

**EXHIBIT 5C**  
**LCRA 11/21/24**

**SECOND AMENDED AND RESTATED LOAN AGREEMENT  
AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS**

by and among

**LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY,  
MISSOURI**  
as Borrower

**KC HOTEL PROPERTY OWNER, LLC**  
as Hotel Owner

**WELLS FARGO BANK, NATIONAL ASSOCIATION**  
as Administrative Agent

and

**THE FINANCIAL INSTITUTIONS NOW OR HEREAFTER SIGNATORIES HERETO  
AND THEIR ASSIGNEES PURSUANT TO SECTION 13.13,**  
as Lenders

**WELLS FARGO SECURITIES, LLC,**  
as Sole Lead Arranger and Sole Bookrunner

Entered into as of [December \_\_], 2024

**WFB LOAN NO. 1017741**

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## SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS

THIS SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS (as amended, restated or otherwise modified from time to time, this “Agreement”) dated as of [December \_\_], 2024 by and among LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI (“Borrower”), KC HOTEL PROPERTY OWNER, LLC, a Delaware limited liability company (“Hotel Owner,” with each of Borrower and Hotel Owner sometimes individually referred to herein as a “Loan Party” and with Hotel Owner and Borrower both individually and collectively referred to herein as the “Loan Parties”), each of the financial institutions initially a signatory hereto together with their assignees under Section 13.13, and WELLS FARGO BANK, NATIONAL ASSOCIATION (“Wells Fargo”) as contractual representative of the Lenders to the extent and in the manner provided in Article 12 (in such capacity, the “Administrative Agent”).

### R E C I T A L S

A. Borrower is the owner and holder of the fee interest in that certain real property located in Kansas City, Missouri, as more particularly described on Exhibit A1 attached hereto and made a part hereof (“Land”), and Hotel Owner is the owner and holder of a leasehold interest in a portion of Land legally described on Exhibit A2 (“Hotel Parcel”) pursuant to the Hotel Lease (as defined below).

B. Pursuant to the Redevelopment Agreement (as hereinafter defined), Hotel Owner constructed, on behalf of Borrower, certain Improvements (as defined below), including, without limitation, a hotel with 800 hotel rooms on the Hotel Parcel.

C. Pursuant to the Redevelopment Agreement, Hotel Owner constructed, on behalf of Borrower, a parking and meeting facility on the portion of the Land legally described on Exhibit A3 (“Parking/Meeting Parcel”) leased to The Kansas City Convention Center Headquarters Hotel Community Improvement District (the “CID”).

D. Pursuant to that certain Building Loan Agreement dated as of January 18, 2018 (the “Original Agreement Date”) by and among Borrower, Hotel Owner, Administrative Agent and Lenders (the “Original Loan Agreement”), Lenders made a loan to Borrower in the maximum principal amount of One Hundred Ten Million and 00/100 Dollars (\$110,000,000.00) (the “Loan”) for the purposes of providing such Loan proceeds to Hotel Owner (pursuant to and as more specifically set forth in that certain Redevelopment Agreement) to pay certain costs pertaining to the Property including, without limitation, certain costs with respect to the construction and equipping of the “Project” (as such term was defined therein), as more particularly described therein.

E. The Original Loan Agreement was amended and restated in its entirety pursuant to that certain Amended and Restated Loan Agreement and Omnibus Amendment to Loan Documents dated as of December 29, 2021 (as amended pursuant to that certain First Amendment to Amended and Restated Loan Agreement and Omnibus Amendment to Loan Documents dated as of December 29, 2023, collectively, the “First A&R Loan Agreement”).



F. The parties hereto have agreed to amend and restate the First A&R Loan Agreement in its entirety pursuant to this Agreement.

NOW, THEREFORE, the First A&R Loan Agreement is hereby amended and restated in its entirety as follows:

## ARTICLE 1. DEFINITIONS

**1.1. DEFINED TERMS.** The following capitalized terms generally used in this Agreement shall have the meanings defined or referenced below. Certain other capitalized terms used only in specific sections of this Agreement are defined in such sections.

“AAIRPA” – means, collectively, each Interest Rate Protection Agreement (if any) to which Administrative Agent or any Affiliate of Administrative Agent is the Counterparty at the time such Interest Rate Protection Agreement is entered into.

“Accounts” – means, collectively, the Operating Account, the FF&E Reserve Account, the Tax Reserve Account, the Insurance Reserve Account, the Credit Card Account, the Cash Reserve Account and any other account opened and maintained with Administrative Agent in the name of Hotel Owner, and expressly excluding all accounts of the Borrower. The account numbers for the Accounts open as of the Effective Date are listed on Exhibit G attached hereto.

“ADA” – means the Americans with Disabilities Act, of July 26, 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101, et seq., as amended from time to time.

“Additional Revenue Streams” – means (a) all “TIF Revenues” (as defined in the Redevelopment Agreement) to the extent actually received by Hotel Owner pursuant to the Master Financing Agreement and/or the Redevelopment Agreement or otherwise; (b) all “Additional EATs” (as defined in the Super-TIF Financing Agreement) to the extent actually received by Hotel Owner pursuant to the Master Financing Agreement and/or the Redevelopment Agreement or otherwise; (c) all “Net CID Revenues” (as defined in the CID Reimbursement Agreement) to the extent actually received by Hotel Owner pursuant to the Master Financing Agreement and/or the CID Reimbursement Agreement or otherwise, and (d) the Fixed Fee Payment (as defined in the Catering Agreement), and any upfront payment received by Hotel Owner in lieu thereof.

“Adjusted NOI” – means, for any period, the amount by which Gross Operating Revenues for such period exceed Adjusted Operating Expenses for such period. Adjusted NOI shall be calculated as of the applicable measurement date based on the trailing twelve (12) months of operations ending on such measurement date. In the event of a bona fide dispute with respect to the determination of Adjusted NOI, Administrative Agent shall have the right to audit Adjusted NOI at Loan Parties’ expense or to determine Adjusted NOI in accordance with the procedures reasonably determined by Administrative Agent. For purposes of calculating Adjusted NOI, Gross Operating Revenues shall include all of the Additional Revenue Streams.

“Adjusted Operating Expenses” – means, for any period of time, Gross Operating Expenses for such period, subject to the following adjustments:

- (a) management fees shall be equal to the greater of: (i) three percent (3%) of Adjusted Operating Revenues; or (ii) aggregate actual base management fees (including incentive management fees) paid under the Hotel Management Agreement; and
- (b) Adjusted Operating Expenses shall include reserves for FF&E equal to the actual amounts for FF&E reserves stipulated in the Hotel Management Agreement or any Franchise Agreement; and
- (c) Adjusted Operating Expenses shall not include ground rent or other payments due to Borrower or its Affiliates under the Hotel Lease.

“Adjusted Operating Revenues” – means, for any period of time, Gross Operating Revenues for such period, minus (a) all reimbursements received by Hotel Owner under the Catering Agreement (including all Reimbursable Expenses (as defined in the Catering Agreement)) actually received by Hotel Owner from the City pursuant to the Catering Agreement, and (b) all reimbursements received actually received by Hotel Owner from the CID pursuant to the Use Agreement.

“Administrative Agent” – means Wells Fargo, or any successor Administrative Agent appointed pursuant to Section 12.14.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by Administrative Agent.

“Affiliate” – means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control, in whole or in part, with the Person specified, and in any event each of the Guarantors and their respective Affiliates shall be deemed to be Affiliates of the Hotel Owner; provided, however, in no event shall (A) any Lender or any of its Affiliates be an Affiliate of Borrower or Hotel Owner, and (B) Borrower be deemed to be an Affiliate of Hotel Owner and vice versa.

“Agreement” – shall have the meaning given to such term in the preamble hereto.

“Alternate Rate” – is a rate of interest per annum four percent (4%) in excess of the applicable Effective Rate in effect from time to time.

“Anti-Corruption Laws” – means: (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (b) the U.K. Bribery Act 2010, as amended; and (c) all other anti-bribery or anti-corruption laws and regulations.

“Anti-Money Laundering Laws” – means laws or regulations relating to money laundering, any predicate crime to money laundering, and any financial record keeping and reporting requirements related thereto.

“Applicable Law” – means all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof,

and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Applicable Spread” – means two and nine-tenths percent (2.90%) per annum.

“Appraisal” – means, with respect to Hotel Owner’s interest in and revenue produced from the Property, including the Additional Revenue Streams, an M.A.I. appraisal commissioned by and addressed to Administrative Agent (acceptable to the Administrative Agent as to form, substance and appraisal date), prepared by a professional appraiser acceptable to the Administrative Agent (at Hotel Owner’s sole cost and expense), having at least the minimum qualifications required under Applicable Law governing the Administrative Agent and the Lenders, including without limitation, FIRREA, and determining the Appraised Value.

“Appraised Value” – means, with respect to Hotel Owner’s interest in and the revenue produced from the Property, including the Additional Revenue Streams, “as if” stabilized market value, as between a willing buyer and a willing seller as reflected in the most recent Appraisal as the same may have been reasonably adjusted by Administrative Agent based upon its internal review of such Appraisal which is based on criteria and factors then generally used and considered by Administrative Agent in determining the value of similar real estate assets and interests, which review shall be conducted prior to acceptance of such Appraisal by Administrative Agent.

“Approved Disbursement Expenses” – means with respect to the Hotel, the following expenses: (i) any debt service shortfalls with respect to the Loan, (ii) shortfalls for capital expenditures approved by Administrative Agent in its reasonable discretion, and (iii) any Gross Operating Expense shortfalls incurred or to be incurred pursuant to the Hotel Management Agreement; and (iv) any principal repayment of the Loan as directed by Hotel Owner.

“Approved Fund” – means, any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of any entity that administers or manages a Lender.

“Assignee” – shall have the meaning given in Section 13.13(c).

“Assignment and Assumption Agreement” – means an Assignment and Assumption Agreement among a Lender, an Assignee and the Administrative Agent, substantially in the form of Exhibit E.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.8(c)(iv).

“Bail-In Action” – means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” – means: (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule; and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” – means the Bankruptcy Reform Act of 1978 (11 USC § 101-1330) as now or hereafter amended or recodified.

“Base Rate” means the greatest of (a) [intentionally omitted], (b) the per annum rate of interest equal to the Federal Funds Rate plus 0.25% and (c) Term SOFR for a one-month tenor in effect on such day; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Federal Funds Rate or Term SOFR, as applicable (provided that clause (c) shall not be applicable during any period in which Term SOFR is unavailable or unascertainable). Notwithstanding the foregoing, in no event shall the Base Rate be less than the Floor.

“Benchmark” means, initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.8(c)(i).

“Benchmark Portion” means the principal balance of the Loan that is subject to a Calculated Interest Rate.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Administrative Agent and Hotel Owner giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor (if applicable), the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Administrative Agent and Hotel Owner giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread

adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor (if applicable) of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if the then-current Benchmark has any Available Tenors, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor (if applicable) of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or

such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor (if applicable) of such Benchmark (or such component thereof); or

- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors (if applicable) of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, if the then-current Benchmark has any Available Tenors, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means the period (if any): (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.8(c); and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.8(c).

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as then-required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“BHC Act Affiliate” has the meaning given to such term in Section 14.33.

“BOI Rule” – means the final rule implementing the CTA, “Beneficial Ownership Information Reporting Requirements,” published by FinCEN on September 30, 2022, as amended from time to time, or any successor rule thereto.

“Bond Trustee” – means BOKF, N.A.

“Borrower” – shall have the meaning given in the preamble hereto.

“Borrower Deed of Trust” – means, individually and collectively, as the context may require, the Borrower Hotel Deed of Trust and the Borrower Parking/Meeting Deed of Trust.

“Borrower Hotel Deed of Trust” – means that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of the Original Agreement Date, encumbering the Hotel Parcel and certain other property described therein, and securing the Note(s) in the maximum aggregate principal amount of \$110,000,000 and given by Borrower to L&GST Corporation, a Missouri corporation for the benefit of Administrative Agent on behalf of the Lenders as security for the Loan, as amended, restated or otherwise modified from time to time.

“Borrower Parking/Meeting Deed of Trust” – means that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of the Original Agreement Date, encumbering the Parking/Meeting Parcel and certain other property described therein, and securing the Note(s) in the maximum aggregate principal amount of \$110,000,000 and given by Borrower to L&GST Corporation, a Missouri corporation, for the benefit of Administrative Agent on behalf of the Lenders as security for the Loan, as amended, restated or otherwise modified from time to time.

“Business Day” means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

“Calculated Interest Rate” means the rate of interest, per annum, equal to the sum of: (a) Applicable Spread; plus (b) the Benchmark.

“Cash Reserve Account” - shall have the meaning given to such term in Section 9.16(f).

“Catering Agreement” means that certain Third Amended and Restated Exclusive Catering Agreement between the City and KC Hotel Developers, LLC, dated as of December 17, 2021, as assigned to Hotel Owner as of the Original Agreement Date, as may be amended, modified, replaced or supplemented from time to time.

“Catering Management Agreement” that certain Catering Management Agreement dated as of the Original Agreement Date between Manager and Hotel Owner, as amended, restated or otherwise modified from time to time.

“Certificate of Division” means a certificate, registration statement or any other document required to be filed with any applicable Governmental Authority in order to legally effectuate a LLC Division (including, without limitation, a certificate of division as described in Section 18-217 of the Delaware Limited Liability Company Act, as amended from time to time), or a LP Division (including, without limitation, a certificate of division as described in Section 17-220 of the Delaware Revised Uniform Limited Partnership Act, as amended from time to time).

“Change in Law” – means the occurrence, after the Effective Date (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof

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

“CID” – shall have the meaning given in Recital C.

“CID Board” - shall have the meaning given to such term in Section 9.27(a).

“CID Board Resignation” - shall have the meaning given to such term in Section 9.27(b).

“CID Documents” means, individually and collectively, the CID Petition and the CID Reimbursement Agreement.

“CID Petition” – means that certain Petition to Establish The Kansas City Convention Center Headquarters Hotel Community Improvement District, dated as of June 26, 2015, as amended by that certain Petition to Add Certain Real Property to and Adjust the Maximum Annual Amount of Special Assessments for the Kansas City Convention Center Headquarters Hotel Community Improvement District, dated as of May 5, 2017, as amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“CID Reimbursement Agreement” – means that certain Reimbursement Agreement, dated as of the Original Agreement Date, by and between the CID and Hotel Owner, as amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“CID Special Assessments” – means the CID Special Assessments billed by Jackson County, Missouri with respect to the Property.

“City” – means the City of Kansas City, Missouri.

“Code” – means the Internal Revenue Code of 1986, as amended.

“Collateral” – means the right, title and interest of each Loan Party to the Property, the Accounts, and any personal property or other collateral, as applicable, with respect to which a Lien or security interest is granted to Administrative Agent, for the benefit of Lenders, pursuant to the Loan Documents.

“Commission” – means the Tax Increment Financing Commission of Kansas City, Missouri.



“Commitment” – means, as to each Lender, the portion of the Loan disbursed by such Lender as set forth on Schedule 1.1(b) attached hereto or as set forth in the applicable Assignment and Assumption Agreement, as the same may be reduced from time to time pursuant to the terms of this Agreement or as appropriate to reflect any assignments to or by such Lender effected in accordance with Section 13.13.

“Confidential Information” – shall have the meaning ascribed to such term in Section 13.16.

“Conforming Changes” means, with respect to the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), 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 Section 2.9 and other technical, administrative or operational matters) that Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such Benchmark Replacement or to permit the use and administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the administration of any such Benchmark Replacement exists, in such other manner of administration as Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents). Such Changes shall be applied in a manner that is not arbitrary and is consistent with Administrative Agent’s standard practices.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Connector” – means that certain above-grade pedestrian walkway connecting the Hotel to the Kansas City Convention Center.

“Connector Agreement” – means that certain Connector Easement Agreement, dated as of the Original Agreement Date, by and among the City, the LCRA and Owner as amended, restated, replaced or otherwise modified from time to time in accordance with the terms of this Agreement.

“Control” or “control” or “Controlled” – means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities or by contract or otherwise. The terms “controlling”, “controlled by” and “under common control with” have the meanings correlative thereto. For the avoidance of doubt, (i) neither the Administrative Agent nor any Lender shall be deemed to “control” any Loan Party by reason of their respective rights under the Loan Documents, (ii) neither the Borrower nor the Hotel Owner shall be deemed to “control” each other notwithstanding that they are both Loan Parties, and (iii) veto rights by a member or partner in any organizational

documents shall not create control or take away control from the managing member or general partner.

“Counterparty” – means each counterparty to, or issuer of, any Interest Rate Protection Agreement other than any Loan Party or an Affiliate of any Loan Party.

“Credit Card Account” – means the account established with Administrative Agent in the name of Hotel Owner, into which all revenues paid by credit card companies to the Hotel Owner with respect to the Hotel shall be deposited, as more particularly described in Section 9.16(b) below.

“Credit Card Agreements” – shall have the meaning given in Section 9.16(b).

“CTA” – means the Corporate Transparency Act, Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (Jan. 1, 2021), including section 6403 of which, among other things, adds a new section 5336, “Beneficial Ownership Information Reporting Requirements,” to subchapter II of chapter 53 of title 31 of the United States Code (as amended), as may be amended from time to time.

“Custodial Funds” - means the following funds collected by Hotel Owner on a third party’s behalf that must be paid or remitted to a third party and so are not properly considered “revenue” of Hotel Owner: (i) tips, gratuities or service charges with respect to food, beverage, banquet or other guest services paid or received via credit card and owed to employees working at the Hotel for the Hotel Owner, (ii) payments or fees received from or on behalf of hotel guests or patrons and paid or reimbursed to tenants or other vendors or service providers of the hotel, and (iii) amounts paid out to hotel guests or patrons for checks cashed, per diem expense allowances paid and the like.

“Deed of Trust” – means, individually and collectively, the Borrower Deed of Trust and the Hotel Owner Deed of Trust.

“Default” – means an event, circumstance or condition which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default.

“Defaulting Lender” – means, subject to Section 12.4 and the last sentence of this definition, any Lender that (a) has failed to (i) fund all or any portion of its Commitment within two (2) Business Days of the date such Commitment was required to be funded hereunder unless such Lender notifies the Administrative Agent and the Loan Parties in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Loan Parties or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund any portion of its Commitment hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be

satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Hotel Owner, to confirm in writing to the Administrative Agent and the Loan Parties that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Hotel Owner), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under the Bankruptcy Code or any other debtor relief law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 12.4) upon delivery of written notice of such determination to the Loan Parties and each Lender.

“Development Manager” means KC Hotel Developers, LLC, a Missouri limited liability company or any other development manager permitted pursuant to the terms of this Agreement.

“Divided LLC” means any LLC that has been formed upon the consummation of a LLC Division.

“Divided LP” means any LP which has been formed upon the consummation of a LP Division.

“Dollars” and “\$” – means the lawful money of the United States of America.

“DSCR” – means, as of the end of any twelve-month period ending on a DSCR Test Date, the ratio of (a) Adjusted NOI for such twelve-month period to (b) Pro Forma Debt Service determined as of the last day of such twelve-month period.

“DSCR Certificate” – shall have the meaning given in Section 10.1(e).

“DSCR Hurdle” – means that the Hotel has achieved, as of any DSCR Test Date from and after the DSCR Test Date occurring on December 31, 2024, a DSCR that equals or exceeds 1.20:1.00.

“DSCR Shortfall” – means, with respect to any DSCR Test Date as of which a DSCR Trigger has occurred, an amount equal to the portion of the principal of the Loan that would be required to have been repaid as of such DSCR Test Date to cause such DSCR Hurdle to be satisfied as of such DSCR Test Date.

“DSCR Test Date” – means the last day of each calendar quarter commencing with the calendar quarter ending in December 2024.

“DSCR Trigger” – means (a) the failure to deliver any DSCR Certificate as and when required pursuant to Section 10.1(e) and such failure continues for five (5) Business Days following written notice from Administrative Agent of such failure, or (b) the failure to satisfy the DSCR Hurdle as of any DSCR Test Date designated with respect to the applicable DSCR Hurdle, unless the DSCR Shortfall is paid within five (5) Business Days following the delivery of any DSCR Certificate which evidences a failure to meet the applicable DSCR Hurdle. Notwithstanding anything to the contrary, the occurrence of a DSCR Trigger shall not constitute an Event of Default.

“EEA Financial Institution” – means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” – means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” – means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” – shall have the meaning given in Section 2.4.

“Effective Rate” – shall have the meaning given in Section 2.6(e).

