parsippany, New Jersey 07054, USA, as franchisor, of all its obligations in accordance with the terms and conditions of its franchise or license agreements and other agreements issued pursuant to the Hawthorn Franchise Disclosure Document and entered into from and after the date hereof as such franchise, license and other agreements shall have been or may hereafter be amended, modified, renewed or extended from time to time. This Guaranty shall continue in force until all such obligations of HAWTHORN SUITES FRANCHISING, INC. shall have been satisfied or until such liability of HAWTHORN SUITES FRANCHISING, INC. to such franchisees or licensees has been completely discharged, whichever first occur. WYNDHAM HOTELS & RESORTS, INC. shall not be discharged from liability hereunder as long as any such claim by a franchisee or licensee against HAWTHORN SUITES FRANCHISING, INC. remains outstanding. Notice of acceptance is waived. Notice of default on the part of HAWTHORN SUITES FRANCHISING, INC. is not waived. This Guaranty shall be binding upon WYNDHAM HOTELS & RESORTS, INC., its successors and assigns.

IN WITNESS WHEREOF, WYNDHAM HOTELS & RESORTS, INC. has, by a duly authorized officer, executed this Guaranty of Performance in Parsippany, New Jersey as of the 28<sup>th</sup> day of March, 2024.

WYNDHAM HOTELS & RESORTS, INC.  
a Delaware corporation

By:   
Michele Allen  
Chief Financial Officer

ATTEST:

By:   
Michael Heistein  
Senior Vice President, Legal

**EXHIBIT E-1**

**EXHIBIT E-1**  
**HAWTHORN SUITES FRANCHISING, INC.**  
**US OPEN AND OPERATING FACILITIES**  
**AS OF 12/31/2023**

<b>SITE ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>ZIP</b>	<b>CONTACT</b>	<b>ENTITY NAME</b>
1628 WEBSTER ST.	ALAMEDA	CA	94501	(510) 522-1000	ALAMEDA HOSPITALITY, LLC
1700 N. LIVERMORE AVE.	LIVERMORE	CA	94551	(925) 606-6060	LIVERMORE HOTEL CORP.
314 SOSCOL AVE.	NAPA	CA	94559-4006	(707) 226-1878	WINE COUNTRY HOSPITALITY, LLC
12180 TRIBUTARY POINT DR.	RANCHO CORDOVA	CA	95670	(916) 351-9192	UMAR, INC.
11750 DUNIA RD.	VICTORVILLE	CA	92392-7656	(760) 949-4700	SPRINGFIELD TRAMP LLC
5360 RONALD REAGAN BLVD	JOHNSTOWN	CO	80534	970578-0966	LOVELAND HOSPITALITY INC.
3557 PINE RIDGE RD.	NAPLES	FL	34109	(239) 593-1300	PINE RIDGE NAPLES HOTEL, LLC
8303 PALM PARKWAY	ORLANDO	FL	32836	(407) 597-5000	SKY RESORT MANAGEMENT, LLC
7909 PANAMA CITY BEACH PARKWAY	PANAMA CITY BEACH	FL	32408	(850) 233-7829	7909 PCB, LLC
301 LAMBERTON DR.	WEST PALM BEACH	FL	33401	(561) 472-7000	D R PALM BEACH, INC.
1659 CENTENNIAL PARKWAY NE	CONYERS	GA	30013-6547	(770) 761-9155	OHM CONYERS LODGING LLC
1323 EAST KING AVENUE	KINGSLAND	GA	31548	(912) 882-4170	TULSI MANAGEMENT INC.
100/110 WEST 2ND AVE.	ROME	GA	30161	(706) 378-4837	BATTEY DOWNTOWN, LLC
1 LYON CT.	BLOOMINGTON	IL	61701	(309) 829-8111	YOGINE INC.
2370 S. MT. ZION ROAD	DECATUR	IL	62521	(217) 864-9311	DECATUR INVESTMENTS LLC
4919 LIMA ROAD	FORT WAYNE	IN	46808	(260) 484-4700	SUNSHINE HOSPITALITY LLC
411 SOUTH WEBB ROAD	WICHITA	KS	67207	(316) 686-7331	SAM CAPITAL VENTURE INC
5500 W KELLOGG DRIVE	WICHITA	KS	67209	316202-3718	HOOVER HOSPITALITY LLC
751 CYPRESS STATION DR.	LOUISVILLE	KY	40207	(502) 899-5959	CYPRESS STATION DRIVE LLC
400 ARENA RD.	SULPHUR	LA	70665	LAQUINTAIN NSULPHUR@GMAIL.COM	VICTOR HOSPITALITY LLC
239 SAINT ROBERT BLVD	SAINT ROBERT	MO	65584	573451 3535	FORTUNE CIRCLE HOTELS LLC
1170 ROUGHRIDER BOULEVARD	DICKINSON	ND	58601	701-483-7829	DICKINSON HOMSTAY, LLC
800 37TH AVENUE SW	MINOT	ND	58701	701858-7300	TPS MINOT LLC
3701 4TH AVENUE WEST	WILLISTON	ND	58801	701577-3701	WILLISTON HOMSTAY SUITES, LLC
3320-24 ROUTE 38	MOUNT LAUREL	NJ	08054	BRANDON@LAHNHOSPITALITY.COM	THE FALLS GROUP LLC