“Eligible Assignee” – means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent and (ii) unless an Event of Default exists, Hotel Owner (each such approval not to be unreasonably withheld or delayed); provided, that notwithstanding the foregoing, “Eligible Assignee” shall not include (x) the Loan Parties or any of the Loan Parties’ Affiliates, or (y) so long as no Event of Default is then continuing, any Excluded Transferee.

“ERISA” – means the Employee Retirement Income Security Act of 1974, as in effect from time to time.

“Erroneous Payment” has the meaning given to such term in Section 12.17(a).

“Erroneous Payment Deficiency Assignment” has the meaning given to such term in Section 12.17(d).

“Erroneous Payment Return Deficiency” has the meaning given to such term in Section 12.17(d).

“EU Bail-In Legislation Schedule” – means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Event of Default” – shall have the meaning given to such term in Section 11.1.

“Excess Cash Flow” – means, for any calendar month, (a) Gross Operating Revenues plus Additional Revenue Streams for such month less (b) without duplication, the sum of (i) all Gross Operating Expenses for such month and all deposits actually made into the Insurance Reserve Account, the Tax Reserve Account and FF&E Reserve Account during such month, (ii) all payments of DSCR Shortfall amounts, (iii) interest and principal amortization (if any) on the Loan paid on the first day of the next month, and (iv) working capital reasonably estimated by Hotel Owner (and subject to the reasonable approval by Administrative Agent) to be necessary to cover the next month’s working capital shortfall, if any.

“Excess Cash Flow Sweep Period” – shall have the meaning given to such term in Section 9.16(g).

“Excess Cash Flow Sweep Termination” – shall have the meaning given to such term in Section 9.16(g).

“Excluded Taxes” – means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment requested by Hotel Owner pursuant to Section 2.12(b) below) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 2.11, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.11(d) and Section 2.11(e) and (d) any Taxes imposed under FATCA.

“Excluded Transferee” – means, from time to time, any Person who is, or is an Affiliate of a manager of ten (10) or more full service, upscale hotels, provided that (i) at least ten (10) of such hotels have at least two hundred (200) keys each and, (ii) all of such properties have at least three thousand (3,000) keys in the aggregate, fifteen hundred (1,500) or more of which are located in the United States.

“Extension Conditions” – as defined in Section 2.5(b).

“Extension Notice” – as defined in Section 2.5(b).

“FATCA” – means Sections 1471 through 1474 of the Code, as of the Effective Date (or any amended or successor version that is substantially comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof (including any Revenue Ruling, Revenue Procedure, Notice or similar guidance issued by the U.S. Internal Revenue Service thereunder as a precondition to relief or exemption from taxes under such provisions and any agreements entered into pursuant to Section 1471(b) of the Code) and any intergovernmental agreement, treaty or convention entered into in connection with the implementation of the foregoing and any fiscal or regulatory legislation, rules or official practices implemented to give effect to any such intergovernmental agreements.

“Federal Funds Rate” – means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent; provided, however, that if the Federal Funds Rate determined as provided above would be less than zero percent (0%), then the Federal Funds Rate for such period shall be deemed to be zero percent (0%).

“Fee Letter” – means that certain letter agreement dated as of the Effective Date by and among Administrative Agent, Hotel Owner and Borrower pertaining to the fees payable by Loan Parties to the parties set forth therein.

“FF&E” – means all fixtures, furnishings, equipment, furniture, and other items of tangible personal property located on the Hotel or used in connection with the use, occupancy, operation and maintenance of all or any part of the Hotel, other than stocks of food and other supplies held for consumption in normal operation and the personal property owned by tenants and guests, but including, without limitation, appliances, machinery, equipment, signs, artwork, office furnishings and equipment, guest room furnishings, and specialized equipment for kitchens, laundries, bars, restaurants, public rooms, health and recreational facilities, dishware, all partitions, screens, awnings, shades, blinds, floor coverings, hall and lobby equipment, heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevators, escalators, air conditioning and communication plants or systems with appurtenant fixtures, vacuum cleaning systems, call or beeper systems, security systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials; reservation system computer and related equipment; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; and the vehicles; and as further described in each Deed of Trust.

“FF&E Budget” – shall have the meaning given such term in Section 10.1(c).

“FF&E Reserve Account” – shall have the meaning given to such term in Section 9.17(a).

“FIRREA” – means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended from time to time.

“First Extended Maturity Date” – means December [\_\_\_\_], 2026.

“Floor” means a rate of interest equal to fifty-five hundredths percent (0.55%).

“Foreign Lender” – means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“Fourth Extended Maturity Date” – means December [\_\_\_\_], 2029.

“Franchise Agreement” – means any Franchise Agreement entered into by Hotel Owner with a Franchisor in accordance with Section 9.7, pursuant to which such Franchisor is to provide services with respect to all or a portion of the Hotel, as each may be amended, restated or otherwise modified from time to time.

“Franchisor” – means any hotel or resort operator or franchisor (for the avoidance of doubt, specifically excluding retail and food and beverage franchisors) that provides services with respect to all or a portion of the Hotel pursuant to a Franchise Agreement in accordance with Section 9.7.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” – means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” – means generally accepted accounting principles in the United States of America consistently applied.

“Governmental Authority” – means any nation or government, any federal, state, local, municipal or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Gross Operating Expenses” – means with respect to the Hotel for any period, the sum of, but without duplication, all costs and expenses of operating, maintaining, directing, managing and supervising the Hotel Owner’s operations at the Hotel (provided that pre-opening expenses shall not be included) computed on an accrual basis (excluding, (i) depreciation, amortization or any other similar expense of a non-cash nature, (ii) any debt service other than debt service on the LCRA Loan, (iii) any capital expenditures in connection with the Hotel that are required to be capitalized under GAAP, (iv) income or similar taxes, (v) the costs of any other things required by the Administrative Agent or the Loan Documents to be done or provided at Hotel Owner’s or the Manager’s sole expense, (vi) Custodial Funds and (vii) any expenses of the CID for the Parking/Meeting Space not attributable to Hotel Events (as defined in the Use Agreement) or not paid by Hotel Owner and reimbursed by the CID pursuant to the terms of the Use Agreement) incurred by or on behalf of Hotel Owner (by Manager or otherwise), or as otherwise specifically provided therein, which are properly attributable to the period under consideration under Hotel Owner’s system of accounting, including without limitation: (a) the cost of all food and beverages sold or consumed and of all necessary china, glassware, linens, flatware, uniforms, utensils and other items of a similar nature (“Operating Equipment”) and paper supplies, cleaning materials

and similar consumable items (“Operating Supplies”) placed in use (other than reserve stocks thereof in storerooms); (b) salaries and wages of personnel of the Hotel, including costs of payroll taxes and employee benefits; (c) the cost of all other goods and services obtained by Hotel Owner or the Manager in connection with its operation of the Hotel including, without limitation, heat and utilities, office supplies and all services performed by third parties, including leasing expenses in connection with Operating Equipment used in the operation of the Hotel; (d) the cost of repairs to and maintenance of such Hotel other than of a capital nature as determined in accordance with GAAP; (e) insurance premiums for property insurance, general liability insurance, workers’ compensation insurance or insurance required by similar employee benefits acts and such business interruption or other insurance as may be provided for protection against claims, liabilities and losses arising from the operation of such Hotel and losses incurred on any self-insured risks of the foregoing types, provided that, Hotel Owner and the Manager have specifically approved in advance such self-insurance or insurance is unavailable to cover such risks; (f) all real estate and personal property taxes, assessments, water rates or sewer rents, levied or assessed or imposed against such Hotel or part thereof and other charges (other than federal, state or local income taxes and franchise taxes or the equivalent) payable by or assessed against the Hotel Owner or the Manager with respect to the operation of such Hotel; (g) the allocated amount of legal fees and fees of any firm of independent certified public accounts designated from time to time only to the extent related to the operation of such Hotel; (h) the costs and expenses of technical consultants and specialized operational experts for specialized services in connection with non-recurring work on operational, legal, functional, decorating, design or construction problems and activities; (i) the allocated amount of all expenses for advertising such Hotel and all expenses of sales promotion and public relations activities or any other similar expense of a non-cash nature; (j) the cost of any reservations system, any accounting services or other group benefits, programs or services from time to time made available to the Hotel; (k) the cost associated with any retail leases or operating leases; (l) any management fees, basic and incentive fees or other fees and reimbursables paid or payable to the Manager under the Hotel Management Agreement; (m) any franchise fees or other fees and reimbursables paid or payable to the Franchisor under any Franchise Agreement; (n) all costs and expenses of owning, maintaining, conducting and supervising the operation of such Hotel to the extent such costs and expenses are not included above; (o) rent due under the Hotel Lease; (p) all debt service due under the LCRA Loan; (q) all Reimbursable Expenses (as defined in the Catering Agreement) incurred in connection with providing the Catering Services (as defined in the Catering Agreement); and (r) all reimbursements actually received by Hotel Owner from the CID pursuant to the Use Agreement incurred in connection with providing the Parking/Meeting Services (as defined in the Use Agreement).

“Gross Operating Revenues” – means, for any period of time, all receipts, revenues, income and proceeds of sales of every kind actually earned in connection with the operation of the Hotel, and shall include, without limitation: room rentals; amounts received in connection with the sale of food and liquor; rent or other payments received from tenants, licensees, and occupants of commercial, office and retail space; deposits forfeited and not refunded; all reimbursements earned by Hotel Owner to be paid by the City under the Catering Agreement (including all Reimbursable Expenses (as defined in the Catering Agreement)) and all reimbursements earned by Hotel Owner to be paid by the CID under the Use Agreement, and any amount recovered in any legal action or proceeding or settlement thereof pertaining to room revenues or rents or other income which arose out of the operation of the Hotel. Gross Operating Revenues shall exclude all credits and refunds to guests, all Sales and Use Taxes and any similar taxes collected as direct taxes payable to taxing



authorities; Custodial Funds; Additional Revenue Streams, complimentary rooms; proceeds of insurance (except for business interruption insurance); proceeds of sales of depreciable property; and proceeds of condemnation.

“Guarantor”– means, collectively and individually, as the context may require, each of Hotel Owner, Loews Guarantor, and any other Person who, or which, in any manner, is or becomes obligated to Administrative Agent and/or the Lenders under any guaranty now or hereafter executed in connection with respect to the Loan.

“Guaranty” – means, collectively and individually, as the context may require, the Hotel Owner Guaranty and the Non-Recourse Carveout Guaranty.

“Hazardous Materials Laws” – shall have the meaning given to such in the Hazardous Materials Indemnity Agreement.

“Hotel” – means the Hotel Parcel, the Hotel Improvements, all FF&E and personal property leased to Hotel Owner pursuant to the Hotel Lease and those portions of the Parking/Meeting Improvements that Hotel Owner has the right to use pursuant to the terms of the Use Agreement.

“Hotel Improvements” – means all appurtenances, fixtures and improvements of every nature now or hereinafter located on the Hotel Parcel.

“Hotel Lease” – means collectively (a) that certain Lease Purchase Agreement by and between Borrower and Hotel Owner with respect to the Hotel Improvements, dated as of the Original Agreement Date (the “Hotel Real Property Lease”), and (b) that certain Personal Property Lease by and between Borrower and Hotel Owner with respect to the personal property related to the Hotel Improvements, dated as of the Original Agreement Date (the “Hotel Personal Property Lease”), as each may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“Hotel Management Agreement” that certain Hotel Operating Agreement dated as of the Original Agreement Date between Manager and Hotel Owner, as amended, restated or otherwise modified from time to time.

“Hotel Owner” – shall have the meaning given in the preamble hereto.

“Hotel Owner Deed of Trust” means that certain Leasehold Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of the Original Agreement Date securing the Hotel Owner Guaranty and given by Hotel Owner to L&GST Corporation, a Missouri corporation for the benefit of Administrative Agent on behalf of the Lenders in connection with the Loan, as amended, restated or otherwise modified from time to time.

“Hotel Owner Guaranty” – means that certain Payment Guaranty dated as of the Original Agreement Date, made by Hotel Owner in favor of Administrative Agent for the benefit of the Lenders, as amended, restated or otherwise modified from time to time.

“Hotel Owner Operating Agreement” – means the Amended and Restated Operating Agreement by and between the Sole Member and the Hotel Owner, as may be amended, restated or otherwise modified from time to time in accordance with the terms of this Agreement.

“Hotel Parcel” – shall have the meaning set forth in Recital A.

“Hotel Personal Property Lease” – has the meaning given in the definition of “Hotel Lease.”

“Hotel Property Lease” – has the meaning given in the definition of “Hotel Lease.”

“Hotel Property Transfer” – has the meaning given to such term in Section 9.21(c)(i).

“Improvements” – means all appurtenances, fixtures and improvements of every nature now or hereinafter located on the Land, including, without limitation, Hotel Improvements and the Parking/Meeting Improvements, other than the Connector.

“Indemnifiable Amounts” – shall have the meaning given to such term in Section 12.12.

“Intercreditor Agreement” means that certain Intercreditor Agreement, dated as of January 18, 2018, by and among Administrative Agent, Bond Trustee, City, Borrower, Commission, CID, NBH, Hotel Owner, Manager, Development Manager and Loews Guarantor and acknowledged by The Convention and Visitors Bureau of Greater Kansas City d/b/a Visit KC, a Missouri 501(c)(6) organization, as may be amended, restated or otherwise modified from time to time in accordance with the terms of this Agreement.

“Indemnified Taxes” – means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document, and (b) to the extent not otherwise described in the immediately preceding clause (a), Other Taxes.

“Indemnitee” – shall have the meaning given to such term in Section 13.1.

“Information Materials” – shall have the meaning given to such term in Section 13.26.

“Initial Maturity Date” – means December [\_\_\_\_], 2025.

“Insurance Reserve Account” – shall have the meaning given to such term in Section 9.25.

“Interest Period” means a period commencing on the first (1st) Business Day of a calendar month and continuing to, but not including, the first (1st) Business Day of the next calendar month; provided, however, that no Interest Period shall extend beyond the Maturity Date.

“Interest Rate Protection Agreement” – shall have the meaning ascribed to such term in Section 9.14.

“IRS” – means the United States Internal Revenue Service.

“Land” – shall have the meaning given to such term in Recital A.

“LCRA Loan” – means that certain loan from Borrower to Hotel Owner pursuant to that certain Loan Agreement between Borrower as lender and Hotel Owner as borrower and which loan payments paid by Hotel Owner to Borrower are to be used by Borrower to pay the CID Special Assessments.

“Lease” – means any lease, sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect), pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Hotel and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, but specifically excluding the Hotel Lease, the Parking/Meeting Lease and agreements under which Persons rent rooms, meeting space or parking at the Hotel.

“Lender” – means each financial institution from time-to-time party hereto as a “Lender”, together with its respective successors and permitted assigns. With respect to matters requiring the consent or approval of all Lenders at any given time, all then existing Defaulting Lenders will be disregarded and excluded, and, for voting purposes only, “all Lenders” shall be deemed to mean “all Lenders other than Defaulting Lenders”.

“Lending Office” means, for each Lender, the office of such Lender specified in such Lender’s Administrative Questionnaire or in the applicable Assignment and Assumption Agreement, or such other office of such Lender as such Lender may notify Administrative Agent in writing from time to time.

“Lien” – means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance (including, but not limited to, easements, rights-of-way, zoning restrictions and the like), lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including without limitation any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement or document having similar effect (other than a financing statement filed by a “true” lessor pursuant to Section 9408 (or a successor section) of the Uniform Commercial Code) naming the owner of the asset to which such Lien relates as debtor, under the Uniform Commercial Code or other comparable law of any jurisdiction.

“Liquidity” – shall have the meaning given to such term in Section 9.15.

“LLC” means any limited liability company formed under the laws of any State of the United States of America.

“LLC Division” means the division or divisive merger of any LLC into multiple entities or multiple series of the same entity pursuant to any Applicable Law, including pursuant to Section 18-217 of the Delaware Limited Liability Company Act, as amended from time to time.

“Loan” – shall have the meaning set forth in Recital D.

“Loan Account” – shall have the meaning given to such term in Section 2.9.

“Loan Documents” – means those documents, as hereafter amended, supplemented, replaced or modified, properly executed and in recordable form, if necessary, listed in Exhibit B as Loan Documents.

“Loan Party” and “Loan Parties” – shall have the meaning given in the preamble hereto.

“Loews Corporation” – means Loews Corporation, a Delaware corporation.

“Loews Guarantor” – means Loews Hotels Holding Corporation, a Delaware corporation.

“Losses” – shall have the meaning given to such term in Section 13.1.

“LP” means any limited partnership formed under the laws of any State or Commonwealth of the United States of America.

“LP Division” means the division or divisive merger of any LP into multiple entities or multiple series of the same entity pursuant to any Applicable Law, including, without limitation, pursuant to Section 17-220 of the Delaware Revised Uniform Limited Partnership Act, as amended from time to time.

“Management Agreement” – means individually and collectively (a) the Hotel Management Agreement, (b) the Catering Management Agreement, and (c) that certain Pre-Opening and Technical Services Agreement, dated as of June 16, 2017 between Manager and Hotel Owner (“Technical Services Agreement”) or any other management agreements entered into by Hotel Owner with a Manager in accordance with Section 9.7, as each may be amended, restated or otherwise modified from time to time in accordance with the terms of this Agreement, but specifically excluding sub-management contracts entered into by Manager in accordance with the terms of the Management Agreement.

“Manager” – means LH KC Operating Company, LLC, a Delaware limited liability company or any other Person that provides management services pursuant to a Management Agreement.

“Master Financing Agreement” means that certain Second Amended and Restated Master Financing Agreement, dated as of the Original Agreement Date, by and between the City and Hotel Owner (as successor-in-interest to KC Hotel Developers, LLC), as amended by that certain First Amendment to Second Amended and Restated Master Financing Agreement dated as of December 29, 2021, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Material Adverse Effect” – means a material adverse effect on (a) the business, assets, financial condition or performance of Hotel Owner taken as a whole, (b) the ability of Hotel Owner, Loews Guarantor or any other Guarantors to perform its material obligations under any Loan Document to which it is a party, (c) the validity or enforceability of any of the Loan Documents, (d) the rights and remedies of Lenders and Administrative Agent under any of the Loan Documents, or (e) the Property. For the avoidance of doubt, a Material Adverse Effect shall

not be deemed to have occurred as a result of any change, event or effect resulting from or arising out of changes or developments in financial or securities markets or the economy in general that does not disproportionately affect Hotel Owner, Loews Guarantor, or any other Guarantor in each case relative to its competitors.

“Material Agreements” – means, collectively, the Hotel Management Agreement, Hotel Lease and the Specified Documents, in each case as amended, restated or otherwise modified from time to time, and any other written contract entered into after the Original Agreement Date by Hotel Owner (either in its own name or as agent for the Borrower) in each case as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect, provided such other material contract is designated as a Material Agreement by the Administrative Agent.

“Maturity Date” – means either: (a) means the Original Maturity Date, as the same may be extended to the First Extended Maturity Date, Second Extended Maturity Date, Third Extended Maturity Date and Fourth Extended Maturity Date, in each case with accordance with the terms hereof; or (b) such earlier date or dates on which the final payment of principal of the Note(s) becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration, acceleration or otherwise.

“Member Distributions” – means the distribution by Hotel Owner of any money or other property to any direct or indirect equity owner of Hotel Owner, whether in the form of earnings, income or other proceeds from the Hotel, to the extent not otherwise prohibited pursuant to the terms of the Loan Documents.

“Monthly Insurance Deposit” – shall have the meaning given to such term in Section 9.25.

“Monthly Tax Deposit” – shall have the meaning given to such term in Section 9.24.

“NBH” – means NBH Bank, Colorado state-chartered bank.

“NBH Loan” – means the loan made by NBH to Hotel Owner pursuant to the NBH Loan Agreement in the maximum principal amount of \$35,400,728.10, which loan was repaid in full on December 29, 2021.

“NBH Loan Agreement” – means that certain Loan Agreement by and between NBH and Hotel Owner dated as of January 18, 2018.

“Net Worth” – shall have the meaning given to such term in Section 9.15.

“Non-Pro Rata Advance” – means a Protective Advance or a disbursement under the Loan with respect to which fewer than all Lenders have funded their respective Pro Rata Shares in breach of their obligations under this Agreement.

“Non-Recourse Carveout Guaranty” – means that certain Non-Recourse Carveout Guaranty dated as of the Original Agreement Date, made by Loews Guarantor in favor of Administrative Agent for the benefit of the Lenders, as amended, restated or otherwise modified from time to time.

“Note” or “Notes” – means each Promissory Note secured by the Deed of Trust, collectively in the original principal amount of the Loan, executed by Borrower and payable to the order of a Lender, together with such other replacement notes as may be issued from time to time pursuant to Section 13.13, as hereafter amended, supplemented, replaced, severed, consolidated or modified.

“Notice” – shall have the meaning given to such term in Section 13.4.

“Obligations” – shall have the meaning given to the term “Secured Obligations” in the Deed of Trust.

“OFAC” – means Office of Foreign Assets Control, Department of the Treasury.

“Operating Account” – shall have the meaning given to such term in Section 9.16(a).

“Operating Budget” – shall have the meaning given to such term in Section 10.1(c).

“Operating Equipment” – shall have the meaning given to such term in the definition of Gross Operating Expenses.

“Operating Supplies” – shall have the meaning given to such term in the definition of Gross Operating Expenses.

“Option to Extend” – as defined in Section 2.5(b).

“Other Connection Taxes” – means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient 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 any Loan or Loan Document).

“Other Related Documents” – means those documents, as hereafter amended, supplemented, replaced or modified from time to time, properly executed and in recordable form, if necessary, listed in Exhibit B as Other Related Documents.

“Other Taxes” – means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.12(b)).

“Overnight Rate” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

“Parking Management Agreement” means that certain Parking Management Agreement between Hotel Owner and SP Plus Corporation dated December 17, 2019.

“Parking/Meeting Improvements” – means all appurtenances, fixtures and improvements of every nature now or hereinafter located on the Parking/Meeting Parcel.

“Parking/Meeting Lease” – means, collectively, that certain (i) Lease Purchase Agreement, dated as of the Original Agreement Date, by and between the Borrower and the CID (the “Parking/Meeting Real Property Lease”), and (ii) the Personal Property Lease dated as of the Original Agreement Date, by and between Borrower and the CID (the “Parking/Meeting Personal Property Lease”) (in each case, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms hereof).

“Parking/Meeting Parcel” – shall have the meaning given in Recital C.

“Parking/Meeting Property Transfer” – shall have the meaning given to such term in Section 9.21(c)(ii).

“Parking/Meeting Real Personal Property Lease” – has the meaning given in the definition of “Parking/ Meeting Lease”.

“Parking/Meeting Real Property Lease” – has the meaning given in the definition of “Parking/ Meeting Lease”.

“Parking/Meeting Space” – means, collectively, the Parking/Meeting Parcel and Parking/Meeting Improvements and personal property leased to the CID pursuant to the Parking/Meeting Lease.

“Participant” – shall have the meaning given to such term in Section 13.13(b).

“Participant Register” – shall have the meaning given to such term in Section 13.13(b).

“Payment Date” – shall have the meaning given to such term in Section 2.6(a).

“Performing Defaulting Pfandbrief Lender” means any Lender that: (a) is a Defaulting Lender solely by reason of clause (c) of the definition thereof and is performing its funding obligations under the Loan Documents; and (b) has added its interest in the Loan into the cover pool for German Pfandbrief issued by it.

“Permit” – means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under any Applicable Law.

“Permitted Liens” – means:

- (a) Liens for taxes, assessments or charges of any Governmental Authority (including the CID Special Assessments and Liens, if any, securing the LCRA Loan) for

claims not yet due or which are being contested in good faith by appropriate proceedings in accordance with Section 13.7;

- (b) any laws, ordinances or regulations affecting the Property, including, without limitation, any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property;
- (c) Liens imposed by laws, such as mechanics' liens and other similar liens, arising in the ordinary course of business which either (i) secure payment of obligations not more than thirty (30) days past due, (ii) are removed of record by bonding or otherwise by a Loan Party (or its contractors) in a manner reasonably acceptable to Administrative Agent, or (iii) are being contested in good faith by appropriate proceedings in accordance with Section 13.7;
- (d) All matters shown on the Survey and on the Title Policy as exceptions to Administrative Agent's coverage thereunder;
- (e) Liens created by the Loan Documents in favor of Administrative Agent for the benefit of Lenders, including under the Deed of Trust;
- (f) Leases which (i) are subordinate to the Deed of Trust or (ii) are otherwise permitted hereunder, including the Hotel Lease and Parking/Meeting Lease;
- (g) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation and deposits securing liability to insurance carriers under insurance arrangements;
- (h) Liens in respect of customary rights of set off, revocation, refund or chargeback or similar rights under deposit, disbursement or concentration account agreements or under the UCC or arising by operation of law, of banks or other financial institutions where any Loan Party maintains deposit, disbursement or concentration accounts in the ordinary course of business;
- (i) deposits to secure the performance of bids, trade contracts (other than for borrowed money), FF&E contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (including, without limitation, deposits maintained with credit card transaction processors);
- (j) easements, rights-of-way, restrictions and other similar encumbrances entered into in the ordinary course of business which do not in any case materially detract from the value of any Loan Party's respective interest in the Property subject thereto or materially interfere with the operation of the Property or ordinary conduct of the business of the Hotel Owner;
- (k) the Use Agreement;
- (l) the Connector Agreement;



- (m) Liens permitted pursuant to Sections 6.23(f) below; and
- (n) any interest or title of a lessor or grantor under any leases or subleases or easement or similar agreement entered into by a Loan Party in accordance with the terms of this Agreement.

“Person” – means any natural person, corporation, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or any other nongovernmental entity, or any Governmental Authority.

“Plan of Division” means (i) with respect to a LLC, a plan of division adopted by such LLC as required by any applicable Governmental Authority in order to legally effectuate a LLC Division, including, without limitation, a plan of division as described in Section 18-217 of the Delaware Limited Liability Company Act, as amended from time to time, and (ii) with respect to a LP, a plan of division adopted by such LP as required by any applicable Governmental Authority in order to legally effectuate a LP Division, including, without limitation, a plan of division as described in Section 17-220 of the Delaware Revised Uniform Limited Partnership Act, as amended from time to time.

“Post-Foreclosure Plan” – shall have the meaning given to such term in Section 12.8.

“Prepayment Fee” – shall have the meaning given to such term in Section 2.2(b).

“Private Information” – shall have the meaning given to such term in Section 13.26.

“Pro Forma Debt Service” – means, on any day, the greater of: (x) the amount obtained by multiplying (a) an amount equal to the outstanding principal balance of the Loan on such day, by (b) the greater of (i) eight percent (8%) or (ii) a debt constant calculated by using the then prevailing rate on United States Treasury bonds with a maturity of ten (10) years plus the Applicable Spread and a 30-year amortization schedule; and (y) the amount obtained by multiplying (a) actual principal (if any) and interest due (taking into account the application of any Interest Rate Protection Agreement or AAIRPA then in place) pursuant to the Loan Documents as of the immediately preceding Payment Date, by (b) twelve (12).

“Prohibited Equity Transfer” – shall have the meaning given to such term in Section 9.22(a).

“Prohibited Property Transfer” – shall have the meaning given to such term in Section 9.21(a).

“Property” – means, collectively, the Land and the Improvements.

“Property Tax” – shall have the meaning given to such term in Section 9.23.

“Pro Rata Share” – means, as to each Lender, the ratio, expressed as a percentage, of (a) the amount of such Lender’s Commitment to (b) the aggregate amount of the Commitments of all Lenders, initially as set forth for such Lender on Schedule 1.1(b) attached hereto; provided,

however, that if at the time of determination the Commitments have terminated or been reduced to zero, the “Pro Rata Share” of each Lender shall be the Pro Rata Share of such Lender in effect immediately prior to such termination or reduction.

“Protective Advance” – means any advances made by Administrative Agent in accordance with the provisions of Section 12.7(e) to protect the Collateral securing the Loan.

“Public Information” – shall have the meaning given to such term in Section 13.26.

“Recipient” – means (a) the Administrative Agent and (b) any Lender, as applicable.

“Redevelopment Agreement” – means that certain Redevelopment Agreement, dated as of the Original Agreement Date, by and among the Commission, the Borrower and Hotel Owner (as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Register” – shall have the meaning given to such term in Section 13.13(c).

“Related Party” – shall have the meaning ascribed to such term in Section 13.16.

“Relevant Governmental Body” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“Requisite Lenders” – means, as of any date, Lenders (which must include the Lender then acting as Administrative Agent) having at least 66-2/3% of the aggregate amount of the Commitments, or, if the Commitments have been terminated or reduced to zero, Lenders holding at least 66-2/3% of the principal amount outstanding under the Loan, provided that, in each case, (a) in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded and the Pro Rata Shares of the Loan of Lenders shall be redetermined, for voting purposes only, to exclude the Pro Rata Shares of the Loan of such Defaulting Lenders, and (b) at all times when two or more Lenders are party to this Agreement, the term “Requisite Lenders” shall in no event mean less than two Lenders (unless there is only one Lender).

“Sales and Use Taxes” – means any sales, use, convention or other similar taxes arising or incurred with respect to the operation of the Property.

“Sanction” or “Sanctions” - means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority in any jurisdiction in which: (a) Hotel Owner, Borrower or any of their respective Affiliates is located or conducts business; (b) in which any of the proceeds of the Loan will be use; or (c) from which repayment of the Loan will be derived.

“Sanctioned Country” – means any country or territory that is itself a target of territorial or country-based Sanctions.

“Sanctioned Person” - means, at any time: (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including, without limitation, OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority; (b) any Person operating, organized or resident in a Sanctioned Country; (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s); or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

“Second Extended Maturity Date” – means December [\_\_\_\_], 2027.

“Senior Loans” – shall have the meaning given to such term in Section 12.4(b).

“Series A Bonds” – means those certain Taxable Project Revenue Bonds (Convention Center Hotel Project – CID Special Assessments) Series 2018A, issued by Borrower.

“Series B Bonds” – means those certain Project Revenue Bonds (Convention Center Hotel Project – TIF Financing) Series 2018B, issued by Borrower.

“Significant Party” – means each of Borrower, Hotel Owner, Loews Guarantor and any other Guarantor.

“SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“Sole Member” means KC Hotel Venture, LLC, a Delaware limited liability company.

“Specified Documents” shall have the meaning given to such term in the Intercreditor Agreement, provided that the NBH Loan Documents (as defined in the Intercreditor Agreement) shall not be considered a Specified Document for the purposes of this Agreement or any of the other Loan Documents.

“Spread Maintenance Premium” shall mean, with respect to any prepayment of the outstanding principal amount of the Loan made on or before [\_\_\_\_\_, 202\_] <sup>1</sup> (the “Spread Maintenance Date”) (other than any prepayments that do not require payment of the Prepayment Fee as provided in Section 2.2(b) of this Agreement), a payment to Lender in an amount equal to the excess, if any, of the amount of all interest due during the first full twenty-four (24) months of the term of the Loan less the amount of interest paid as of the date of prepayment on the outstanding principal amount of the loan with interest for the remaining period of the initial 24-month period calculated using the 30-day Term SOFR forward curve for such remaining period. Lender’s

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<sup>1</sup> NTD: the first day of the 25<sup>th</sup> full calendar month after closing.

calculation of the Spread Maintenance Premium shall be conclusive and binding on Hotel Owner and Borrower absent manifest error.

“Subdivision Map” – shall have the meaning given to such term in Section 9.4.

“Super-TIF Financing Agreement” – means that certain First Amended and Restated Super-TIF Financing Agreement, dated as of August 22, 2016, by and among the City, the Convention and Visitors Bureau of Greater Kansas City d/b/a VisitKC, a Missouri 501(c)(6) organization, the Commission and Hotel Owner (as successor in interest to Development Manager) as amended by that certain First Amendment to First Amended and Restated Super-TIF Financing Agreement dated as of December 29, 2021, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Survey” – shall have the meaning given to such term in Section 3.1(j).

“Taxes” – means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Tax Reserve Account” – shall have the meaning given to such term in Section 9.24.

“Technical Services Agreement” – shall have the meaning set forth in the definition of Management Agreement.

“Term SOFR” means,

(a) for any calculation with respect to a Loan bearing interest based on SOFR, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (Eastern Standard Time or Eastern Daylight Time, as applicable) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to the Base Rate on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Base Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (Eastern Standard Time or Eastern Daylight Time, as applicable) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been

published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Third Extended Maturity Date” – means December [\_\_\_\_], 2028.

“Title Company” – means First American Title Insurance Company.

“Title Policy” – means the ALTA Lender’s Policy of Title Insurance issued by the Title Company to Administrative Agent in connection with the initial closing of the Loan.

“Transfer” – means any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, in any case whether voluntarily, involuntarily or by operation of law or otherwise.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Uniform System of Accounts” – means the Uniform System of Accounts for the Lodging Industry, Eleventh Revised Edition, 2014, as published by the Educational Institute of the American Hotel & Lodging Association, as revised from time to time to the extent such revision has been or is in the process of being generally implemented within the system.

“Use Agreement” – means that certain Reciprocal Easement and Use Agreement, dated as of the Original Agreement Date, by and between, the CID and Hotel Owner, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“United States” - means the United States of America.

“U.S. Government Securities Business Day” - means any day except for (i) a Saturday, (ii) a Sunday or (iii) 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 United States government securities.

“U.S. Person” – means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” – shall have the meaning given to such term in Section 2.11(d)(ii)(B)(3).

“Wells Fargo” – shall have the meaning given to such term in the preamble hereto.

“Withholding Agent” – means any Loan Party and the Administrative Agent, as applicable.

“Write-Down and Conversion Powers” – means, with respect to any EEA Resolution Authority, the writedown and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**1.2. RATES.** Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.8(c), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Loan Parties. Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Loan Parties, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

**1.3. DIVISIONS.** For all purposes under the Loan Documents, in connection with any division or Plan of Division: (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person; and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

**1.4. SCHEDULES AND EXHIBITS INCORPORATED.** The Schedules and Exhibits attached hereto, are hereby incorporated into this Agreement.

## ARTICLE 2. LOAN

**2.1. LOAN.** By and subject to the terms of this Agreement, Lenders agree to lend to Borrower, and Borrower agrees to borrow from Lenders, the principal sum of One Hundred Ten Million and 00/100 Dollars (\$110,000,000.00), said sum to be evidenced by the Notes. The Notes shall be secured, in part, by the Borrower Deed of Trust encumbering the Borrower's right, title and interest in and to the Property. One Hundred Seven Million and 00/100 Dollars (\$107,800,000.00) of the Loan is outstanding as of the Effective Date and Three Million and 00/100 Dollars (\$2,200,000.00) shall be disbursed on the Effective Date to Hotel Owner. Therefore the Loan Parties shall not be entitled to request further Loan disbursements after the Effective Date. Notwithstanding the foregoing, the outstanding balance of the Loan may decrease from time to time, or may increase from time to time a result of protective advances or other discretionary disbursements by Lenders, but the total amount of such secured indebtedness shall not exceed the maximum principal amount equal to double the face amount of the Notes plus interest, and any advances or disbursements made for the benefit or protection of or the payment of taxes, assessments, levies or insurance upon the Property with interest on such disbursements as provided herein.

### **2.2. LOAN FEES.**

(a) Loan Parties shall pay to Administrative Agent (for the benefit of itself or such other parties as referenced in the Fee Letter) such fees as set forth in the Fee Letter. There are no fees outstanding pursuant to any fee letter executed prior to the Effective Date. All fees paid by any Loan Party pursuant to any fee letter executed prior to the Effective Date shall be deemed to be earned in full and non-refundable.

(b) **Prepayment Fee.** In connection with any prepayment of the Loan, in whole or in part, pursuant to Section 2.7(c) prior to the Spread Maintenance Date, Hotel Owner shall pay to Administrative Agent for the benefit of the Lenders a prepayment fee in an amount equal to the greater of (i) one percent (1.0%) of the amount of the Loan being prepaid and (ii) the Spread Maintenance Premium (as applicable, the "Prepayment Fee"). After the Spread Maintenance Date, Loan Parties may prepay the Note, in whole or in part, without payment of the Prepayment Fee, any other fee or penalty except for any Breakage Costs. Notwithstanding the foregoing, no Prepayment Fee shall be payable with respect to a prepayment in whole or in part (i) upon application of casualty or insurance proceeds to the principal balance of the Loan, (ii) otherwise as the result of a casualty or condemnation with respect to the Property or (iii) in connection with the payment of the DSCR Shortfall to achieve the DSCR Hurdle pursuant to Section 9.16(g). Furthermore, notwithstanding anything to the contrary in this Agreement or any other Loan Document, Hotel Owner's failure to make the DSCR Shortfall shall not constitute an Event of Default under this Agreement or any of the Loan Documents.

**2.3. LOAN DOCUMENTS.** Loan Parties have executed (to the extent applicable) and delivered to Administrative Agent (or caused to be executed, to the extent applicable, and delivered) concurrently with this Agreement, properly executed and in recordable form, as applicable, each of the documents described in Exhibit B as Loan Documents.

**2.4. EFFECTIVE DATE.** The “Effective Date” shall be the date of this Agreement.

**2.5. MATURITY DATE.**

(a) All sums due and owing under this Agreement and the other Loan Documents shall be repaid in full on or before the Maturity Date. All payments due to Administrative Agent and Lenders under this Agreement, whether at the Maturity Date or otherwise, shall be paid in Dollars in immediately available funds.

(b) Options to Extend. Hotel Owner shall have the right, on behalf of Loan Parties, to extend the term of the Loan from (i) the Initial Maturity Date to the First Extended Maturity Date, Second Extended Maturity Date, Third Extended Maturity Date or Fourth Extended Maturity Date, (ii) if applicable, the First Extended Maturity Date to the Second Extended Maturity Date, Third Extended Maturity Date or Fourth Extended Maturity Date, (iii) if applicable, the Second Extended Maturity Date to the Third Extended Maturity Date or Fourth Extended Maturity Date, or (iv) if applicable, the Third Extended Maturity Date to the Fourth Extended Maturity Date, (individually and collectively, the “Option to Extend”) upon satisfaction of each and every one of the following conditions precedent (the “Extension Conditions”):<sup>2</sup>

- (i) Hotel Owner shall have given Administrative Agent written notice (“Extension Notice”) of its intent to exercise the applicable Option to Extend not less than thirty (30) days prior to the then applicable Maturity Date;
- (ii) As of the date of Hotel Owner’s delivery of each Extension Notice, and as of the then applicable Maturity Date, no Event of Default shall have occurred and be continuing, and no event or condition which, with the giving of notice or the passage of time or both, would constitute an Event of Default shall have occurred and be continuing;
- (iii) Hotel Owner shall have paid all reasonable legal fees and expenses actually incurred by Administrative Agent in connection any review of the Interest Rate Protection Agreement or assignment thereof as required pursuant to the terms of Section 9.14; and
- (iv) Hotel Owner shall enter into an Interest Rate Protection Agreement in accordance with the terms of Section 9.14 or that is otherwise reasonably acceptable to Requisite Lenders and Hotel Owner shall provide written evidence of same reasonably acceptable to Administrative Agent.

(c) At such time as Administrative Agent has determined whether the Extension Conditions have or have not been satisfied, Administrative Agent shall promptly notify Loan Parties in writing thereof, which shall be no later than 10 days after Hotel Owner delivery of the Extension Notice. To the extent the Extension Conditions have not been satisfied, Administrative Agent shall include in such notice the specific condition and/or conditions which have not been

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<sup>2</sup> NTD: The possibility of a 2+1+1+1 extension option is also under discussion.



satisfied, and if such conditions are satisfied prior to the then current Maturity Date, as reasonably determined by Administrative Agent, the Extension Conditions will be deemed satisfied.

## **2.6. INTEREST ON THE LOAN.**

(a) **Monthly Interest Payments.** Interest accrued on the outstanding principal balance of the Loan shall be due and payable, in the manner provided in Section 2.7, on the first (1<sup>st</sup>) day of each month (“Payment Date”) commencing with the first month after the date the initial advance of Loan proceeds is made hereunder.

(b) **Default Interest.** Notwithstanding the rates of interest specified in Section 2.6(e) below and the Payment Date specified in Section 2.6(a), at Requisite Lenders’ discretion at any time following the occurrence and during the continuance of any Event of Default or at the times provided in Section 11.2, the principal balance of the Loan then outstanding and, to the extent permitted by Applicable Law, any interest payments on the Loan not paid when due, and all other amounts due Administrative Agent or Lenders (whether directly or for reimbursement) under this Agreement or any of the other Loan Documents if not paid when due, or if no time period is expressed, if not paid within ten (10) days after demand, shall likewise, at the option of Requisite Lenders, shall bear interest from and after demand at the Alternate Rate until paid.