90 PARK ROAD	TINTON FALLS	NJ	07724	(732) 389-8100	ANZ TINTON FALLS, LLC
1511 GIBSON BOULEVARD SE	ALBUQUERQUE	NM	87106	(505) 242-1555	PARAMOUNT NEW MEXICO INVESTOR GROUP, LLC
5220 N LOVINGTON HWY	HOBBS	NM	88240	(575) 391-0282	RANI HOTELS LLC
910 S. BOULDER HWY	HENDERSON	NV	89015	(702) 568-7800	T.L. VERMA CORPORATION
8005 SHERIDAN DRIVE	WILLIAMSVILLE	NY	14221	(716) 810-7829	SCOTT'S BUFFALO SUITES INC.
11180 DOWLIN DR.	CINCINNATI	OH	45241	(513) 354-1000	AMBAJI LLC
9369 WATERSTONE BLVD.	CINCINNATI	OH	45249	513774-0610	QUADRANT WATERSTONE LLC
5505 KEIM CIRCLE	COLUMBUS	OH	43228	(614) 853-6199	KDM AND ASSOCIATES, LLC
6191 QUARTER HORSE DRIVE	COLUMBUS	OH	43229	(614) 431-1819	AMERICAN CHAMPION HOTELS & RESORTS LLC
7070 POE AVENUE	DAYTON	OH	45414	(937) 898-7764	SINGH 5 HOSPITALITY, INC. - DAYTON OH
51110 NATIONAL ROAD EAST	SAINT CLAIRSVILLE	OH	43950	(740) 695-2035	CENTURY HOSPITALITY-ST. CLAIRSVILLE, LLC
5025 PARK AVE. WEST	SEVILLE	OH	44273	(330) 769-5025	PARKASH & PRASHAR HOSPITALITY, INC.
2602 RINA PARK RD.	ARDMORE	OK	73401	(580) 226-0100	KRISHNA 123 CORPORATION
5701 TINKER DIAGONAL	MIDWEST CITY	OK	73110	(405) 737-7777	MIDWEST HOSPITALITY, INC.
417 S. MERIDIAN AVE	OKLAHOMA CITY	OK	73108	GLWAHLERS@YAHOO.COM	MERIDIAN JOSEPH INVESTMENTS LLC
8061 PEACH STREET	ERIE	PA	16509	(814) 864-2500	SCOTT'S RESORTS LLC
7720 MAIN STREET	FOGELSVILLE	PA	18051	(610) 366-9422	HARI PRASAD, INC
2045 LINCOLN HIGHWAY EAST	LANCASTER	PA	17602	(717) 290-7100	MAA LAXMI, INC.
200 ZIMALCREST DR.	COLUMBIA	SC	29210	803-772-7200	JAYDEV HOSPITALITY LLC
7645 NORTHWOODS BLVD.	NORTH CHARLESTON	SC	29406	(843) 572-5757	PSM HOSPITALITY, LLC
1010 UNIVERSITY DRIVE EAST	COLLEGE STATION	TX	77840	(979) 695-9500	SMIT COLLEGE STATION LLC
1442 S. PADRE ISLAND DR.	CORPUS CHRISTI	TX	78416	(361) 854-3400	ISLANDER INVESTMENT, INC.
15201 WINDWARD DR.	CORPUS CHRISTI	TX	78418	361949-2400	WINDWARD HOSPITALITY LTD.
7900 BROOKRIVER DRIVE	DALLAS	TX	75247	(214) 688-1010	TASACOM REAL ESTATE LLC
273 EAST CANTU ROAD	DEL RIO	TX	78840	830488 6226	MICHAEL FORREST
6789 BOEING DR.	EL PASO	TX	79925	(915) 778-6789	MANIR PROPERTIES IV, LLC
2323 IMPERIAL DR.	IRVING	TX	75062	(972) 257-5400	ISA HOSPITALITY, INC.
24450 EASTEX FWY	KINGWOOD	TX	77339	ARTURO.CAN ALES@KIRBY CAPITALGROUP.COM	KIRBY CAPITAL GROUP LP
3211 HOTEL WAY	LONGVIEW	TX	75605	(903) 236-0000	DIWALI LONGVIEW NORTH, LLC