(c) **Late Fee.** Loan Parties acknowledge that late payment to Administrative Agent will cause Administrative Agent and Lenders to incur costs not contemplated by this Agreement. Such costs include, without limitation, processing and accounting charges. Therefore, if the Loan Parties fail timely to pay any sum due and payable hereunder through the Maturity Date (other than payment of the entire outstanding balance of the Loan on the Maturity Date), unless waived by Administrative Agent, a late charge of four cents (\$.04) for each dollar of any such principal payment, interest or other charge due hereon and which is not paid within fifteen (15) days after such payment is due, shall be charged by Administrative Agent (for the benefit of Lenders) and paid by the Loan Parties for the purpose of defraying the expense incident to handling such delinquent payment. Loan Parties and Administrative Agent agree that this late charge represents a reasonable sum considering all of the circumstances existing on the Effective Date and represents a fair and reasonable estimate of the costs that Administrative Agent and Lenders will incur by reason of late payment. Loan Parties and Administrative Agent further agree that proof of actual damages would be costly and inconvenient. Acceptance of any late charge shall not constitute a waiver of the default with respect to the overdue installment, and shall not prevent Administrative Agent from exercising any of the other rights available hereunder or any other Loan Document. Such late charge shall be paid without prejudice to any other rights of Administrative Agent.

(d) **Computation of Interest.** Interest shall be computed on the basis of the actual number of days elapsed in the period during which interest or fees accrue and a year of three hundred sixty (360) days on the principal balance of the Loan outstanding from time to time. In computing interest on the Loan, the date of the making of a disbursement under the Loan shall be included and the date of payment shall be excluded. Notwithstanding any provision in this Section 2.6, interest in respect of the Loan shall not exceed the maximum rate permitted by Applicable Law.

(e) **Effective Rate.** Subject to Section 2.8, provided that no Event of Default then exists, the “Effective Rate” upon which interest shall be calculated for the Loan shall, prior to the Effective Date, be as set forth in the First A&R Loan Agreement, and from and after the Effective Date, be the Calculated Interest Rate on the Effective Date, as determined by Administrative Agent. Such Effective Rate shall apply to such principal amount from the Effective Date through and including the date immediately preceding the first (1st) Business Day of the next calendar month. Commencing with the first (1st) Business Day of the first (1st) calendar month after the Effective Date, and continuing thereafter on the first (1st) Business Day of each succeeding calendar month, the Effective Rate on the outstanding Benchmark Portion of the Loan (i.e., all outstanding principal on such first (1st) Business Day) shall be reset to the Calculated Interest Rate, as determined by Administrative Agent to be effective on each such first (1st) Business Day. Upon the occurrence and during the existence of an Event of Default, the Effective Rate applicable to the Loan shall, at Administrative Agent’s option, upon the expiration of the Interest Period in effect upon the occurrence of such Event of Default, automatically convert to and continue to be the Base Rate plus the Applicable Spread, unless and until such Event of Default is waived in writing in accordance with the provisions of this Agreement. Further, the Loan may bear interest at the Alternate Rate subject to the provisions of Section 2.6(b).

(f) **Maximum Rate.** In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law that a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and Lenders shall at Administrative Agent’s option: (i) promptly refund to Hotel Owner any interest received by Lenders in excess of the maximum lawful rate; or (ii) apply such excess to the principal balance of the Obligations. It is the intent hereof that Hotel Owner not pay or contract to pay, and that neither Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Hotel Owner under Applicable Law.

(g) **Term SOFR Conforming Changes.** In connection with the use or administration of Term SOFR, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. Administrative Agent will promptly notify Loan Parties and Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR. Term SOFR Conforming Changes shall be applied in matter that is not arbitrary and is consistent with Administrative Agent’s standard practices.

## **2.7. PAYMENTS.**

(a) **Manner and Time of Payment.** All payments of principal, interest and fees hereunder payable to Administrative Agent or the Lenders shall be made without condition or reservation of right and free of set-off or counterclaim, in Dollars and by wire transfer (pursuant to Administrative Agent’s written wire transfer instructions) of immediately available funds, to

Administrative Agent, for the account of each Lender as applicable, not later than 2:00 P.M. (New York time) on the date due; and funds received by Administrative Agent after that time and date shall be deemed to have been paid on the next succeeding Business Day. Amounts repaid (or prepaid) by Loan Parties hereunder shall be permanently cancelled and may not be re-borrowed.

(b) **Payments on Non-Business Days.** Whenever any payment to be made by the Loan Parties hereunder shall be stated to be due on a day which is not a Business Day, payments shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder and of any fees due under this Agreement, as the case may be. [If the Maturity Date is not a Business Day, then repayment of the entire principal amount of the Loan and all other Obligations shall be due on the preceding Business Day.<sup>3</sup>]

(c) **Voluntary Prepayment.** Hotel Owner may, upon not less than three (3) Business Days prior written notice to Administrative Agent (to be received by Administrative Agent not later than 11:00 A.M. (New York time) on the date given), at any time and from time to time, prepay all or any portion of the Loan without premium or penalty, except as otherwise expressly set forth in this Section 2.7(c), or Section 2.2(b). Any notice of prepayment given to Administrative Agent under this Section 2.7(c) shall specify the date of prepayment and the principal amount of the prepayment. In the event of a prepayment of any Benchmark Portion, Hotel Owner shall concurrently pay any Breakage Costs payable in respect thereof pursuant to Section 2.6(h). In addition to the foregoing, in connection with any prepayment (voluntary or involuntary), whenever made, any sums payable by Hotel Owner to the Counterparty in connection with the early termination or partial termination of the Interest Rate Protection Agreement, if any, shall be simultaneously paid. Any principal balance reduction shall reduce Lenders' Commitment by a like amount, and any such amounts repaid by Loan Parties may not be re-borrowed.

(d) **Direct Debit.** In order to assure timely payment to Administrative Agent, for the benefit of Lenders, of accrued interest, principal, fees and late charges due and owing under the Loan, each Loan Party hereby irrevocably authorizes Administrative Agent to directly debit the Operating Account (or a different disbursement account designated by Hotel Owner and reasonably approved by Administrative Agent) for payment when due of all such amounts payable to Administrative Agent or any Lender. Hotel Owner represents and warrants to Administrative Agent and Lenders that Hotel Owner is the legal owner of the Operating Account (or such different disbursement account designated by Hotel Owner and reasonably approved by Administrative Agent). Written confirmation of the amount and purpose of any such direct debit shall be given to Hotel Owner by Administrative Agent not less frequently than monthly. In the event any direct debit hereunder is returned for insufficient funds, Hotel Owner shall pay Administrative Agent, for the benefit of Lenders, upon demand, in immediately available funds, all amounts and expenses due and owing, including, without limitation, any late fees incurred, to Administrative Agent or any Lender.

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<sup>3</sup> NTD: Upon initial confirmation of date that is 5 years from Closing, parties to determine whether this provision is required.

## 2.8. CHANGED CIRCUMSTANCES.

(a) Circumstances Affecting Benchmark Availability. Subject to clause (c) below, if for any reason (i) Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining Term SOFR for the applicable Interest Period with respect to the Benchmark Portion on or prior to the first day of such Interest Period or (ii) the Requisite Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that Term SOFR does not adequately and fairly reflect the cost to such Lender of making or maintaining the Loan during such Interest Period and, in the case of clause (ii), the Requisite Lenders have provided notice of such determination to Administrative Agent then, in ease case, Administrative Agent shall promptly give notice thereof to Hotel Owner and Borrower. Thereafter, unless Loan Parties repay in full (or cause to be repaid in full) the then outstanding principal amount of the Loan, together with accrued interest thereon and the payment of any amounts payable pursuant to Section 2.2(b) (subject to Section 2.6(f)), on the last day of the then current Interest Period, on the day following the last day of the then current Interest Period and thereafter, until Administrative Agent (with respect to clause (ii), at the instruction of the Requisite Lenders) notifies Hotel Owner and Borrower that such circumstances no longer exist, Loan will accrue interest at the Base Rate plus the Applicable Spread. Upon any such prepayment or conversion, Loan Parties shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.9.

(b) Laws Affecting SOFR Availability. If, after the Effective Date, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain the Loan using SOFR, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate or Term SOFR, such Lender shall promptly give notice thereof to Administrative Agent and Administrative Agent shall promptly give notice to Hotel Owner and Borrower and the other Lenders. Thereafter, until each affected Lender notifies the Administrative Agent and the Administrative Agent notifies the Borrower and Hotel Owner that the circumstances giving rise to such determination no longer exist, the Loan shall accrue interest at the Base Rate plus the Applicable Spread and the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of “Base Rate” until Administrative Agent is advised in writing by each affected Lender to that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR, the Term SOFR Reference Rate or Term SOFR.

(c) Benchmark Replacement Setting.

(i) Benchmark Replacement.

(A) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition

Event, Administrative Agent, Hotel Owner and Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Administrative Agent has posted such proposed amendment to all Lenders, Hotel Owner and Borrower so long as Administrative Agent has not received, by such time, written notice of objection to such amendment from Hotel Owner or the Lenders comprising the Requisite Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.8(c)(i) will occur prior to the applicable Benchmark Transition Start Date.

- (B) No Interest Rate Protection Agreement shall be deemed to be a “Loan Document” for purposes of this Section 2.8(c).
- (ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.
- (iii) Notices; Standards for Decisions and Determinations. Administrative Agent will promptly notify Hotel Owner, Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Administrative Agent will promptly notify Hotel Owner and Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.8(c)(iv). Any determination, decision or election that may be made by Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.8(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.8(c).
- (iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not

displayed on a screen or other information service that publishes such rate from time to time as selected by Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

- (v) Benchmark Unavailability Period. Upon Hotel Owner’s and Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, Hotel Owner and Borrower may revoke any pending request for a borrowing and, until the end of the Benchmark Unavailability Period, the entire outstanding principal amount of the Loan will be converted to a Loan bearing interest at the Base Rate plus the Applicable Spread. During any Benchmark Unavailability Period, the component of Base Rate based upon Term SOFR will not be used in any determination of Base Rate.
- (vi) Benchmark Transition Costs. Hotel Owner hereby agrees to promptly pay to Administrative Agent for the account of any Lender, upon demand, any additional amounts necessary to compensate Lenders for any costs incurred by any Lender in connection with any Benchmark Transition Event and the related conversion of the Effective Rate in accordance with this Agreement. Administrative Agent’s notice of such costs, as certified to Hotel Owner and Borrower, shall be conclusive absent manifest error.

**2.9. INDEMNITY.** Hotel Owner agrees to indemnify Administrative Agent and each Lender and to hold Administrative Agent and each Lender harmless from any loss, cost or expense (including any loss, cost or expense arising from the liquidation or reemployment of funds but excluding consequential and punitive damages) that Administrative Agent and/or any Lender sustains or incurs as a consequence of: (a) any failure by Hotel Owner or Borrower to make any payment when due of any amount due hereunder in connection with the Loan; (b) [intentionally omitted]; (c) any failure of Hotel Owner or Borrower to prepay any portion of the Loan on a date specified therefor by Hotel Owner, Borrower and Administrative Agent, (d) any payment or prepayment (in each case, whether voluntary or mandatory) of any Loan other than on the Payment Date therefor (including as a result of an Event of Default) or (e) the assignment of any Loan other than on the Payment Date at the request of Hotel Owner or Borrower (the amounts referred to in clauses (a), (b), (c), (d) and (e) are herein referred to collectively as the “Breakage Costs”); provided, however, Hotel Owner shall not indemnify Administrative Agent or any Lender from

any loss or expense arising from such Person's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final non-appealable judgment. This provision shall survive payment and performance of the Obligations in full.

## **2.10. INCREASED COSTS.**

(a) Increased Costs Generally. If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the FRB, as amended and in effect from time to time)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender;
- (ii) subject any Recipient to any Taxes (other than: (A) Indemnified Taxes; (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes; and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or
- (iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or the Loan made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining the Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender or other Recipient, Hotel Owner shall promptly pay to any such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitment of such Lender or the Loan made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time upon written request of such Lender, Hotel Owner shall promptly pay to such Lender such

additional amount or amounts as will compensate such Lender or such holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or such other Recipient setting forth the amount or amounts necessary to compensate such Lender or such other Recipient or any of their respective holding companies, as the case may be, as specified in subsection (a) or (b) of this Section 2.10 and delivered to the Loan Parties, shall be conclusive absent manifest error. Hotel Owner shall pay such Lender or such other Recipient, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such other Recipient's right to demand such compensation; provided, however, that Hotel Owner shall not be required to compensate any Lender or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Lender or such other Recipient, as the case may be, notifies the Loan Parties of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or such other Recipient's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to herein shall be extended to include the period of retroactive effect thereof).

(e) Survival. All of the obligations of the Loan Parties under this Section 2.10 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**2.11. TAXES.** For purposes of this Section, the term "Applicable Law" includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Significant Party shall be increased as necessary so that after such deduction or withholding has been made the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Indemnification by the Loan Parties. Hotel Owner shall indemnify each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Lender or required to be withheld or deducted from a payment to such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such



Indemnified 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 the Loan Parties by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on behalf of a Lender, shall be conclusive absent manifest error.

(c) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Hotel Owner have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of Hotel Owner to do so), (ii) any Taxes attributable to such Lender's failure to comply with any of its obligations in connection with the provisions of Section 13.13(b) relating to maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such 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 any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this subsection (c).

(d) Status of Lenders.

- (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Loan Parties and the Administrative Agent, at the time or times reasonably requested by the Loan Parties or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Loan Parties or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Loan Parties or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Loan Parties or the Administrative Agent as will enable the Loan Parties or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in the paragraphs (ii)(A), (ii)(B) and (ii)(D) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.
- (ii) Without limiting the generality of the foregoing, in the event that the Loan Parties are a U.S. Persons:

- (A) any Lender that is a U.S. Person shall deliver to the Loan Parties and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Loan Parties or the Administrative Agent), two (2) executed originals of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;
- (B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Loan Parties and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Loan Parties or the Administrative Agent), whichever of the following is applicable:
- (1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;
  - (2) executed originals of IRS Form W-8ECI;
  - (3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit P-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a Loan Party within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or
  - (4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate

substantially in the form of Exhibit P-2 or Exhibit P-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-4 on behalf of each such direct and indirect partner;

- (C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Loan Parties and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Loan Parties or the Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Loan Parties or the Administrative Agent to determine the withholding or deduction required to be made; and
- (D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Loan Parties and the Administrative Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Loan Parties or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Loan Parties or the Administrative Agent as may be necessary for the Loan Parties and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each 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 the Loan Parties and the Administrative Agent in writing of its legal inability to do so.

(e) Status of Administrative Agent. At least five (5) Business Days prior to the first day on which fees are payable hereunder for the account of Administrative Agent or at the request of the Loan Parties, Administrative Agent shall furnish the Loan Parties with a properly completed executed copy of IRS Form W-8BEN-E, IRS Form W-8ECI or IRS Form W-9, as applicable, and any other properly completed and executed documentation reasonably requested by the Loan Parties as will permit such payments to be made without withholding. If any form or certification Administrative Agent previously delivered expires or becomes obsolete or inaccurate in any respect, Administrative Agent shall update such form or certification or promptly notify the Loan Parties in writing of its legal inability to do so. Administrative Agent shall comply at all times with all applicable United States laws and regulations, including all provisions of any applicable tax treaty, with regard to any withholding tax exemption or reduction to which Administrative Agent is entitled with respect to any payments made under any Loan Document.

(f) Intentionally Omitted.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.11 (including by the payment of additional amounts pursuant to this Section 2.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this section with respect to the Taxes giving rise to such refund) net of all out-of-pocket expenses (including Taxes) of such indemnified party, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.11(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.11(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.11(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.11(g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

## **2.12. MITIGATION OBLIGATIONS; REPLACEMENT OF LENDERS.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.10, or requires Hotel Owner to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.11, then such Lender shall, at the request of Hotel Owner, use reasonable efforts to

designate a different Lending Office for funding or booking the Loan or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment: (i) would eliminate or reduce amounts payable pursuant to Section 2.10 or Section 2.11, as the case may be, in the future; and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Hotel Owner hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.10, or if Hotel Owner is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.11, and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 2.12(a), or if any Lender is a Defaulting Lender, then Hotel Owner may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 13.13), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.10 or Section 2.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

- (i) Hotel Owner shall have paid to Administrative Agent the assignment fee (if any) specified in Section 13.13;
- (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loan, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.9) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Hotel Owner (in the case of all other amounts);
- (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.10 or payments required to be made pursuant to Section 2.11, such assignment shall result in a reduction in such compensation or payments thereafter; and
- (iv) such assignment does not conflict with Applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Loan Parties to require such assignment and delegation cease to apply.

Each party hereto agrees that: (A) an assignment required pursuant to this Section 2.12 may be effected pursuant to an Assignment and Assumption Agreement executed by the Loan Parties, Administrative Agent and the assignee; and (B) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to

and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender or Administrative Agent; provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

(c) Selection of Lending Office. Subject to Section 2.12(a), each Lender may make the Loan to Borrower through any Lending Office; provided that the exercise of this option shall not affect the obligations of the Loan Parties to repay the Loan in accordance with the terms of this Agreement or otherwise alter the rights of the parties hereto.

**2.13. FULL REPAYMENT AND SATISFACTION/ASSIGNMENT.** Upon receipt of all sums owing and outstanding under the Loan Documents, and the full payment and performance of all other obligations secured by the Deed of Trust, Administrative Agent shall issue a full satisfaction or assignment of the Deed of Trust (or, upon Hotel Owner's request, Administrative Agent shall cause the Lenders to assign their promissory notes and shall assign the Deed of Trust, without recourse to Loan Parties or their designee or designees, provided, that as a condition to each of the foregoing, Loan Parties shall reimburse Administrative Agent and Lenders for their reasonable out of pocket expenses incurred in connection therewith, including reasonable attorneys' fees); provided, however, that prior to any such release, satisfaction or assignment, the Administrative Agent, for the benefit of Lenders, shall have received all escrow, closing and recording costs, the costs of preparing and delivering such satisfaction and/or assignment and any sums then due and payable under the Loan Documents. Any repayment shall be without prejudice to any Loan Party's obligations under any AAIRPA between any Loan Party and Lender, which shall remain in full force and effect subject to the terms of such AAIRPA (including provisions that may require a reduction, modification or early termination of a swap transaction, in whole or in part, in the event of such repayment, and may require a Loan Party to pay any fees or other amounts for such reduction, modification or early termination), and no such fees or amounts shall be deemed a penalty hereunder or otherwise. In the event of an irreconcilable conflict between this Section 2.13 and Section 5.12 of any Deed of Trust, the provisions of this Section 2.13 shall control.

**2.14. LENDERS' ACCOUNTING.** Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Loan Parties, shall maintain a loan account (the "Loan Account") on its books in which shall be recorded (a) the names and addresses and the Pro Rata Shares of the Commitment of each of the Lenders, and principal amount of (and interest on) the Loan owing to each Lender from time to time, and (b) all repayments of principal and payments of accrued interest, as well as payments of fees required to be paid pursuant to this Agreement. All entries in the Loan Account shall be made in accordance with Administrative Agent's customary accounting practices as in effect from time to time. Monthly or at such other interval as is customary with Administrative Agent's practice (but not less than monthly), Administrative Agent will render a statement of the Loan Account to the Loan Parties and will deliver a copy thereof to each Lender. Each such statement shall be deemed final, binding and conclusive in all respects as to all matters reflected therein (absent manifest error).

The Loan Parties, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Loan Account pursuant to the terms hereof as a Lender hereunder for all

purposes of this Agreement. The Loan Account shall be available for inspection by the Loan Parties and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Loan Parties, shall maintain electronically (and make available through one of its offices in the United States) a copy of each Assignment and Assumption Agreement entered into pursuant to Section 2.12 or Section 13.13.

**2.15. MONTHLY PRINCIPAL PAYMENTS.** If the Maturity Date has been extended to the (i) Third Extended Maturity Date, then commencing on [\_\_\_\_] 1, 202[\_\_\_\_]<sup>4</sup> and on each Payment Date thereafter up to and including, [\_\_\_\_] 1, 202[\_\_\_\_]<sup>5</sup>, Borrower shall make a principal repayment in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00), and (ii) Fourth Extended Maturity Date, then commencing on [\_\_\_\_] 1, 202[\_\_\_\_]<sup>6</sup> and on each Payment Date thereafter up to and including, [\_\_\_\_] 1, 202[\_\_\_\_]<sup>7</sup>, Borrower shall make a principal repayment in the amount of Two Hundred Thousand and No/100 Dollars (\$200,000.00).