4435 MARSHA SHARP FWY	LUBBOCK	TX	79407	(806) 792-3600	SHIV GANGE II, LLC
4801 WEST EXPRESSWAY 83	MCALLEN	TX	78503-8523	(956) 618-7240	LORAM MANAGEMENT SERVICES, LLC
5708 STARBOARD DRIVE	MIDLAND	TX	79706	(432) 704-5110	VANSH HOTEL, LLC
1607 S STOCKTON AVE	MONAHANS	TX	79756	(432) 943-2510	DRPB HOSPITALITY LLC
201 SOUTH JBS PARKWAY	ODESSA	TX	79762	(432) 227-6666	SAMSA HS, LLC
1408 TOWN CENTER DR	PFLUGERVILLE	TX	78660	512212-5004	TRES PRIMOS LLC
7440 MEMORIAL BLVD	PORT ARTHUR	TX	77642	409-722-1034	SANDALWOOD HOTEL LLC
250 MUNICIPAL DRIVE	RICHARDSON	TX	75080	(972) 669-1000	HRS HOSPITALITY LLC
5750 SHERWOOD WAY	SAN ANGELO	TX	76901	325617-5292	FOUR DIA, LLC
36 BLAIR PARK ROAD	WILLISTON	VT	05495	802216-0889	VT HOTEL GROUP LLC
335 W. SAINT JOSEPH ST.	GREEN BAY	WI	54301	(920) 435-2222	CLEVELAND HOTEL ASSOCIATES, LLC
1001 W. COLLEGE AVE	OAK CREEK	WI	53154	(414) 571-8800	NIRVAIR HOSPITALITY LLC
75 SOUTH VIEW DR.	BRIDGEPORT	WV	26330	304-848-8700	CENTURY HOSPITALITY-BRIDGEPORT, LLC
20 BOB WISE DRIVE	TRIADELPHIA	WV	26059	(304) 218-2500	CENTURY HOSPITALITY 3D, LLC

**EXHIBIT E-1**  
**HAWTHORN SUITES FRANCHISING, INC.**  
**US FRANCHISE AGREEMENTS SIGNED BUT NOT OPENED**  
**AS OF 12/31/2023**