**2.16. CREDIT FOR PRINCIPAL PAYMENTS.** Any payment made upon the outstanding principal balance of the Loan shall be credited as of the Business Day received, provided such payment is received by Administrative Agent no later than 2:00 p.m. (Eastern Standard Time or Eastern Daylight Time, as applicable) and constitutes immediately available funds. Any principal payment received after said time or which does not constitute immediately available funds shall be credited upon such funds having become unconditionally and immediately available to Administrative Agent.

### ARTICLE 3. CONDITIONS TO EFFECTIVENESS

**3.1. CONDITIONS PRECEDENT.** The effectiveness of this Agreement is subject to the Loan Parties' compliance with and/or satisfaction (as the context so requires) of, each of the following conditions precedent, in each case, to the satisfaction of Administrative Agent in its reasonable discretion:

(a) Intentionally Omitted; and

(b) Hotel Owner shall have fulfilled the insurance requirements required under Article 5 of this Agreement and Administrative Agent and its consultants shall have approved the same; and

(c) On or before the Effective Date, Administrative Agent shall have reviewed and approved, in its reasonable discretion, the fully executed Management Agreement and fully executed versions of all of the other Material Agreements; and

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<sup>4</sup> NTD: 37<sup>th</sup> month from closing.

<sup>5</sup> NTD: 48<sup>th</sup> month from closing.

<sup>6</sup> NTD: 49<sup>th</sup> month from closing.

<sup>7</sup> NTD: 59<sup>th</sup> month from closing.

(d) As of the Effective Date, there shall exist no Event of Default or monetary or material non-monetary Default, as defined in this Agreement; and

(e) Intentionally Omitted; and

(f) Intentionally Omitted; and

(g) Payment by Loan Parties of all fees and expenses required by this Agreement or the Fee Letter, to the extent due and payable, including, without limitation, Administrative Agent's reasonable attorneys' fees and expenses, and delivery to Administrative Agent of an original counterpart of the Fee Letter, duly executed by Borrower and Hotel Owner; and

(h) On or before the Effective Date, the Loan Documents shall have been duly executed (to the extent applicable) and delivered by the parties thereto and shall be in full force and effect, and Administrative Agent shall have received the originals or fully executed counterparts thereof; and

(i) Intentionally Omitted; and

(j) On or prior to the Effective Date, Hotel Owner shall have delivered to Administrative Agent a boundary survey, certified by a land surveyor registered as such in the State of Missouri, which survey shall otherwise be in form and substance reasonably satisfactory to Administrative Agent (the "Survey"); and

(k) Intentionally Omitted; and

(l) On or before the Effective Date, Hotel Owner shall have delivered to Administrative Agent an endorsement to the Title Policy (which evidences or does not otherwise disclose the failure of, inter alia, the payment of all applicable mortgage recording taxes, intangibles taxes and other taxes due in connection with the recordation of the Deed of Trust, and payment in full for the Title Policy) reasonably satisfactory in all respects to Administrative Agent, dated the date of the Effective Date; and

(m) On or before the Effective Date, (i) Loews Guarantor shall have delivered to Administrative Agent certified copies of such parties' respective financial statements (in the form required and to the extent required by Article 10 for such party) and corporate or other organizational documents, and (i) Hotel Owner and Sole Member shall have delivered to Administrative Agent certified copies of their organizational documents, in each case the same shall be acceptable to Administrative Agent in all respects; and

(n) On or before the Effective Date, Administrative Agent shall have received opinions of legal counsel reasonably satisfactory to Administrative Agent in form and content reasonably satisfactory to Administrative Agent and its counsel to the effect that: (a) upon due authorization and execution as may be specified in the opinion, each of the Loan Documents shall be or continue to be legal, valid and binding instruments, enforceable against the makers thereof in accordance with their respective terms (subject to usual and customary qualifications and assumptions); (b) Borrower, Hotel Owner and Loews Guarantor are duly formed and have all requisite authority



to enter into the Loan Documents; and (c) such other matters, incident to the transactions contemplated hereby, as Administrative Agent may reasonably request; and

(o) On or before the Effective Date, Administrative Agent shall have received an Appraisal (the costs of which Hotel Owner has agreed to reimburse Administrative Agent on or before the Effective Date); and

(p) On or before the Effective Date, Hotel Owner shall have delivered to Administrative Agent (and Administrative Agent shall have approved) a comprehensive copy of each Other Related Document listed on Exhibit B attached hereto together with estoppel certificates, in form and substance reasonably satisfactory to Administrative Agent and each Lender, from those third-party Persons as requested by Administrative Agent; and

(q) On or before the Effective Date, Hotel Owner shall have opened the Accounts as and when required pursuant to the terms hereof; and

(r) Intentionally Omitted; and

(s) Intentionally Omitted; and

(t) On or before the Effective Date, Loan Parties shall have executed and delivered to Lender a Disbursement Instruction Agreement in the form attached hereto as Exhibit H.

**3.2. ACCOUNT PLEDGE AND ASSIGNMENT, AND DISBURSEMENT AUTHORIZATION.** Account funds, when qualified for disbursement, shall be deposited by Administrative Agent into the Operating Account or otherwise disbursed to or for the benefit or account of Loan Parties under the terms of this Agreement; provided, however, that any direct disbursements which are made by means of wire transfer, shall be subject to the provisions of any funds transfer agreement which is identified in Exhibit B hereto. Disbursements hereunder may be made by Administrative Agent upon the written request of any person who has been authorized by Loan Parties to request such disbursements until such time as written notice of Loan Parties' revocation of such authority is received by Administrative Agent.

**3.3. PLEDGE AND ASSIGNMENT.** As security for payment and the performance by Loan Parties of all other terms, conditions and provisions of the Loan Documents, Hotel Owner hereby pledges and assigns to Administrative Agent on behalf of the Lenders, and grant to Administrative Agent a security interest in, all of the Hotel Owner's right, title and interest in and to the Accounts. The Loan Parties shall not, without obtaining the prior written consent of Administrative Agent, further pledge, assign or grant any security interest in any Account, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC Financing Statements, except those naming Administrative Agent as the secured party, to be filed with respect thereto. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. During the continuance of an Event of Default, Administrative Agent may apply any sums in any Account in any order and in any manner as Administrative Agent shall elect in Administrative Agent's discretion without seeking the appointment of a receiver and without adversely affecting the rights of Administrative Agent and the Lenders to foreclose the Lien of either Deed of Trust or exercise their other rights under the Loan Documents. The Accounts shall not constitute trust funds and may be commingled with

other monies held by Administrative Agent. The Accounts shall each be non-interest-bearing accounts. Loan Parties shall not have the right to withdraw funds from or otherwise control any of the Accounts, except to the extent specifically set forth herein. Upon payment of the Loan in full and performance by Loan Parties of all other terms, conditions and provisions of the Loan Documents, all remaining funds in the Accounts, if any, shall be promptly disbursed to the respective Loan Party. Loan Parties shall not take any action or inaction which would cause the representations and warranty set forth in Section 6.30 to be breached or rendered untrue.

**3.4. LOAN DISBURSEMENTS.** All disbursements shall be held by Loan Parties in trust and applied by Loan Parties solely for the purposes for which the funds have been disbursed. Administrative Agent and Lenders have no obligation to monitor or determine Loan Parties' use or application of the disbursements.

**3.5. FUNDS TRANSFER DISBURSEMENTS.** Loan Parties hereby authorize Administrative Agent, to disburse Account funds pursuant to the Loan Documents as requested by an authorized representative of the Hotel Owner to the Operating Account pursuant to a Disbursement Instruction Agreement in the form attached hereto as Exhibit H. Loan Parties agree to be bound by any transfer request: (i) authorized or transmitted by Hotel Owner; or (ii) made in any Hotel Owner's name and accepted by Administrative Agent in good faith and in compliance with these transfer instructions, even if not properly authorized by Hotel Owner. Loan Parties further agree and acknowledge that Administrative Agent may rely solely on any bank routing number or identifying bank account number or name provided by Hotel Owner to effect a wire of funds transfer even if the information provided by Hotel Owner identifies a different bank or account holder than named by the Hotel Owner. Administrative Agent is not obligated or required in any way to take any actions to detect errors in information provided by the Hotel Owner. If Administrative Agent takes any actions in an attempt to detect errors in the transmission or content of transfer requests or takes any actions in an attempt to detect unauthorized funds transfer requests, Loan Parties agrees that no matter how many times Administrative Agent takes these actions Administrative Agent will not in any situation be liable for failing to take or correctly perform these actions in the future and such actions shall not become any part of the transfer disbursement procedures authorized under this provision, the Loan Documents, or any agreement between Administrative Agent and the Loan Parties. Loan Parties agree to notify Administrative Agent of any errors in the transfer of any funds or of any unauthorized or improperly authorized transfer requests within fourteen (14) days after Administrative Agent's confirmation to Loan Parties of such transfer. Administrative Agent will, in its sole discretion, determine the funds transfer system and the means by which each transfer will be made. Administrative Agent, may delay or refuse to accept a funds transfer request if the transfer would: (a) violate the terms of this authorization, (b) require use of a bank unacceptable to Administrative Agent or any Lender or prohibited by government authority; (c) cause Administrative Agent or any Lender to violate any Federal Reserve or other regulatory risk control program or guideline; or (d) otherwise cause Administrative Agent or any Lender to violate any Applicable Law. Neither Administrative Agent nor any Lender shall be liable to Loan Parties or any other parties for: (i) errors, acts or failures to act of others, including other entities, banks (other than Administrative Agent or the Lenders, to the extent applicable), communications carriers or clearinghouses, through which Loan Parties transfers may be made or information received or transmitted, and no such entity shall be deemed an agent of Administrative Agent or any Lender, (ii) any loss, liability or delay caused by fires, earthquakes, wars, civil disturbances, power surges or failures, acts of government, labor disputes,

failures in communications networks, legal constraints or other events beyond Administrative Agent or any Lender's control, or (iii) any special, consequential, indirect or punitive damages, whether or not (A) any claim for these damages is based on tort or contract or (B) Administrative Agent or any Lender or Loan Parties knew or should have known the likelihood of these damages in any situation. Neither Administrative Agent nor any Lender makes any representations or warranties other than those expressly made in this Agreement.

#### **ARTICLE 4. INTENTIONALLY OMITTED**

#### **ARTICLE 5. INSURANCE**

Hotel Owner shall while the Loan is outstanding at Hotel Owner's sole expense, with authorized insurers reasonably approved by Administrative Agent, the following policies of insurance in form and substance satisfactory to Administrative Agent. Capitalized terms used in this Article shall have the same meaning as such terms are commonly and presently defined in the insurance industry.

**5.1. TITLE INSURANCE.** The Title Policy required by Section 3.1(l).

**5.2. PROPERTY INSURANCE.** From and after the Original Agreement Date, Hotel Owner shall maintain for itself and on behalf of the CID (as lessee) under the Parking/Meeting Space Lease pursuant to the terms of the Use Agreement an all risk and/or special perils policy on the Improvements, which shall include without limitation, theft coverage and such other coverages and endorsements as Administrative Agent may reasonably require, insuring Administrative Agent, for the benefit of Lenders, against damage to the Improvements in an amount not less than 100% of the full replacement cost of the Improvements (provided that such policies shall contain coverage for losses due to certified acts of terrorism to the extent commercially available, and commercially reasonable sub-limits and deductibles shall be applicable to flood and windstorm). In each case, Administrative Agent, for the benefit of Lenders, shall be named on the policy as mortgagee and named under a Lender's Loss Payable Endorsement.

**5.3. FLOOD HAZARD INSURANCE.** If any portion of the Improvements are located in a special flood hazard area, a policy of flood insurance, as required by applicable governmental regulations in an amount not less than the amount sufficient to meet the requirements of Applicable Law.

**5.4. LIABILITY INSURANCE.** A policy of Commercial General Liability insurance on an occurrence basis, with coverages and limits as required by Administrative Agent (which shall be a minimum, excess or umbrella coverage with a limit of no less than \$50,000,000 per occurrence and in the aggregate), insuring against liability for injury and/or death to any person and/or damage to any property occurring on the Property. During the period of any construction, to the extent not covered by Hotel Owner's Commercial General Liability policy, (a) Hotel Owner shall cause its contractors and/or subcontractors to maintain in full force and effect the liability insurance, or (b) the liability insurance may be provided through an owner controlled insurance program of Hotel Owner, in each case with limits that are commensurate with the applicable construction project but that are not less than \$5,000,000 per occurrence and in the aggregate. Administrative Agent may require that Loan Parties be identified as additional insureds on any

such policy described in the immediately preceding sentence. Whether Loan Parties employ a general contractor or performs as owner-builder, Administrative Agent may require that coverage include statutory workers' compensation insurance.

**5.5. BUSINESS INTERRUPTION.** From and after the Effective Date, Business interruption insurance for a period of eighteen (18) months in an amount equal to one hundred percent (100%) of the projected Adjusted Operating Revenues (less noncontinuing expenses) as approved by Administrative Agent, from the Hotel Owner's operations of the Hotel. The amount of such business interruption insurance shall be determined prior to the Effective Date and at least once each year thereafter based on Hotel Owner's reasonable estimate of the Adjusted Operating Revenues (less noncontinuing expenses) from the Hotel Owner's operation of the Hotel for the succeeding twelve (12) month period.

**5.6. EARTHQUAKE.** If the Property is located in seismic zone 3 or 4 and the "Probable Maximum Loss" (expressed as a percentage) is greater than or equal to twenty percent (20%), earthquake insurance with coverage amounts of not less than the product of the "Probable Maximum Loss" (expressed as a percentage) applicable to the Property, as set forth in the seismic report satisfactory to Administrative Agent prepared by a seismic engineer or other qualified consultant, multiplied by the replacement cost of the Improvements as such replacement cost may be reasonably estimated by Administrative Agent.

**5.7. OTHER COVERAGE.** Hotel Owner shall provide to Administrative Agent evidence of such other reasonable insurance in such reasonable amounts as Administrative Agent may from time-to-time request against such other insurable hazards which at the time are commonly insured against for property similar to the subject Property located in or around the region in which the Property is located. Such coverage requirements may include but are not limited to coverage for liquor liability, worker's compensation, disability, vehicles, acts of terrorism (to the extent described in Section 5.2 above), sink hole, soft costs, tenant improvement or environmental.

**5.8. PARKING/MEETING IMPROVEMENT INSURANCE.** Because of the integrated nature of the Hotel and the Parking/Meeting Space, Hotel Owner will obtain property insurance for the entire Property and be reimbursed by the CID, pursuant to the terms of the Use Agreement for the CID allocable share of the property insurance related to the Parking/Meeting Space. Borrower and Administrative Agent shall be included as additional insureds on all insurance policies related to the Parking/Meeting Space required under the terms of the Parking/Meeting Lease. Pursuant to the terms of Use Agreement, Hotel Owner shall be the named insured and the CID will be a loss payee on all property insurance policies related to the Parking/Meeting Parcel and Parking/Meeting Improvements required under the terms of the Use Agreement.

**5.9. GENERAL.** Hotel Owner shall provide to Administrative Agent insurance certificates or other evidence of coverage in form acceptable to Administrative Agent, with coverage amounts, deductibles, and limits listed, as required by Administrative Agent. All insurance policies shall provide that the coverage shall not be cancelable without 10 days prior written notice to Administrative Agent of any cancellation for nonpayment of premiums, and not less than 30 days prior written notice to Administrative Agent of any other cancellation. With the

exception of business interruption insurance, Administrative Agent, for the benefit of Lenders shall be named under a Lender's Loss Payable Endorsement on all Property insurance policies which Hotel Owner actually maintains with respect to the Property. All insurance policies shall be issued and maintained by authorized insurers approved to do business in the state in which the Property is located and must have an A.M. Best Company financial rating and policyholder surplus acceptable to Administrative Agent.

## **ARTICLE 6. REPRESENTATIONS AND WARRANTIES.**

As a material inducement to Lenders' entry into this Agreement, each Loan Party represents and warrants to Administrative Agent and each Lender as of the Effective Date solely with respect to each such Loan Party only that:

**6.1. AUTHORITY/ENFORCEABILITY.** The Hotel Owner has been duly formed and is validly existing as a limited liability company under the laws of the State of Delaware and the Borrower is a public body corporate and politic duly organized under the laws of the State of Missouri and ordinances of the City of Kansas City, Missouri. Each of the Loan Parties has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the other Loan Documents. Each of the Loan Parties and the Property is in compliance with all Applicable Law applicable to it or the Property (as applicable), except where the failure to be in compliance could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party has the power and authority to own, develop, lease and operate the Property as contemplated by the Loan Documents.

**6.2. BINDING OBLIGATIONS.** This Agreement and the transactions contemplated hereby have been duly authorized by all necessary action of the Loan Parties. Each of this Agreement and each of the other Loan Documents to which either of the Loan Parties is a party is the valid and binding obligation of such Loan Party, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

**6.3. FORMATION AND ORGANIZATIONAL DOCUMENTS.** Hotel Owner has delivered to Administrative Agent the Hotel Owner Operating Agreement and the certificate of formation for Hotel Owner along with, the formation and organizational documents of Sole Member and of Loews Guarantor. All such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to Administrative Agent or as described in the relevant definitions included in Section 1.1. Hotel Owner shall promptly provide Administrative Agent with copies of any amendments or modifications of the formation or organizational documents of Hotel Owner. As of the Effective Date, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to Administrative Agent in connection with this Agreement is true and correct in all respects.

**6.4. NO VIOLATION.** Each Loan Party's execution, delivery, and performance under the Loan Documents do not: (a) require any consent or approval not heretofore obtained under any

partnership agreement, operating agreement, articles of incorporation, bylaws or other document by which either of the Loan Parties or the Property are bound; (b) violate any Applicable Law applicable to either of the Loan Parties, the Property or any other statute, law, regulation or ordinance or any order or ruling of any court or Governmental Authority; or (c) conflict with, or constitute a breach or default or permit the acceleration of obligations under any material agreement, material contract, material lease, or other material document by which either of the Loan Parties or the Property are bound or regulated.

**6.5. COMPLIANCE WITH LAWS.** Hotel Owner has obtained all Permits necessary to operate the Hotel Parcel and Hotel Improvements and to the extent required such Permits necessary to use the Parking/Meeting Improvements pursuant to the Use Agreement, and shall comply with all Applicable Law applicable to each of the Loan Parties, the Property to the extent of each Loan Parties interest therein, or necessary for the operation of the Property to the extent of each Loan Parties operation and use of the Property, other than, in each case if the failure could not reasonably be expected to result in a Material Adverse Effect.

**6.6. LITIGATION.** Except as disclosed on Schedule 6.6, there are no actions, suits, or proceedings pending against Hotel Owner, against Borrower relating to the Property, or affecting the Property, other than, at any time this representation is remade or deemed remade, actions, suits or proceedings that, if determined against any Loan Party, would not result in any Material Adverse Effect.

**6.7. FINANCIAL STATEMENTS.** All financial statements and information heretofore delivered to Administrative Agent by, or on behalf of Hotel Owner including without limitation, information relating to the financial condition of each of the Hotel Owner, the Property, Loews Guarantor, and/or any other Guarantors, fairly and accurately represent the financial condition of the subject thereof and, with respect to the financial statements that have been provided in accordance with Article 10, have been prepared in accordance with GAAP in all material respects. Notwithstanding the use of GAAP, as to the financial statements of the Hotel Owner the calculation of liabilities shall not include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB standards allowing entities to elect fair value option for financial liabilities. Therefore, the amount of liabilities shall be the historical cost basis, which generally is the contractual amount owed adjusted for amortization or accretion of any premium or discount.

**6.8. NO MATERIAL ADVERSE CHANGE.** There has been no material adverse change in the financial condition of either of the Hotel Owner, Loews Guarantor and/or any other Guarantor since the dates of the applicable financial statements referenced in Section 6.7 and furnished to Administrative Agent. Except for the Hotel Lease, the Parking/Meeting Lease, the Management Agreement, the Use Agreement and the other Material Agreements to which Hotel Owner is a party and as otherwise disclosed to Administrative Agent in writing, Hotel Owner has not entered into any material transaction which is not disclosed in its financial statements referred to in Section 6.7.

**6.9. INTENTIONALLY OMITTED.**

**6.10. ACCURACY.** All reports, documents, instruments, information and forms of evidence delivered to Administrative Agent by or on behalf of the Loan Parties concerning the Loan or security for the Loan or required by the Loan Documents, when taken as a whole, is complete and correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading, provided that any management projections or forward-looking statements relating to the Loan Parties or the Property provided by or on behalf of the Loan Parties are based on assumptions and estimates developed in good faith and actual results will depend upon future events some of which are not within the control of the Loan Parties.