SITE ADDRESS	CITY	STATE	ZIP	CONTACT	ENTITY NAME
2301 MT OLIVE RD	GARDENDALE	AL	35071	SMITH.JOSHAGENCY@GMAIL.COM	JOSH SMITH
3170 LEEMAN FERRY RD SW	HUNTSVILLE	AL	35801	(423) 777-8997	RIVERMONT HOSPITALITY, LLC
8554 HIGHWAY 72	MADISON	AL	35758	PRITESH47@YAHOO.COM	PRITESH PATEL
SWANCOTT RD & PEOPLES RD	MADISON	AL	35758	RUSHIL@PRIMEGROUPDEV.COM	RUSHIL CHOKSI
FINNIE FLAT RD. & HOMESTEAD PARKWAY	CAMP VERDE	AZ	86322	(928) 524-1170	ANAND BHAKTA
1125 SUNRISE AVE	KINGMAN	AZ	86401	(602) 690-8483	MICHAEL CARNEL
NE CORNER OF PECOS AND SOSSAMAN RD	MESA	AZ	85212	(602) 508-3565	SKYPLUS HOTEL, CORP
750 WEST RIVERSIDE DR.	PARKER	AZ	85344	(801) 710-8574	MARK YARDLEY
8TH STREET AND GISS PARKWAY	YUMA	AZ	85365	(602) 690-8483	MICHAEL CARNEL
SAND CREEK & SHADY WILLOW LANE	BRENTWOOD	CA	94513	SUNNY@AELIUSMANAGEMENTGROUP.COM	AELIUS MANAGEMENT GROUP
5060 HAMNER AVENUE	EASTVALE	CA	91752	(999) 999-9999	HIGHLAND HOSPITALITY LLC
CORNER OF SLOVER AVENUE AND JUNIPER AVENUE	FONTANA	CA	92335	(999) 999-9999	HIGHLAND HOSPITALITY LLC
INDIANA COURT & W. LUGONIA AVE. I-10 AND HWY 210	REDLANDS	CA	92374	(818) 540-5489	UCR GROUP, LLC
W. ELKHORN BLVD. & BEAR PAW DR	SACRAMENTO	CA	95835	(209) 601-6265	AJAYPAL SINGH BATH & HARMANPREET SINGH DHILLON
12019 SOUTH HIGHLAND AVENUE	SELMA	CA	93662	(559) 352-7001	JOSAN & JOSAN, INC
10230 TRINITY PARKWAY	STOCKTON	CA	95219	(999) 999-9999	AELIUS MANAGEMENT GROUP
5044 WEST LN	STOCKTON	CA	95210	SYEDKHAN247@GMAIL.COM	KAPALUA REAL ESTATE INVESTMENTS INC
7294 W US HWY 160 LOC A	ALAMOSA	CO	81101	(817) 455-7225	RODNEY MONDRAGON AND MICHELLE MONDRAGON
19302 COTTONWOOD DR	PARKER	CO	80138-8696	(303) 221-2453	COLORADO WORLD RESORTS, LLC
WEITZEL ST. & SWETSVILLE ZOO RD.	TIMNATH	CO	80547	(720) 849-2462	CAMILLE CAVE
116 NEWTOWN ROAD	DANBURY	CT	06810	(914) 514 9146	DP39, LLC AND AE7, LLC
400 SARGENT DRIVE	NEW HAVEN	CT	06511	(999) 999-9999	NEW HAVEN LODGING, LLC
3301 ULMERTON ROAD	CLEARWATER	FL	33762	(908) 444-8139	CLW LODGING, LLC
999 WEST CYPRESS CREEK ROAD	FORT LAUDERDALE	FL	33309	(305) 747-6153	CYPRESS CREEK ENTERPRISES, LLC
10858 MOSS ROSE WAY	ORLANDO	FL	32832	(813) 964-0967	ARJUN CHOUDHARY
I-95 & HWY 92	ACWORTH	GA	30102	(770) 743-8645	TIMES SQUARE ACWORTH INC.
HIGHWAY 400 AND	ALPHARETTA	GA	30005	(678) 522 5058	KARMA DEVELOPERS

WINDWARD PARKWAY					LLC
166 CLASSIC ROAD	ATHENS	GA	30606	GOLDENFORESTHOSPITALITY@GMAIL.COM	GOLDEN FOREST HOSPITALITY, LLC
3038 WASHINGTON RD	AUGUSTA	GA	30907	(425) 212-8188	WYNN HOTELS OF AUGUSTA LLC
INTERSTATE 85 AND HIGHWAY 20	BUFORD	GA	30519	(678) 522 5058	KARMA DEVELOPERS LLC
I-75 & HWY 53	CALHOUN	GA	30701	(423) 605-1080	MANISHA INVESTMENTS, LLC
I-75 & EAST MAIN STREET	CARTERSVILLE	GA	30121	(706) 506-2109	BILLAL JAVAID & KHALID JAVAID
0 COURTNEY DRIVE	FOREST PARK	GA	30297	SBERNARD@TPIGROUPGA.COM	JASBER HOSPITALITY GROUP, LLC
I-85 AND SUGARLOAF PARKWAY	SUWANEE	GA	30024	(678) 522 5058	KARMA DEVELOPERS LLC
2102 MEMORIAL DRIVE	WAYCROSS	GA	31501	ADIDEVGROUPLLC@GMAIL.COM	ADIDEV GROUP LLC
E. CHISHOLM DR. & E. FARGO AVE	NAMPA	ID	83687	RVBOOMEN@GMAIL.COM	RICK VANDEN BOOMEN
3703 WEST LAKE AVENUE	GLENVIEW	IL	60026	(773) 294-1491	M2G USA INVESTMENTS INC.
1001 WEST KILLARNEY	URBANA	IL	61801	(217) 328-7900	VIDHI 3 LLC
100 BLACKBURN LANE	DRY RIDGE	KY	41035	(859) 523-5148	PRADIPKUMAR PATEL & KUNAL PATEL, INDIVIDUALLY
6535 PARAMOUNT PARK DRIVE	LOUISVILLE	KY	40213	(859) 523-5148	PRADIPKUMAR PATEL & KUNAL PATEL, INDIVIDUALLY
NEC CROSS ST AND TRUMAN ST	MANKATO	MN	56003	MAX@DEMARSGC.COM	VESSEL HOLDINGS, LLC
1800 ZUMBEHL RD	SAINT CHARLES	MO	63303	(999) 999-9999	DOMINION HOSPITALITY ST CHARLES LLC
1901 MICROSOFT WAY	CHARLOTTE	NC	28273	(609) 865-3815	BHASKAR PEDDIREDDY
2910 SIGMAN ST	FAYETTEVILLE	NC	28303	(999) 999-9999	JDG MANAGEMENT 2910 INC.
W. ARLINGTON BLVD. & GABRIEL DR	GREENVILLE	NC	27834	(252) 341-8755	DEWITT NEWKIRK
I-95 AND HIGHWAY 301	LUMBERTON	NC	28360	(678) 522 5058	KARMA DEVELOPERS LLC
0 LOWES BLVD	MEBANE	NC	27302	(563) 676-0993	DRPBS HOSPITALITY, LLC
INTERSTATE 80 AND SOUTH 216TH STREET	GRETNA	NE	68028	STERLING@ARIACAPITALPARTNERS.NET	ARIA CAPITAL PARTNERS, LLC
3012-3020 ENGLISH CREEK AVE	EGG HARBOR TOWNSHIP	NJ	08234	EMILIO.MALPARTIDA@SJELITESPORTS.COM	SOUTH JERSEY ELITE SPORTS LLC
808 PRESERVATION LAKE WILDLIFE	JACKSON	NJ	08527	(732) 762-1616	TROPHY PARK, INC.
1719 ROUTE 10	PARSIPPANY	NJ	07054	(814) 234-2700	MARK R. MORATH AND MINDA J. MORATH
NORTHRISE & RINCONADA BLVD	LAS CRUCES	NM	88011	(505) 453-0637	SEAN JARIWALA
1500 RAILROAD PASS CASINO ROAD	HENDERSON	NV	89002	(702) 990-8660	JOSEPH DESIMONE JR.
4288 N. NELLIS BLVD	LAS VEGAS	NV	89115	(702) 498 7423	KINDRED LAKES HOSPITALITY LLC
925 MATLEY LN	RENO	NV	89502	(999) 999-9999	NAV BAJWA
140 NY-32	CENTRAL VALLEY	NY	10917	(781) 828-2100	PAUL OLIVEIRA
274-278 DOLSON AVENUE	MIDDLETOWN	NY	10940	(845) 344-4719	NOWAK 5, LLC