**6.11. TAX LIABILITY.** Except with respect to taxes addressed in Section 6.22, to the extent required by Applicable Law and subject to any contest being conducted in accordance with Section 13.7, Hotel Owner has filed or caused to be filed all income and other material federal, state, county and municipal tax returns required to be filed and has paid all income and other material federal, state and other taxes and assessments otherwise due and payable.

**6.12. TITLE TO ASSETS; NO LIENS.** Hotel Owner has good leasehold title to the Hotel Parcel and Hotel Improvements pursuant to the Hotel Lease, free and clear of all liens and encumbrances except Permitted Liens; and Borrower has good and indefeasible fee simple title to the Land and Improvements, free and clear of all liens and encumbrances except Permitted Liens.

**6.13. MANAGEMENT AGREEMENTS AND FRANCHISE AGREEMENT.** Except for the Management Agreement, the Parking Management Agreement, and the Hotel Lease, neither of the Loan Parties nor any Affiliate of either of the respective Loan Parties is a party or subject to any other management agreement with respect to the management or operation of all or any portion of the Property, and the Loan Parties hereby represent and warrant that the Hotel Lease is in full force and effect and there are no material defaults or events of default thereunder. Hotel Owner hereby represents and warrants that the Management Agreement, is in full force and effect and there are no material defaults or events of default thereunder. Neither of the Loan Parties has entered into any Franchise Agreement in connection with the Property.

**6.14. UTILITIES.** All utility services, including, without limitation, gas, water, sewage, electrical and telephone, necessary for the occupancy of the Land and Improvements are available at or within the boundaries of the Land.

**6.15. COMPLIANCE.** Loan Parties are familiar with, and are in compliance with, all Applicable Law and will conform to and comply with all Applicable Law, other than if such failure could not reasonably be expected to result in a Material Adverse Effect.

**6.16. AMERICANS WITH DISABILITIES ACT COMPLIANCE.** The Improvements have been designed and shall be maintained, in accordance and in compliance with, in all material respects, all of the requirements of the ADA applicable to the Property. Loan Parties shall be responsible for all ADA compliance costs.

**6.17. BUSINESS LOAN.** The Loan is a business loan transaction in the stated amount solely for the purpose of carrying on the business of each respective Loan Party and none of the

proceeds of the Loan will be used for the personal, family or agricultural purposes of either Loan Party.

**6.18. FLOOD ZONE.** None of the Improvements on the Land are located or are to be located, in an area identified by the Federal Emergency Management Agency as a special flood hazard area.

**6.19. PHYSICAL CONDITION.** Other than as has been fully repaired, neither the Land nor any material portion of the Improvements, if any, have been damaged or injured as a result of any fire, explosion, accident, flood or other casualty. There are no proceedings pending, or, to Hotel Owner's knowledge, threatened, to acquire by power of condemnation or eminent domain, the Property, or any interest therein, or to enjoin or similarly prevent the use or enjoyment of the Improvements. Hotel Owner 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.

**6.20. BOUNDARIES.** Except as set forth on the survey delivered in connection with Section 3.1(j) or referenced in the Title Policy, to the best of Hotel Owner's knowledge, no improvements on adjoining properties encroach upon the Land, and no easements or other encumbrances affecting the Land encroach upon any of the portion of the Land, so as to materially adversely affect the value or marketability of the Property except those which are insured against by the Title Policy.

**6.21. LEASES.** The Property is not subject to any Leases other than the leases described on Schedule 6.21, the Hotel Lease and the Parking/Meeting Lease.

**6.22. FILING AND RECORDING TAXES.** All transfer taxes, documentary stamps, intangible taxes, personal property taxes or other amounts in the nature of transfer or debt taxes required to be paid under Applicable Law in connection with the transfer of the Property to each respective Loan Party, and each Loan Party's respective encumbrance of the Property, if any, have been paid. All mortgage, mortgage recording, stamp, intangible, personal property or other similar taxes required to be paid under Applicable Law in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, each Deed of Trust, have been paid. All taxes and governmental assessments due and payable in respect of the Property have been paid or will be paid prior to delinquency thereof, subject to any contest being conducted in accordance with Section 13.7.

**6.23. SINGLE PURPOSE.** Hotel Owner hereby represents and warrants to, and covenants that as of the Effective Date and until such time as the Loan shall be paid in full:

(a) Hotel Owner does not own and will not own any material asset or property other than (i) the leasehold estate in the Hotel Parcel and Hotel Improvements, (ii) rights to use the Parking/Meeting Improvements pursuant to the Use Agreement, (iii) the Additional Revenue Streams, and (iv) incidental personal property and FF&E necessary for the construction, ownership or operation of the Hotel.



(b) Sole Member does not own and will not own, any material asset or property other than its membership interest in Hotel Owner.

(c) Hotel Owner does not and will not engage in any business other than the ownership, construction, management and operation of the Property and performance of the catering services pursuant to the Catering Agreement.

(d) Sole Member does not and will not engage, in any business other than the ownership and management of Hotel Owner.

(e) Hotel Owner shall not enter into any contract or agreement with any Affiliate of Hotel Owner, except (i) the Hotel Owner Operating Agreement (including, without limitation, provisions relating to the reimbursement to the members and their Affiliates of overhead costs or predevelopment costs allocable to the Property), the Management Agreement and (ii) other agreements upon terms and conditions that are no less favorable to Hotel Owner than those that would be available on an arm's length basis with third parties.

(f) Hotel Owner has not incurred nor will incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation) other than to Affiliates pursuant to any of the documents described in Section 6.23(e) and, in the case of Hotel Owner: (i) the NBH Loan, (ii) the Hotel Owner Guaranty, (iii) the LCRA Loan; (iv) the guaranty by Hotel Owner of the CID's obligations under Parking/Meeting Space Lease as set forth in the Hotel Lease, (v) pursuant to the Interest Rate Protection Agreements, (vi) the obligation of Hotel Owner to repay any portion of the Fixed Fee Payment (as defined in the Catering Agreement) or any upfront payment received by Hotel Owner in lieu thereof in accordance with the Catering Agreement, (vii) unsecured trade payables and operational debt not evidenced by a note and in an amount not exceeding \$3,500,000 in the aggregate at any one time and (viii) indebtedness incurred in the financing of equipment and other personal property used on or in connection with the Property having a value of not more than \$5,000,000 in the aggregate; provided that any indebtedness incurred pursuant to subclauses (vii) and (viii) shall be (x) not more than thirty (30) days past due, (y) incurred in the ordinary course of business and (z) in the case of indebtedness incurred pursuant to subclause (vii) only, (1) the applicable Lien (if any) shall be created substantially simultaneously with the acquisition of such equipment or property, and (2) the applicable Lien (if any) shall not at any time encumber any property other than the property financed by such indebtedness. No indebtedness other than the Loan (including the Hotel Owner Guaranty) or an AAIRPA may be secured (subordinate, *pari passu* or otherwise) by the Property or any interest therein.

(g) Hotel Owner has not made or will make any loans or advances to any third party (including any Affiliate or constituent party) other than pursuant to the Hotel Owner Operating Agreement and Hotel Owner shall not acquire obligations or securities of its Affiliates.

(h) Hotel Owner has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Hotel Owner will not amend, modify or otherwise change operating agreement of Hotel Owner without the prior consent of Administrative Agent in any manner that: (i) violates the single purpose covenants set forth in this Section 6.23; (ii) amends, modifies or otherwise changes any provision thereof that by its terms

cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Administrative Agent or Lenders' consent; or (iii) would materially and adversely affect Hotel Owner's ability to lease the Hotel Parcel, lease the Hotel Improvements or operate the Property, to the extent of Hotel Owner's rights to operate the Property, or to perform under the Loan (or perform any activities ancillary thereto).

(i) Hotel Owner will maintain all of its books, records, financial statements and bank accounts separate from those of their Affiliates and none of Hotel Owner assets will be listed as assets on the financial statement of any other Person (except that the assets of Hotel Owner may be included in the consolidated financial statements of its Affiliates to the extent the financial statements of such Affiliates are required by law or accounting principles to include such assets). Hotel Owner shall maintain its own books, records, resolutions and agreements as official records.

(j) Hotel Owner will be a legal entity separate and distinct from any other entity (including any Affiliate of Hotel Owner), and Hotel Owner will, at all times hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Hotel Owner), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself as a division or part of any other entity and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks bearing its own name.

(k) Neither Hotel Owner, nor any constituent party, will seek or effect a liquidation, dissolution, winding up, consolidation or merger, or transfer or otherwise dispose of all or substantially all of its assets (other than as expressly permitted hereby).

(l) Hotel Owner will not commingle its funds and other assets with those of any Affiliate, and Hotel Owner will hold all of its assets in its own name.

(m) Hotel Owner has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party or any other Person.

(n) Other than pursuant to the Hotel Owner Operating Agreement, the Hotel Owner Guaranty, and the Hotel Lease, the Hotel Owner will not guarantee or become obligated for the debts of any other Person and Hotel Owner does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.

(o) Hotel Owner will not permit any Affiliate or constituent party independent access to its bank accounts (if any), other than Manager in the case of the Operating Account.

(p) Hotel Owner has not had or will not have any obligation to indemnify its partners or members, as the case may be, unless such obligation is fully subordinated to the Loan, provided that so long as no Event of Default is continuing, such indemnity payments may be made by Hotel Owner.

(q) Hotel Owner shall not file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or

indirect legal or beneficial ownership interest or is the direct or indirect general partner or manager without the affirmative vote of all of the directors, members or partners of the entity (as applicable).

(r) To the extent applicable, Hotel Owner will pay the salaries of its own employees (if any) (and the allocable cost of employees of Affiliates as described in clause (e) above) from its own funds and maintain a sufficient number of employees (or otherwise have access to employees of Affiliates as described herein) in light of its contemplated business operations, but is not required to have any employees.

(s) To the extent applicable, Hotel Owner will compensate each of its consultants and agents from their funds for services provided to it and pay from its own assets all obligations of any kind incurred.

(t) Hotel Owner will not create or adopt a Plan of Division, or file a Certificate of Division, or otherwise effectuate a LLC Division, be liquidated, terminated, dissolved, or merged or consolidated into another entity pursuant to a LLC Division, be divided into two or more Persons, including, without limitation, becoming a Divided LLC (whether or not the original Person survives such division), or be created, or reorganized into, one or more series pursuant to a LLC Division or otherwise.

**6.24. SOLVENCY.** Hotel Owner (a) has not entered into the transaction or any Loan Document with the intent to hinder, delay, or defraud any creditor and (b) received reasonably equivalent value in exchange for its respective obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Hotel Owner's assets exceeds and will, immediately following the making of such advance, exceed Hotel Owner's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Hotel Owner is and will, immediately following the making of each Loan advance, be greater than Hotel Owner's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Hotel Owner's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Hotel Owner does not intend to, and does not believe that it will, incur indebtedness and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by Hotel Owner and the amounts to be payable on or in respect of obligations of Hotel Owner).

**6.25. 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 Applicable Law or by the terms and conditions of this Agreement or the other Loan Documents.

**6.26. NO DEFAULT.** No Default or Event of Default exists.

**6.27. ZONING; EASEMENTS.**

(a) As of the date of the initial disbursement of the Loan pursuant to this Agreement, the land use, zoning regulations and variances issued in connection with the Property which are in effect for the Land permit the use and occupancy of the Property thereon on an as-of-right basis and no additional variance, conditional use permit, special use permit or other similar approval is required for such use and occupancy of the Property.

(b) All material easements, restrictions, covenants or operating agreements which benefit or burden the Property are in full force and effect, and to the best of Hotel Owner's knowledge there are no material defaults thereunder by any party thereto.

**6.28. FOREIGN PERSON.** Neither of the Loan Parties is a "foreign person" within the meaning of section 1445(f)(3) of the Code.

**6.29. INVESTMENT COMPANY ACT.** Neither of the Loan Parties is an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

**6.30. ACCOUNTS.** Hotel Owner has opened the Accounts with Administrative Agent, to the extent required herein. The Accounts will be the sole accounts used in connection with the ownership and operation of the Property by Hotel Owner and there will be no other accounts used by Hotel Owner in connection with the Property and/or the Loan except for any accounts of Hotel Owner established under the Master Disbursing Agreement.

**6.31. MATERIAL AGREEMENTS.** Hotel Owner has made available to Administrative Agent a correct and complete copy of each of the Material Agreements to which Hotel Owner or Loews Guarantor is a party to and all amendments thereto. There are no material oral agreements that relate to either Loan Party's respective interest in the Property. As of the Effective Date, each of the Material Agreements to which Hotel Owner or Loews Guarantor is a party is unmodified (except for modifications disclosed to Administrative Agent) and in full force and effect and, to Hotel Owner's actual knowledge, no party to any such Material Agreement is in default thereunder.

**6.32. HOTEL LEASE.** Hotel Owner lawfully holds and possesses the entire unencumbered (except for Permitted Liens) leasehold estate in the Hotel Improvements created by the Hotel Lease, without limitation on the right to encumber same by the Hotel Owner Guaranty and the Hotel Owner Deed of Trust. A true, correct and complete copy of the Hotel Lease has been delivered to Administrative Agent by (or on behalf of) Hotel Owner. The Hotel Lease is in full force and effect and has not been modified or amended in any manner whatsoever except as set forth in the definition of "Hotel Lease." There exists no event of default under the Hotel Lease by either Loan Party. All rents, additional rents and other sums due and payable by Loan Parties under the Hotel Lease have been paid in full. Neither of the Loan Parties has commenced any action or given or received any notice for the purpose of terminating the Hotel Lease. Except for the Hotel Lease, the Management Agreement, the Parking Management Agreement, the LCRA Loan, and the Material Agreements there are no agreements between Loan Parties in any way concerning the subject matter of the Hotel Lease or the occupancy or use of the Hotel Parcel or

Hotel Improvements. The respective interests of Loan Parties under the Hotel Lease have not been assigned other than pursuant to the Loan Documents. There are no actions, suits, legal proceedings or arbitration proceedings pending or to the knowledge of the Hotel Owner, or threatened in writing with respect to the Hotel Lease.

**6.33. SANCTIONS; ANTI-CORRUPTION AND ANTI-MONEY LAUNDERING LAWS.**

(a) Neither: (i) Borrower, Hotel Owner, Loews Guarantor nor any other Guarantor, any subsidiary Hotel Owner, Loews Guarantor or any other Guarantor, nor, to Loan Parties' knowledge, any of their respective directors, officers, or employees; nor (ii) to Loan Parties' knowledge, any agent or representative of Borrower, Hotel Owner, Loews Guarantor or any other Guarantor that will act in any capacity in connection with the Loan or that will benefit from the Loan, is a Sanctioned Person. To Loan Parties' knowledge, the Borrower, Hotel Owner, Loews Guarantor each other Guarantor (if any), and their subsidiaries are in compliance with Sanctions, and are in compliance in all material respects with applicable Anti-Corruption Laws and Anti-Money Laundering Laws.

(b) No proceeds of the Loan have been used, directly or indirectly, by Borrower, Hotel Owner or any subsidiary Hotel Owner or any of their respective directors, officers, employees, or, to Loan Parties' knowledge, any of their respective agents or representatives: (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; or (ii) to fund, finance or facilitate any activity, business or transaction of or with any Sanctioned Person, or of, with or in any Sanctioned Country, including, but not limited to, any payment (directly or indirectly) to a Sanctioned Person or a Sanctioned Country, or that violates any Sanctions applicable to any party hereto.

(c) Hotel Owner has instituted such policies, procedures and controls reasonably designed to ensure compliance with each of the CTA and BOI Rule, and shall maintain and comply with such policies, procedures and controls reasonably designed to ensure compliance with each of the CTA and BOI Rule.

**6.34. NO LLC/LP DIVISION.** Neither Hotel Owner nor any Guarantor has created or adopted a Plan of Division, or filed a Certificate of Division, or has otherwise effectuated a LLC Division or LP Division, as applicable, of such Person.

**6.35. CTA AND BOI.** Hotel Owner has complied in all material respects with the requirements of the CTA and the BOI Rule, including, without limitation, the requirement to make an initial filing with FinCEN to report its beneficial owners, unless an exemption to the requirement to make such a filing is applicable.

**6.36. SURVIVAL OF REPRESENTATIONS.** Loan Parties agree that all of the representations and warranties set forth in this Article 6 and elsewhere in this Agreement and the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement and the other Loan Documents by Loan Parties shall be

deemed to have been relied upon by Administrative Agent and Lenders notwithstanding any investigation heretofore or hereafter made by or on behalf of Administrative Agent and Lender.

**ARTICLE 7. INTENTIONALLY OMITTED.**

**ARTICLE 8. INTENTIONALLY OMITTED.**

**ARTICLE 9. COVENANTS OF LOAN PARTIES**

**9.1. EXPENSES.** Hotel Owner shall promptly pay Administrative Agent upon demand and receipt of reasonable evidence of all costs and expenses incurred by Administrative Agent in connection with: (a) the preparation of this Agreement, all other Loan Documents and Other Related Documents contemplated hereby; (b) the administration of this Agreement, the other Loan Documents and Other Related Documents for the term of the Loan; (c) the enforcement or satisfaction by Administrative Agent or Lenders of any of Loan Parties' obligations under this Agreement, the other Loan Documents, or the Other Related Documents; and (d) to the extent not already covered by any of the preceding clauses, to pay or reimburse the fees and disbursements of counsel to the Administrative Agent and Lenders incurred in connection with the representation of the Administrative Agent or Lenders in any matter relating to or arising out of any bankruptcy or other proceeding of the type described in Sections 11.1(f) or 11.1(g), including, without limitation (i) any motion for relief from any stay or similar order, (ii) the negotiation, preparation, execution and delivery of any document relating to the Loan and (iii) the negotiation and preparation of any debtor in possession financing or any plan of reorganization of either of the Loan Parties or any other Significant Party, whether proposed by the Loan Parties, such Significant Party, the Lenders or any other Person, and whether such fees and expenses are incurred prior to, during or after the commencement of such proceeding or the confirmation or conclusion of any such proceeding. For all purposes of this Agreement, Administrative Agent's costs and expenses shall include, without limitation, all appraisal fees (but solely during the continuance of an Event of Default), cost engineering and inspection fees, legal fees and expenses, accounting fees, environmental consultant fees, auditor fees, UCC filing fees and/or UCC vendor fees, and the cost to Administrative Agent of any title insurance premiums, title surveys, reconveyance and notary fees. Loan Parties recognize and agree that formal written Appraisals of the Property by a licensed independent appraiser may be required by Administrative Agent's or any Lender's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis. If any of the services described above are provided by an employee of Administrative Agent, Administrative Agent's costs and expenses for such services shall be calculated in accordance with Administrative Agent's standard charge for such services.

**9.2. ERISA COMPLIANCE.** Hotel Owner shall at all times comply with the provisions of ERISA with respect to any retirement or other employee benefit plan to which either is a party as employer, and as soon as possible after Hotel Owner knows or has reason to know, that any Reportable Event (as defined in ERISA) with respect to any such plan of the Hotel Owner has occurred, it shall furnish to Administrative Agent a written statement setting forth details as to such Reportable Event and the action, if any, which the Hotel Owner propose to take with respect thereto, together with a copy of the notice of such Reportable Event furnished to the Pension Benefit Guaranty Corporation.

### 9.3. LEASING.

(a) Hotel Owner shall use commercially reasonable efforts to lease any leasable space in the Property that Hotel Owner elects to lease at no less than fair market rental rates (unless for reasonable business reasons the Hotel Owner or Manager desire to lease space at the Property for less than fair market rental rates to non-Affiliates of Hotel Owner and Manager).

(b) Notwithstanding anything in this Agreement to the contrary, no Leases or Lease amendments shall require Administrative Agent's prior written consent unless (i) an Event of Default exists, or (ii) such Lease (or proposed amendment to such Lease) or the operations to be conducted pursuant thereto could reasonably be expected to materially interfere with, or materially impair or detract from, the operation of the Hotel, or (iii) such Lease (or proposed amendment to such Lease) has an initial term, together with all extension options, totaling five (5) years or more, or (iv) such Lease (or proposed amendment to such Lease) is for an initial leased premises, together with all expansion options, of 1,500 rentable square feet or more; provided that upon request by the Hotel Owner, the Administrative Agent shall provide the tenant under any Lease that has been approved by Administrative Agent in writing with a subordination, non-disturbance and attornment agreement substantially in the form of Exhibit M hereto or in such other form as is reasonably satisfactory to the Administrative Agent, provided, that as a condition thereto, Hotel Owner shall pay to Administrative Agent all costs incurred by Administrative Agent in connection with the preparation and negotiation of each such subordination, non-disturbance and attornment agreement. Administrative Agent shall not unreasonably withhold, condition or delay its consent to a Lease or Lease amendment that is on then-current market terms (including fair market rental rates).