475 CALKINS ROAD	ROCHESTER	NY	14623	(585) 943-2759	MICHAEL SPOLETA
200 WEST WILLIAMS ST	KENT	OH	44240	(330) 673-4914	NYPANO COMPANY, LLC
250 BYERS ROAD	MIAMISBURG	OH	45342	(513) 671-0556	ARYAN RHEA INC.
11604 MILAN ROAD	MILAN	OH	44846	(999) 999-9999	NORTH COAST INN VII LLC
205 WASHINGTON STREET	PORTSMOUTH	OH	45662	(740) 820-8800	ED NEWSOME
SWC I-44 AND I-35	OKLAHOMA CITY	OK	73111	SHP923@GMAIL.COM	HARISH PATEL AND SURAJ PATEL
7037 SOUTH ZURICH AVE	TULSA	OK	74136	(918) 633-6509	PARESH PATEL
CORNER OF NE THREE MILE LN AND NE LAUREL RD	MCMINNVILLE	OR	97128	SUNNYSINGH_HMH@YAHOO.COM	AMRITPAL SINGH
EAST BROAD STREET AND ROUTE 424	HAZLETON	PA	18201	(999) 999-9999	SEVEN ISLES CAPITAL INVESTMENTS LLC
SHILOH ROAD AND S.R. 150	STATE COLLEGE	PA	16801	(570) 337-3878	SARGUN HOSPITALITY, INC.
1539 HORSESHOE DRIVE	COLUMBIA	SC	29223	(909) 935-9966	RIYA HOSPITALITY LLC
3875 TRENTON RD	CLARKSVILLE	TN	37040	(999) 999-9999	DONALD BRANDT
SWC S. BYHALIA RD & E WINCHESTER BLVD	COLLIERVILLE	TN	38017	(901) 286-7263	AMRIT NAUHRIA
1317 KIRBY ROAD	KNOXVILLE	TN	37909	(865) 321-1840	RAMA PAPERMILL, LLC
WINFIELD DUNN PKWY & STADIUM DRIVE	KODAK	TN	37764	(999) 999-9999	ONE OAK CAPITAL, LLC
1556 SYCAMORE VIEW RD	MEMPHIS	TN	38134	(731) 803-9486	DINESH PATEL
CEDAR GLADES DRIVE & FORTRESS BLVD STATES	MURFREESBORO	TN	37129	(615) 969-2951	KRISHNA PATEL, SARIKA PATEL, PETE PATEL, RAJENDRA PATEL AND HEMANG PATEL
SE CORNER OF EAST PARMER AND EAST YAGER LANE	AUSTIN	TX	78754	(830) 488-6226	PRIMOS DEL RIO, LLC, LEE EMERSON AND BRETT EMERSON
I-635 & LAKE JUNE ROAD	BALCH SPRINGS	TX	75180	(817) 689-1008	DIPALI PATEL
529 AGNES	BASTROP	TX	78602	JAYSON@ELEV8DEV ELOPERS.COM	NXTGEN GROUP INVESTMENTS LLC
ROOSEVELT STREET & HWY 136, BORGER	BORGER	TX	79007	(720) 687-3800	SAUREN ENTERPRISES, LLC
US 290 & CANTEY STREET	BRENHAM	TX	77833	(281) 763-3084	JORGE ROMO, JR.
N. EXPY & TANDY RD	BROWNSVILLE	TX	78520	(956) 717-2033	PRIYA VASWANI AND SHASHI VASWANI
4TH AVE & TAYLOR LANE	CANYON	TX	79015	(720) 687-3800	SAUREN ENTERPRISES, LLC
3610 TEXAS 6 FRONTAGE RD	COLLEGE STATION	TX	77845	(314) 803-2951	DEVKRUPA HOSPITALITY INC
SEC LAKE BUSINESS DR & MCCAULEY RD	CONROE	TX	77304	EVELYNMULLERG@GMAIL.COM	SPAZIO PROMOTORA LLC
N LOOP 1604 E AND LOWER SEGUIN RD	CONVERSE	TX	78109	(210) 887-6099	THOMAS GUHA AND SUMIT GUHA
2383 STEMMONS TRAIL	DALLAS	TX	75220	(999) 999-9999	MARUTI NANDAN DALLAS INVESTMENTS LLC
STATE HWY 71 AND FM 973	DEL VALLE	TX	78617	(512) 294-9309	PLATINUM HOLDINGS GROUP, LLC
I-35 & CENTRE PARK BLVD	DESOTO	TX	75115	(513) 649-4949	OM SHIVAM HOSPITALITY LLC
S. ADAMS ST & BLISS ST	EAGLE PASS	TX	78852	(999) 999-9999	EAGLE HOSPITALITY GROUP LLC
NORTH 6TH AVE	EDINBURG	TX	78541	(405) 623-9433	HARISH PATEL AND SAQIB ANWAR

375 & I-10	EL PASO	TX	79835	(999) 999-9999	VIMAL BHAKTA
1 MIRA LAGO BLVD	FARMERS BRANCH	TX	75234	(214) 905-1400	BHAVIN MANAGEMENT, INC.
SWC WESTERN CENTER BLVD AND I-35W	FORT WORTH	TX	76131	(817) 689-1008	DIPALI PATEL
I-35 AND INNER LOOP	GEORGETOWN	TX	78626	(512) 294-9309	PLATINUM HOLDINGS GROUP, LLC
OLD DENTON RD & NORTHERN CROSS BLVD	HALTOM CITY	TX	76117	(817) 368-3341	KARMALI HOLDINGS, INC.
ED SCHMIDT BLVD & N EMORY COVE	HUTTO	TX	78634	NIMESH.PATEL@HIEXTAYLOR.COM	SADYA CAPITAL LLC
NEC S. HOUSTON STREET AND 34	KAUFMAN	TX	75142	DAVID@CEDARCRESTDEVELOPMENTCO.COM	DAVID WILLIS
NWQ OF US-380 & MAIN STREET	LITTLE ELM	TX	75068	(979) 830-8885	SKYLINE HOTELS, LLC
NEC HARDIN BLVD AND MCKINNEY RANCH PKWY	MCKINNEY	TX	75070	SHP923@GMAIL.COM	HARISH PATEL AND SURAJ PATEL
2400 S LAMESA RD	MIDLAND	TX	79701	(432) 352 1845	SAMSA WGHS LLC
BROADWAY AND 288	PEARLAND	TX	77584	(346) 366-0244	WENDELL ARMSTRONG
PALO ALTO ROAD & WATSON RD	SAN ANTONIO	TX	78211	(956) 324-1162	RAUL MENDOZA AND MARIA CRISTINA MENDOZA
MARS RD.	WILMER	TX	75172	(940) 427-1160	LIBERTY MULTIFAMILY, LLC
135 EAST 123000 SOUTH	DRAPER	UT	84020	(801) 556-8858	KRISTINE ANN PROPERTIES LLC
1085 EAST MAIN ST	GREEN RIVER	UT	84525	(801) 710-8574	MARK YARDLEY
1743 WOODLAND PARK DR	LAYTON	UT	84041	(801) 390-6000	DOUGLAS DURBANO
2200A NORTH REDWOOD ROAD	SARATOGA SPRINGS	UT	84045	RICH@ADVENTUT.COM	RICHARD C. BENNION
380 E. WASHINGTON ST	PETERSBURG	VA	23803	(301) 346-7005	VIRGINIA HOTEL DEVELOPMENT GROUP, LLC
7379 COMFORT INN DRIVE	WARRENTON	VA	20187	(217) 361-5898	NABSUN, LLC
201 WATER COUNTRY PKWY	WILLIAMSBURG	VA	23185	(757) 253-6444	OM NAMAH LLC
INTERSECTION OF WARD STRASSE AND ZELT STRASSE	LEAVENWORTH	WA	98826	NISHASANDHU19@GMAIL.COM	NISHA SANDHU
HWY 17 & PATTON BLVD	MOSES LAKE	WA	98837	(509) 766-2000	MOSES LAKE TRAVEL PLAZA, LLC
549 SW MOUNT SI BLVD	NORTH BEND	WA	98045	(509) 750-4396	EASTSIDE INVESTMENT GROUP LLC

**EXHIBIT E-2**

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**EXHIBIT E-2**  
**HAWTHORN SUITES FRANCHISING, INC.**  
**GUEST LODGING FACILITIES WHICH VOLUNTARILY OR INVOLUNTARILY**  
**LEFT THE CHAIN FROM 01/01/2023 TO 12/31/2023**

<b>CITY</b>	<b>STATE</b>	<b>CONTACT</b>	<b>ENTITY NAME</b>
SACRAMENTO	CA	(916) 601-0814	PASHA HOSPITALITY, LLC
SOUTHFIELD	MI	(248) 789-0100	Dearborn Hospitality, Inc.
Virginia	VA	(703) 893-0120	8616 Westwood Hospitality LLC
South Riding	VA	(703) 466-8500	DHARA HOLDINGS LLC
MADISON	WI	(608) 271-3400	Hatchery Hill Hotel Two LLC

**EXHIBIT E-2  
HAWTHORN SUITES FRANCHISING, INC.  
GUEST LODGING FACILITIES WHICH DID NOT COMMUNICATE WITH THE  
FRANCHISOR WITHIN 10 WEEKS OF THE DISCLOSURE DOCUMENT  
ISSUANCE DATE**

**NONE**

# **EXHIBIT F**

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## **North America**

# **Standards of Operation and Design Manual**

**Hawthorn Suites Franchising, Inc.**

**(Revised January 01, 2024)**

**Hawthorn Suites Franchising, Inc.**

**22 Sylvan Way  
Parsippany, NJ 07054**

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Several defined terms are used throughout the Wyndham Rewards Front Desk Guide. For full definitions of all defined terms, please refer to the Glossary on [pages 98-101](#).