(c) Notwithstanding anything in this Section 9.3 to the contrary, with respect to any request for approval of any Lease (or amendment), Administrative Agent shall use commercially reasonable efforts to respond to such requests within a period of time that is reasonable considering the nature of such requests.

**9.4. SUBDIVISION MAPS.** Prior to recording any final map, plat, parcel map, lot line adjustment or other subdivision map of any kind covering any portion of the Property (collectively, "Subdivision Map"), Loan Parties shall submit such Subdivision Map to Administrative Agent for Administrative Agent's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Within ten (10) Business Days after Administrative Agent's receipt of such Subdivision Map, Administrative Agent shall provide Loan Parties written notice if Administrative Agent disapproves of said Subdivision Map. Within five (5) Business Days after Administrative Agent's or Loan Parties' (as applicable) request, Loan Parties and Administrative Agent shall execute, acknowledge and deliver such amendments to the Loan Documents as may reasonably be required to reflect the change in the legal description of the Property resulting from the recordation of any Subdivision Map, in each case only to the extent that any such Subdivision Map has been approved by Administrative Agent in accordance with the terms hereof. In connection with and promptly after the recordation of any amendment or other modification to the Hotel Lease and each Deed of Trust recorded in connection with such amendments, Loan Parties shall deliver to Administrative Agent, for the benefit of Lenders, at Hotel Owner's sole expense, a title endorsement to the Title Policy in form and substance satisfactory to Administrative Agent insuring the continued first priority lien of each Deed of Trust. Subject to the execution and

delivery by Loan Parties of any documents required under this Section, Administrative Agent, on behalf of Lenders, shall, if required by Applicable Law, sign any Subdivision Map approved by Administrative Agent pursuant to this Section.

**9.5. FURTHER ASSURANCES.** Upon Administrative Agent's reasonable request and at Loan Parties' sole cost and expense, Loan Parties shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper as reasonably determined by Administrative Agent, to carry out the purposes of this Agreement and the other Loan Documents or to perfect and preserve any Liens created by the Loan Documents.

**9.6. ASSIGNMENT.** Without the prior written consent of Lenders, neither Loan Party shall assign its interest under any of the Loan Documents, or in any monies due or to become due thereunder, and any assignment without such consent shall be void. In this regard, Loan Parties acknowledge that Lenders would not make this Loan except in reliance on Hotel Owner's expertise, reputation and prior experience in developing and constructing commercial real property.

**9.7. MANAGEMENT OF PROPERTY.** (a) Except for the Management Agreement each of which has been approved by Administrative Agent, Hotel Owner shall not enter into any Management Agreement, Franchise Agreement, or other agreement relating to the management or operation of a material portion of the Hotel without the express written consent of Requisite Lenders, which consent may be withheld in each Lender's sole discretion; provided that (1) Lender's approval for any restaurant management agreement shall not be unreasonably withheld, conditioned or delayed, and (2) this Section 9.7 shall not apply to parking management agreements that are terminable without penalty on no more than ninety (90) days' notice and are with a Person that is not an Affiliate of Hotel Owner. Each Management Agreement and Franchise Agreement shall be in material compliance with all Applicable Law. Hotel Owner shall cause each Manager and Franchisor (as applicable) to manage the portions of the Hotel used by Hotel Owner in a first class manner in accordance with each Hotel Management Agreement and Franchise Agreement, and in accordance with the Material Agreements to which Hotel Owner is a party (to the extent applicable) and Hotel Owner shall (i) diligently perform and observe in all material respects all of the terms, covenants and conditions of the Management Agreement and Franchise Agreement, on the part of Hotel Owner to be performed and observed, (ii) promptly notify Administrative Agent of any written notice to Hotel Owner of any default by Hotel Owner in the performance or observance of any of the material terms, covenants or conditions of any Management Agreement or Franchise Agreement on the part of Hotel Owner to be performed and observed and (iii) promptly notify Administrative Agent of any material default, beyond the expiration of any applicable notice and cure periods, if any, by Manager or Franchisor in the performance or observance of any of the terms, covenants or conditions of (x) each Management Agreement on the part of the Manager thereunder to be performed and observed and/or (y) each Franchise Agreement on the part of Franchisor to be performed and observed. If Hotel Owner shall default in the performance or observance of any material term, covenant or condition of any Management Agreement or Franchise Agreement on the part of Hotel Owner to be performed or observed, then, without limiting Administrative Agent's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Hotel Owner from any of its respective obligations hereunder or under any Management Agreement or Franchise Agreement, Administrative Agent shall have the right, but shall be under no obligation, to pay any



sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of each Management Agreement and Franchise Agreement on the part of Hotel Owner to be performed or observed.

(a) Hotel Owner shall not, without the prior written consent of Requisite Lenders, which consent shall not be unreasonably withheld, conditioned or delayed, (i) surrender, terminate or cancel the Management Agreement or any Franchise Agreement (if applicable), (ii) reduce or extend or consent to the reduction of or extension of the term of, or assignment by the Manager or Franchisor of, the Management Agreement or any Franchise Agreement (if applicable); (iii) increase or consent to the increase by any material amount of the amount of any sums payable by Hotel Owner under the Management Agreement or any Franchise Agreement (if applicable); (iv) decrease or consent to the decrease by any material amount of the services provided to Hotel Owner or the Property, or of the amount of any sums payable to Hotel Owner under the Management Agreement or any Franchise Agreement (if applicable); or (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under the Management Agreement or any Franchise Agreement (if applicable) to the extent any of the foregoing would materially and adversely affect or materially decrease the rights and remedies of, or materially increase the liabilities or obligations of, Hotel Owner under such Management Agreement or Franchise Agreement. Hotel Owner shall execute and cause each replacement Manager to execute a subordination of management agreement in substantially the form executed by Hotel Owner and Manager in connection with the closing of the Loan.

**9.8. LICENSES.** Neither Hotel Owner nor its Affiliates shall assign or otherwise encumber any liquor license issued in connection with the Property to any Person other than Administrative Agent. To the extent permitted by Applicable Law, upon the reasonable request of the Administrative Agent, Hotel Owner shall promptly cause each liquor license issued in connection with the Property to be collaterally assigned to Administrative Agent upon issuance of same, and shall execute and deliver to Administrative Agent reasonable and customary documentation requested by Administrative Agent in order to effectuate same. In the event of foreclosure of either Deed of Trust or deed in lieu of foreclosure, Hotel Owner shall cooperate (and cause Manager to cooperate) with Administrative Agent (and its nominees and successors and assigns) in the transfer to Administrative Agent (or such nominee, successor or assign) of all licenses or other Permits (including without limitation liquor licenses) necessary or appropriate for the operation of the Property, to the extent that such licenses or other Permits are assignable.

**9.9. INTENTIONALLY OMITTED.**

**9.10. REQUIREMENTS OF LAW.** Hotel Owner shall comply with all Applicable Law and shall use commercially reasonable and good faith efforts to require their respective Affiliates, contractors, agents, customers and invitees to comply with same in connection with the Property, other than where the failure to comply could not reasonably be expected to result in a Material Adverse Effect, subject to the contest rights set forth in Section 13.7.

**9.11. SPECIAL COVENANTS; SINGLE PURPOSE ENTITY.** Without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, conditioned or delayed, Hotel Owner shall not engage in any action or inaction which would cause the representations and warranties set forth in Section 6.23 of this Agreement to be breached or

rendered untrue in any material respect, or incur any indebtedness secured by the Hotel, additional indebtedness or other material obligation, other than as specifically permitted under the Loan Documents.

**9.12. LIMITATIONS ON DISTRIBUTIONS, ETC.** Following the occurrence and during the continuance of any Event of Default or Excess Cash Flow Sweep Period, neither Member Distributions nor the repayment of any principal or interest on any loan or other advance made to Hotel Owner by any direct or indirect equity owner in Hotel Owner shall not be permitted. So long as no Event of Default or Excess Cash Flow Sweep Period is continuing, Member Distributions shall be permitted.

**9.13. SANCTIONS.** Neither Borrower, Hotel Owner, Loews Guarantor nor any other Guarantor shall, or permit their respective directors, officers, employees, agents or representatives to: (i) use any of the Loan proceeds to: (A) provide financing to or otherwise make funds directly or indirectly available to any Sanctioned Person or Sanctioned Country; or (B) provide financing to or otherwise fund any transaction that would be prohibited by Sanctions or would otherwise cause Administrative Agent, Borrower or Hotel Owner or any entity affiliated with Administrative Agent, Hotel Owner or Borrower, to be in breach of any Sanction; or (ii) fund any repayment of the Loan with proceeds derived from any transaction that would be prohibited by Sanctions or would otherwise cause Administrative Agent, Hotel Owner or Borrower, or any entity affiliated with Administrative Agent, Hotel Owner or Borrower, to be in breach of any Sanction.

**9.14. INTEREST RATE PROTECTION AGREEMENT.**

(a) As of the Effective Date, Hotel Owner shall have entered into an interest rate protection agreement that satisfies all of the following conditions (such interest rate protection agreement together with (i) any extension thereof or modification thereto or (ii) any other interest rate protection agreement entered into pursuant to Section 9.14(b), being referred to herein as the “Interest Rate Protection Agreement”):

- (i) The Interest Rate Protection Agreement is with Administrative Agent or another financial institution having a long term, unsecured and unsubordinated debt rating of at least “A-” by S&P or Moody’s; has a term ending no earlier than the Initial Maturity Date; is an interest rate swap or an interest rate cap which shall effectively hedge the Benchmark on the then-outstanding principal balance of the Loan at a rate not to exceed five and one quarter percent (5.25%).
- (ii) Hotel Owner’s interest in such Interest Rate Protection Agreement shall be assigned to Administrative Agent on behalf of the Lenders pursuant to documentation reasonably satisfactory to Administrative Agent in form and substance (including, without limitation, an assignment of interest rate protection agreement), and the Counterparty to such Interest Rate Protection Agreement shall execute and deliver to Administrative Agent an acknowledgment of such assignment in a form as reasonably approved by Administrative Agent.

(b) If the Interest Rate Protection Agreement referred to in Section 9.14(a) hereof is scheduled to expire prior to the then current Maturity Date due to the proposed extension of the Maturity Date pursuant to Section 2.5 above, as a condition precedent to any such extension, Hotel Owner shall either (i) extend the term of such Interest Rate Protection Agreement to a date not earlier than the Maturity Date (as extended), or (ii) enter into one or more new interest rate protection agreements which expire no earlier than the Maturity Date (as extended), and which extension or new agreement satisfies the requirements described in Section 9.14(a) above.

(c) The obligations of Hotel Owner under any Interest Rate Protection Agreement (other than any AAIRPA) shall not be secured by or encumber any of the collateral securing Hotel Owner's obligations under the Loan Documents and, notwithstanding anything to the contrary contained herein, shall be non-recourse to Hotel Owner. The obligations of Hotel Owner under any AAIRPA shall be secured *pari passu* by the Hotel Owner Deed of Trust and other collateral for the Loan and all sums which may become due and payable by Hotel Owner to the Counterparty thereunder, in accordance with the terms and provisions of such Interest Rate Protection Agreement, including in connection with any termination thereof, shall be payable pursuant to this Agreement. If any AAIRPA obtained by Hotel Owner is in the form of a swap, Hotel Owner shall promptly cause to be delivered to Administrative Agent a "swap endorsement" to the Title Policy on the issuing title company's standard form.

#### **9.15. GUARANTOR FINANCIAL COVENANTS.**

The Loews Guarantor shall maintain at all times until the Loan is repaid in full a Net Worth of not less than \$135,000,000 and Liquidity of not less than \$50,000,000. As used herein, "Liquidity" shall mean, as of a given date, the total amount of the following assets, in each case only if free and clear of all liens and encumbrances: (a) unrestricted cash and cash equivalents (including short term investments) and (b) the current market value of marketable securities (net of margin debt). As used herein, "Net Worth" shall mean, as of a given date, (x) the total fair market value of the assets (including, without limitation, any uncalled capital commitments) of the Loews Guarantor, less (y) Loews Guarantor's total non-contingent liabilities (e.g. with obligations in respect of any completion type guarantees or non-recourse carveout type guarantees being treated as contingent and obligations under any payment type guaranty being treated as non-contingent), in each case as determined by GAAP.

#### **9.16. OPERATING ACCOUNT; CASH RESERVE ACCOUNT; DSCR TEST.**

(a) Hotel Owner has established an account in Hotel Owner's name with Administrative Agent for the purpose of holding all operating revenues derived by Hotel Owner from its interest the Property including the Additional Revenue Streams (the "Operating Account").

(b) Hotel Owner or Manager has directed each of the credit card companies with which Hotel Owner or Manager has entered into merchant's or other credit card agreements (collectively, "Credit Card Agreements"), on a form substantially similar to Exhibit I attached hereto, that all revenues paid by such credit card companies with respect to the Property (less any processing fees which are owed such credit card company in accordance with the terms of its respective Credit Card Agreement), in accordance with such merchant's agreements or otherwise, shall be

transferred by wire transfer or ACH system to the Credit Card Account. Hotel Owner shall (or shall cause Manager to) also direct each new credit card company with which Hotel Owner or Manager enters into a Credit Card Agreement in connection with the execution of each such new credit card company's Credit Card Agreement, on a form substantially similar to Exhibit I attached hereto, to deposit all revenues due to Hotel Owner with respect to the Hotel into the Credit Card Account in accordance with the preceding sentence. Hotel Owner's instructions to the credit card companies described in this Section 9.16(a) shall be irrevocable, except by written direction of Administrative Agent.

(c) Funds deposited into the Credit Card Account shall be transferred to the Operating Account on a daily basis (subject to the terms of the Credit Card Agreements).

(d) Hotel Owner and Manager shall instruct all other applicable Persons that are party to any of the Material Agreements for which Additional Revenue Streams may be paid that all other revenue and amounts payable to Hotel Owner or, Manager (including, without limitation of the foregoing, amounts from any of the Additional Revenue Streams) shall be transferred by wire transfer or ACH system to the Operating Account. Additionally, Hotel Owner shall (and shall cause Manager to) deposit all cash and checks received by Hotel or Manager in connection with the operation of the Hotel into the Operating Account within five (5) Business Days after receipt.

(e) Provided that no Event of Default has occurred and is continuing, and subject to the provisions of this Section 9.16 below, Hotel Owner and Manager shall have daily access to all amounts on deposit in the Operating Account (and, subject to the terms of the Credit Card Agreements, the Credit Card Account) and shall have the ability to withdraw such amounts without limit or restriction.

(f) Prior to the Effective Date, Hotel Owner has also established an interest-bearing account in Hotel Owner's name with the Administrative Agent for the purpose of holding, to the extent required pursuant to this Section 9.16, all Excess Cash Flow (the "Cash Reserve Account").

(g) An "Excess Cash Flow Sweep Period" shall commence from time to time on the first day of each calendar month following the month in which it is determined that a DSCR Trigger has occurred and shall terminate upon the earliest of (i) the first DSCR Test Date after the commencement of the applicable Excess Cash Flow Sweep Period as of which the Property shall have satisfied the then applicable DSCR Hurdle for two consecutive DSCR Test Dates and Hotel Owner shall have timely delivered the DSCR Certificates so certifying, (ii) the date as of which both (x) the DSCR Shortfall has been paid to the Lenders, and (y) Hotel Owner shall have delivered a new DSCR Certificate so certifying such compliance (taking into account such DSCR Shortfall payment), or (iii) payment in full of the Loan in accordance with the terms of the Loan Documents (any, of the foregoing (i), (ii) or (iii), an "Excess Cash Flow Sweep Termination"). DSCR shall be tested as of each applicable DSCR Test Date, and Hotel Owner shall deliver the DSCR Certificate as and when required pursuant to Section 10.1(e).

(h) During an Excess Cash Flow Sweep Period, Hotel Owner shall deposit with the Administrative Agent on the twentieth (20<sup>th</sup>) day of each calendar month, beginning with the first full calendar month after the calendar month in which the first day of such Excess Cash Flow Sweep Period commences, the total Excess Cash Flow for the immediately preceding calendar

month. Such amounts shall be held by the Administrative Agent in the Cash Reserve Account. Simultaneously with each deposit required to be made as set forth in the immediately preceding sentence, Hotel Owner shall deliver to the Administrative Agent a certificate, in substantially the form attached as Exhibit K hereto, calculating the amount of the deposit being made into the Cash Reserve Account. Provided no Event of Default has occurred and is continuing, all funds on deposit in the Cash Reserve Account shall be deposited in the Operating Account upon the Excess Cash Flow Sweep Termination of the then-applicable Excess Cash Flow Sweep Period.

(i) So long as no Event of Default then exists, Hotel Owner shall have the right to receive and Administrative Agent shall fund amounts from the Cash Reserve Account into the Operating Account as directed by Hotel Owner for payment of Approved Disbursement Expenses, to the extent Gross Operating Revenues are insufficient to pay for same and all other Gross Operating Expenses in addition to a working capital shortfall, if any, reasonably estimated by Hotel Owner (and subject to the reasonable approval by Administrative Agent), for such expenses and provided the following conditions are satisfied: (i) Hotel Owner shall have delivered to Administrative Agent a written request for the disbursement of such funds; (ii) Hotel Owner shall have delivered invoices or other evidence reasonably satisfactory to Administrative Agent that the requested disbursement will be used for Approved Disbursement Expenses (or will be used to reimburse Loan Parties for Approved Disbursement Expenses previously paid by Loan Parties); and (iii) Loan Parties shall not have received more than one (1) other disbursement from the Cash Reserve Account during such calendar month (with Loan Parties acknowledging that Loan Parties shall only be entitled to make one (1) request per calendar month for disbursement from the Cash Reserve Account and that Administrative Agent shall not be required, subject to all other terms and conditions of this Agreement, to disburse funds more than one (1) time per month from the Cash Reserve Account. Loan Parties covenant and agree that they will use any funds disbursed to it hereunder only for the purpose for which they were disbursed.

(j) At any time during the continuance of an Event of Default, Administrative Agent may apply any funds on deposit in the Cash Reserve Account to pay any amounts due and payable under the Loan Documents or to pay the principal amount of, or interest on, the Loan.

(k) Intentionally Omitted.

(l) Intentionally Omitted.

#### **9.17. FF&E RESERVE ACCOUNT.**

(a) Hotel Owner has established an account in Hotel Owner's name with Administrative Agent for the purpose of holding replacement reserves for FF&E (the "FF&E Reserve Account").

(b) Hotel Owner shall deposit with Administrative Agent on the fifth (5th) Business Day of each calendar month beginning with December 2024, an amount equal to the greater of: (i) four percent (4%) of Adjusted Operating Revenues for the calendar month preceding the previous calendar month; or (ii) the greatest of any actual amounts for FF&E reserves stipulated in the Management Agreement, any Franchise Agreement or any other agreement related to the Property. Such amounts shall be held by Administrative Agent in the FF&E Reserve Account. Hotel Owner

shall also deliver to Administrative Agent a written report on the fifth (5th) Business Day of each calendar month beginning with December 2024, in form reasonably satisfactory to Administrative Agent, calculating the amount of the deposit into the FF&E Reserve Account being made on that Business Day.

(c) Notwithstanding any provisions of Section 9.17(b) to the contrary, so long as no Event of Default is continuing, Hotel Owner may (or may permit Manager to), in lieu of the deposit of the full monthly amount required pursuant to Section 9.17(b), use, from time to time, the funds that would otherwise be required to be deposited pursuant to Section 9.17(b), solely for the payment of capital expenditures (determined in accordance with GAAP) incurred pursuant to the FF&E Budget and the amount to be deposited pursuant to Section 9.17(b) shall be reduced by the amounts so used. In such event, the Hotel Owner shall, or shall require the Manager to, provide a monthly reconciliation of the amounts so deposited or so used for such expenditures.

(d) Provided that no Event of Default has occurred and is continuing, Hotel Owner and Manager shall have daily access to all amounts on deposit in the FF&E Reserve Account solely for expenditures incurred in accordance with the FF&E Budget, and for no other purpose whatsoever.

(e) Notwithstanding the terms contained herein, if an Event of Default then exists, (i) neither Loan Parties nor Manager shall be entitled to use any funds on deposit in the FF&E Reserve Account and (ii) Administrative Agent may at its election (but shall not be obligated to) disburse any funds on deposit in the FF&E Reserve Account on Loan Parties' behalf. Hotel Owner shall not have the right to use any of the funds on deposit in the FF&E Reserve Account, except as provided for herein.