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## **EXHIBIT G**

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## State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration:

California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

<b>State</b>	<b>Effective Dates</b>
California	Effective March 30, 2024
Hawaii	Pending
Illinois	Effective March 30, 2024
Indiana	Effective March 30, 2024
Maryland	Pending
Michigan	Effective March 30, 2024
Minnesota	Pending
New York	Effective March 30, 2024
North Dakota	Pending
Rhode Island	Pending
South Dakota	Effective March 30, 2024
Virginia	Pending
Washington	Pending
Wisconsin	Effective March 30, 2024

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

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## RECEIPT

This Disclosure Document summarizes certain provisions of the license agreement and other information in plain language. Read this Disclosure Document and all agreements carefully. If Hawthorn Suites Franchising, Inc. offers you a franchise, it must provide this Disclosure Document to you 14 calendar days\* before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If Hawthorn Suites Franchising, Inc. does not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the state agency listed on Exhibit B.

The franchisor is Hawthorn Suites Franchising, Inc., located at 22 Sylvan Way, Parsippany, New Jersey 07054. Its telephone number is 800.758.8999.

The name, principal business address and telephone number of the franchise seller offering the franchise is:

---

Date of Issuance: March 30, 2024.

See Exhibit B for our registered agents authorized to receive service of process.

I received a disclosure document dated March 30, 2024, which includes the following exhibits:

- A State Addenda
- B Regulatory Authorities; Registered Agents for Service of Process
- C-1 Franchise Agreement; Guaranty; Initial Fee Note; Development Incentive Note; Dual Brand Addendum; Assignment and Assumption Agreement; State Addenda and Franchise Application
- C-2 Master Information Technology Agreement
- C-3 Elavon Hosted Services Agreement for Hosted Gateway Services
- C-4 Three Party Agreement; Request For Three Party Agreement; Lender Notification Agreement; Request For Lender Notification Agreement
- C-5 Termination and Release Agreement
- C-6 Signature Reservation Services Agreement
- C-7 Hotel Revenue Management Agreement
- C-8 Hotel Connectivity Solutions Support Agreement
- C-9 Remote Sales Services Agreement
- C-10 Sculptor Loan Agreement and Wyndham Loan Agreement
- D Financial Statements and Guaranty of Performance of Wyndham Hotels & Resorts, Inc.
- E-1 List of Facilities in the United States as of December 31, 2023
- E-2 List of Facilities in the United States that Voluntarily or Involuntarily left the Hawthorn Suites by Wyndham Chain from January 1, 2023 to December 31, 2023 or that did not communicate with us during the ten-week period preceding the date of the Disclosure Document
- F Tables of Contents for Standards of Operation and Design Manual and Wyndham Rewards Front Desk Guide

**[PLEASE SIGN RECEIPT ON BACK OF PAGE]**

\*10 business days if you are a resident of, or your franchise will be located, in any of the following states: Michigan. The earlier of the "First Personal Meeting" or 10 business days if you are a resident of, or your franchise will be located in New York.

Name of Proposed Franchisee: \_\_\_\_\_

Type of Business Entity: \_\_\_\_\_

\_\_\_\_\_  
Your signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print your name

\_\_\_\_\_  
Print your title

\_\_\_\_\_  
Location in which you are interested

**KEEP THIS COPY FOR YOUR RECORDS.**

## RECEIPT

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Your signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print your name

\_\_\_\_\_  
Print your title

\_\_\_\_\_  
Location in which you are interested

**Please sign this copy of the receipt, date your signature, and return it to Hawthorn Suites Franchising, Inc. 22 Sylvan Way, Parsippany, New Jersey 07054.**