(f) Administrative Agent shall have the right (to be exercised from time to time at its election but not more than once per month) to audit Hotel Owner's books and records in order to determine whether or not the funds disbursed from the FF&E Reserve Account have been spent only for the purpose for which they were disbursed. Hotel Owner shall cooperate with Administrative Agent in connection with any such audit.

**9.18. INTENTIONALLY OMITTED.**

**9.19. INCOME TO BE APPLIED TO DEBT SERVICE.** Hotel Owner shall apply all Gross Operating Revenues and all Additional Revenue Streams received by the Hotel Owner from the Property only to the payment of operating expenses for the Property and the payment of accrued interest and monthly payments of principal (if any) on the Loan and to fund any reserves and other amounts payable under the Loan Documents. Any amounts remaining after application to the foregoing may be distributed to Hotel Owner's members, in Hotel Owner's sole discretion, subject to the provisions of Section 9.12.

**9.20. ALTERATIONS.** Administrative Agent's prior approval shall be required in connection with any alterations to any Hotel Improvements or Parking/Meeting Improvements to be undertaken by a Loan Party that may have a Material Adverse Effect. Notwithstanding the foregoing, so long as no Excess Cash Flow Sweep Period is then in effect, Administrative Agent's consent shall not be required for Property renovations, including but not limited to guest rooms,

corridors, meeting rooms, lobby, and F&B outlets in the ordinary course of business, if such renovations are included in the FF&E Budget. Upon the occurrence of an Excess Cash Flow Sweep Period, the FF&E Budget currently in place shall remain in place and be deemed approved by Administrative Agent. If an Excess Cash Flow Period is continuing at such time as the next FF&E Budget shall be provided to Administrative Agent in accordance with Section 10.1(c) below, the foregoing Property renovations set forth in such next FF&E Budget shall be subject to Administrative Agent's written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

#### **9.21. PROPERTY TRANSFERS.**

(a) **Prohibited Property Transfers.** Neither of the Loan Parties shall cause or permit any Transfer of all or any part of the Property or the Collateral (collectively, a "Prohibited Property Transfer"), including, without limitation, (i) a lease or sublease of all or a material part of the Property for any purpose other than actual occupancy by a space tenant; (ii) the Transfer of all or any part of any Loan Party's right, title and interest in and to any lease, sublease or lease or sublease payments, and (iii) a Transfer of all or any part of Borrower's fee interest in the Property to Hotel Owner.

(b) **Permitted Property Transfers.** Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Property Transfer: (i) a Transfer which is expressly permitted under this Agreement including all Permitted Liens; (ii) a lease or sublease which is permitted under the terms of the Loan Documents; (iii) the sale or other disposal of inventory or obsolete equipment or property in the ordinary course of business; (iv) the Transfer of the Hotel Parcel and Hotel Improvements to the Hotel Owner pursuant to the terms of the Hotel Lease except to the extent resulting from a default by Hotel Owner thereunder, and except to the extent resulting from the exercise of voluntary purchase option by Hotel Owner thereunder, and subject to and in accordance with Section 9.21(c) below, and (v) the Transfer of the Parking/Meeting Parcel and Parking/Meeting Improvements to the CID pursuant to the terms of the Parking/Meeting Lease except to the extent resulting from a default by Hotel Owner under the Use Agreement, and except to the extent resulting from the exercise of voluntary purchase option by the CID under the Parking/Meeting Lease, and subject to and in accordance with Section 9.21(c) below.

(c) **Certain Borrower Property Transfers.**

(i) Hotel Parcel. Administrative Agent and Lenders acknowledge that contemporaneously with the expiration or termination of the Hotel Lease, Borrower will transfer title to the Hotel Parcel and the Hotel Improvements to Hotel Owner. Administrative Agent and Lenders acknowledge that, notwithstanding anything else in this Agreement or the Loan Documents to the contrary, Borrower shall have the right without consent to transfer its fee estate in the Hotel Parcel and the Hotel Improvements to Hotel Owner in accordance with Sections 10, 15 and 17 of the Hotel Real Property Lease, and the right to transfer its fee interest in the personal property leased pursuant to the Hotel Personal Property Lease in accordance with Articles 8 and 11 of the Hotel Personal Property Lease, as applicable, either pursuant to Hotel Owner's default thereunder or pursuant to Hotel Owner's option to

purchase or to Borrower's option to transfer. Notwithstanding the foregoing or anything in this Section 9.21 to the contrary: (x) any transfer of the Hotel Parcel and the Hotel Improvements to Hotel Owner in accordance with Sections 15 of the Hotel Real Property Lease, or any transfer of Borrower's fee interest in the personal property leased pursuant to the Hotel Personal Property Lease to Hotel Owner in accordance with Article 8 of the Hotel Personal Property Lease, shall in each case constitute an Event of Default hereunder; and (y) until the Loan is repaid in full, in no event shall Hotel Owner exercise, or Borrower accept the exercise of, respectively, any purchase option in the Hotel Lease without Administrative Agent's prior written consent. In connection with any Transfer of the Hotel Parcel and the Hotel Improvements to Hotel Owner for any reason permitted hereunder (each a "Hotel Property Transfer") (it being acknowledged and agreed that any transfer not permitted hereunder shall be void *ab initio*) the following shall be in effect:

- (1) Borrower and Hotel Owner shall provide Administrative Agent with copies of all Transfer, assignment and assumption documents on the effective date of any Hotel Property Transfer;
- (2) Borrower shall be fully and forever released from all obligations under the Borrower Hotel Deed of Trust, provided, that it is expressly acknowledged and agreed that notwithstanding the foregoing release and the re-granting of the security interest created by the Borrower Hotel Deed of Trust below, in no event shall the lien of the Borrower Hotel Deed of Trust be released from any portion of the property encumbered thereby, and the Borrower Hotel Deed of Trust shall continue to secure the Loan to the same extent as if Borrower had retained ownership of the property encumbered thereby, and Administrative Agent shall have the right to name Borrower as a defendant in any foreclosure of the Borrower Hotel Deed of Trust to the extent required by Applicable Law, provided that Administrative Agent shall not be entitled to obtain a judgment against Borrower for the payment of any amount, including, but not limited to, any deficiency amount. Hotel Owner shall pay for all costs and expenses (including reasonable attorney's fees) incurred by Borrower in connection with any foreclosure or other enforcement action;
- (3) Borrower shall be deemed to have automatically assigned, and Hotel Owner shall be deemed to have automatically assumed and undertaken, all benefits, liabilities, obligations, indebtedness and duties of the Borrower as borrower under the Borrower Hotel Deed of Trust from and after the



effective date of such Hotel Property Transfer to the same extent as if Hotel Owner had originally made and executed the Borrower Hotel Deed of Trust as grantor thereunder. Hotel Owner shall make all payments, and perform all duties, due and owing by Borrower to Administrative Agent under and with respect to the Borrower Hotel Deed of Trust. Administrative Agent may enforce the Borrower Hotel Deed of Trust directly against Hotel Owner as grantor to the same extent as Administrative Agent would be entitled to enforce the Borrower Hotel Deed of Trust if Hotel Owner had originally made and executed the Borrower Hotel Deed of Trust as grantor *mutatis mutandis*. Hotel Owner hereby waives any defenses or defects in the Loan Documents as a result of such Loan Documents being signed by the Borrower not the Hotel Owner and acknowledges receipt of full and satisfactory consideration for the agreements described in this Section 9.21(c);

- (4) without limiting the continuing validity of the Borrower Hotel Deed of Trust and the priority of the lien thereof, effective on the effective date of such Hotel Property Transfer, Hotel Owner does hereby IRREVOCABLY AND FOREVER GRANT, BARGAIN, AND SELL to the trustee of the Borrower Hotel Deed of Trust, and to the trustee's successors and assigns, all on the terms set out in the Borrower Hotel Deed of Trust as if Hotel Owner was the original grantor under the Borrower Hotel Deed of Trust, all of Hotel Owner's estate, right, title and now owned or hereafter acquired in the Hotel Parcel and the Hotel Improvements, together with all other improvements, buildings, tenements, rents (including additional and percentage rents and reimbursements for expenses), leases, hereditament, fixtures, appurtenances, gas, oil, minerals, easements located in, on, over or under the Property, and all other property subject to the Borrower Hotel Deed of Trust to secure the Loan and further to secure any additional debt now or hereafter owing by Borrower or Hotel Owner to Administrative Agent or the Lenders;
- (5) each Guarantor shall continue to remain liable under the terms of each Guaranty to which it is a party;
- (6) the Hotel Lease shall not be permitted to terminate without Administrative Agent's consent and no transfer of the Hotel Parcel shall operate to result in a merger of any fee, leasehold or other interest in the Hotel Parcel, unless and except to the extent agreed to in writing by Administrative Agent (it being

acknowledged and agreed that nothing in this clause (6) shall prevent Borrower from transferring the Hotel Parcel in accordance with the terms hereof);

- (7) the foregoing clauses (1) – (6) shall be effective automatically upon the effective date of such Hotel Property Transfer, but Borrower and Hotel Owner shall, if requested by Administrative Agent, enter into an assignment and assumption agreement for the benefit of Administrative Agent on terms consistent with this Section 9.21(c), together with such other documents as Administrative Agent may reasonably request in connection therewith, each in form and substance reasonably acceptable to Administrative Agent, Borrower and Hotel Owner;
  - (8) promptly after the effective date of such Hotel Property Transfer, Hotel Owner shall deliver to Administrative Agent an endorsement to the Title Policy insuring that the Borrower Hotel Deed of Trust remains a valid first lien on the Hotel Parcel, subject only to Permitted Liens; and
  - (9) Hotel Owner shall pay all costs associated with any such Hotel Property Transfer, including Borrower's and Administrative Agent's reasonable legal fees and recording fees.
- (ii) Parking/Meeting Parcel. Administrative Agent and Lenders acknowledge that contemporaneously with the expiration or termination of the Parking/Meeting Lease, Borrower will transfer title to the Parking/Meeting Parcel and the Parking/Meeting Improvements to the CID. Administrative Agent and Lenders acknowledge that, notwithstanding anything else in this Agreement or the Loan Documents to the contrary, Borrower shall have the right without consent to transfer its fee estate in the Parking/Meeting Parcel and the Parking/Meeting Improvements to the CID in accordance with Sections 10, 15 and 17 of the Parking/Meeting Real Property Lease, and the right to transfer its fee interest in the personal property leased pursuant to the Parking/Meeting Personal Property Lease in accordance with Articles 8 and 11 of the Parking/Meeting Personal Property Lease, as applicable, either pursuant to the CID's default thereunder or pursuant to the CID's option to purchase or to Borrower's option to transfer. Notwithstanding the foregoing or anything in this Section 9.21 to the contrary, any transfer of the Parking/Meeting Parcel and the Parking/Meeting Improvements to the CID in accordance with Sections 15 of the Parking/Meeting Real Property Lease, or any transfer of Borrower's fee interest in the personal property leased pursuant to the Parking/Meeting Personal Property Lease to the CID in accordance with Article 8 of the Parking/Meeting Personal Property Lease, shall in each case constitute an Event of Default hereunder. In

connection with any Transfer of the Parking/Meeting Parcel and the Parking/Meeting Improvements to the CID for any reason permitted hereunder (a “Parking/Meeting Property Transfer”) (it being acknowledged and agreed that any transfer not permitted hereunder shall be void *ab initio*) the following shall be in effect:

- (1) Borrower shall provide Administrative Agent with copies of all Transfer, assignment and assumption documents on the effective date of such Parking/Meeting Property Transfer;
- (2) Borrower shall be fully and forever released from all obligations under the Borrower Parking/Meeting Deed of Trust, provided, that it is expressly acknowledged and agreed that notwithstanding the foregoing release and the re-granting of the security interest created by the Borrower Parking/Meeting Deed of Trust below, in no event shall the lien of the Borrower Parking/Meeting Deed of Trust be released from any portion of the property encumbered thereby, and the Borrower Parking/Meeting Deed of Trust shall continue to secure the Loan to the same extent as if Borrower had retained ownership of the property encumbered thereby, and Administrative Agent shall have the right to name Borrower as a defendant in any foreclosure of the Borrower Parking/Meeting Deed of Trust to the extent required by Applicable Law, provided that Administrative Agent shall not be entitled to obtain a judgment against Borrower for the payment of any amount, including, but not limited to, any deficiency amount. Hotel Owner shall pay for all costs and expenses (including reasonable attorney’s fees) incurred by Borrower in connection with any foreclosure or other enforcement action;
- (3) Any Parking/Meeting Property Transfer shall be made subject to the continuing lien of the Borrower Parking/Meeting Deed of Trust, Administrative Agent may foreclose the Borrower Parking/Meeting Deed of Trust directly against the owner of the Parking/Meeting Space.
- (4) intentionally omitted;
- (5) each Guarantor shall continue to remain liable under the terms of each Guaranty to which it is a party;
- (6) the Parking/Meeting Lease shall not be permitted to terminate without Administrative Agent’s consent and no transfer of the Parking/Meeting Parcel shall operate to result in a merger of any fee, leasehold or other interest in the

Parking/Meeting Parcel, unless and except to the extent agreed to in writing by Administrative Agent (it being acknowledged and agreed that nothing in this clause (6) shall prevent the Borrower from transferring the Parking/Meeting Parcel in accordance with the terms hereof);

- (7) the foregoing clauses (1) – (6) shall be effective automatically upon the effective date of such Parking/Meeting Property Transfer;
  - (8) promptly after the effective date of such Parking/Meeting Property Transfer, Hotel Owner shall deliver to Administrative Agent an endorsement to the Title Policy insuring that the Borrower Parking/Meeting Deed of Trust remains a valid first lien on the Parking/Meeting Parcel, subject only to Permitted Liens; and
  - (9) Hotel Owner shall pay all costs associated with any such Parking/Meeting Property Transfer, including Borrower's and Administrative Agent's reasonable legal fees and recording fees.
- (iii) Hotel Parcel and Parking/Meeting Parcel. In the event that both a Hotel Property Transfer and a Parking/Meeting Property Transfer have occurred:
- (1) Borrower shall be fully and forever released from all obligations under the Loan and the Loan Documents, provided, without limiting any provision of Section 9.21(c)(i) above or Section 9.21(c)(ii) above, that it is expressly acknowledged and agreed that notwithstanding the foregoing release, in no event shall the lien of the Borrower Deed of Trust or any other Loan Document be released from any portion of the property encumbered thereby, and the Borrower Deed of Trust and such other Loan Documents shall continue to secure the Loan to the same extent as if Borrower had retained ownership of the property encumbered thereby, and Administrative Agent shall have the right to name Borrower as a defendant in any foreclosure of the Borrower Deed of Trust or such other Loan Documents to the extent required by Applicable Law, provided that Administrative Agent shall not be entitled to obtain a judgment against Borrower for the payment of any amount, including, but not limited to, any deficiency amount. Hotel Owner shall pay for all costs and expenses (including reasonable attorney's fees) incurred by Borrower in connection with any foreclosure or other enforcement action;

- (2) Borrower shall be deemed to have automatically assigned, and Hotel Owner shall be deemed to have automatically assumed and undertaken, all benefits, liabilities, obligations, indebtedness and duties of the Borrower as borrower under the Loan and the Loan Documents (other than the Borrower Parking/Meeting Deed of Trust) from and after the effective date of the later of the Hotel Property Transfer and the Parking/Meeting Property Transfer to the same extent as if Hotel Owner had originally made and executed the Loan Documents (other than the Borrower Parking/Meeting Deed of Trust) as borrower thereunder, except that the limitations on liability described in Section 13.31 of this Agreement shall not apply to Hotel Owner as borrower. Hotel Owner shall make all payments, and perform all duties, due and owing by Borrower to Administrative Agent under and with respect to the Loan Documents (other than the Borrower Parking/Meeting Deed of Trust). Administrative Agent may enforce the Loan Documents (other than the Borrower Parking/Meeting Deed of Trust) directly against Hotel Owner as borrower to the same extent as Administrative Agent would be entitled to enforce the Loan Documents (other than the Borrower Parking/Meeting Deed of Trust) if Hotel Owner had originally made and executed the Loan Documents (other than the Borrower Parking/Meeting Deed of Trust) as borrower mutatis mutandis. Hotel Owner hereby waives any defenses or defects in the Loan Documents as a result of such Loan Documents being signed by the Borrower not the Hotel Owner and acknowledges receipt of full and satisfactory consideration for the agreements described in this Section 9.21(c);
- (3) each Guarantor shall continue to remain liable under the terms of each Guaranty to which it is a party;
- (4) the foregoing clauses (1) – (3) shall be effective automatically upon the effective date of the later of the Hotel Property Transfer and the Parking/Meeting Space Transfer, but Borrower and Hotel Owner shall, if requested by Administrative Agent, enter into an assignment and assumption agreement for the benefit of Administrative Agent on terms consistent with this Section 9.21(c), together with such other documents as Administrative Agent may reasonably request in connection therewith, each in form and substance reasonably acceptable to Administrative Agent, Borrower and Hotel Owner; and

- (5) Hotel Owner shall pay all costs associated with any such assignment and assumption, including Borrower's and Administrative Agent's reasonable legal fees and recording fees. Nothing contained in this clause 9.21(c) shall be deemed to be a waiver of any Event of Default resulting from any Transfer described in this clause 9.21.
- (iv) The provisions of this Section 9.21(c) are subject to the provisions of the Intercreditor Agreement, and in the event of an irreconcilable conflict between the terms of this Agreement and the terms of the Intercreditor Agreement, the terms of the Intercreditor Agreement shall control.

## **9.22. EQUITY TRANSFERS.**

(a) **Prohibited Equity Transfers.** Except as permitted below in this Section 9.22, Hotel Owner shall not cause or permit any Transfer of any direct or indirect legal or beneficial interest (such Transfers that are not so permitted below, collectively, a "Prohibited Equity Transfer") in Hotel Owner.

(b) **Permitted Equity Transfers.** Notwithstanding any provision of Section 9.22(a) above to the contrary, but subject to Section 9.22(c) below, so long as no Event of Default is continuing (subject to the last paragraph of this Section 9.22), Transfers of indirect interests in Hotel Owner shall be permitted, provided that after giving effect to any such Transfer: (i) Loews Guarantor shall continue to Control Hotel Owner, (ii) Loews Guarantor shall indirectly own, collectively, at least sixty-five percent (65%) of the equity interests in Hotel Owner and (iii) Sole Member shall continue to Control and directly own one hundred percent (100%) of the equity interests in Hotel Owner.

(c) **Transfer Qualifications.** Each Transfer permitted pursuant to this Section 9.22 shall be subject to the following requirements and conditions:

- (i) None of the representations or covenants of Section 6.23 shall be rendered untrue in any material respect as a result of such Transfer;
- (ii) If after giving effect to one Transfer or a series of Transfers, any Person (together with its Affiliates), would own 10% or more of the direct or indirect interests in Hotel Owner and such Person (together with its Affiliates) owned less than 10% of the direct or indirect interests in such Hotel Owner prior to such Transfer or series of Transfers, such Transfers shall be subject to Administrative Agent's prior written consent, which consent shall not be denied (so long as such transfer is otherwise not a Prohibited Property Transfer or a Prohibited Equity Transfer) unless such Person (or its Affiliates) does not satisfy Administrative Agent's or any Lender's customary background, criminal, OFAC or Patriot Act checks. Notwithstanding the foregoing, no consent or other activity shall be required by this Section 9.22(c)(ii) as a result of: (A) any Transfers of direct

or indirect interests in Loews Guarantor; or (B) any Transfers that involve the Transfer, sale or issuance of securities that are publicly traded.

- (iii) Promptly after any Transfer that would result in the organizational chart attached hereto as Exhibit C (or any more recent organizational chart provided to Administrative Agent pursuant to this Section 9.22(c)(iii)), no longer being true and correct, an updated organizational chart reflecting the Transfer will be provided;
- (iv) Hotel Owner shall have paid any and all third-party costs and expenses of Administrative Agent actually incurred (and for which Administrative Agent has provided reasonable evidence to Hotel Owner) in connection with such proposed Transfer (including reasonable out of pocket attorneys' fees and expenses); and
- (v) The ownership and Control requirements described in Section 9.22(b)(i) – (iii) above shall be satisfied at all times.

For the avoidance of doubt, and notwithstanding anything in Section 9.22(b), Transfers of direct or indirect legal or beneficial interests in Loews Corporation or Loews Guarantor may be made regardless of whether an Event of Default is continuing.

**9.23. TAXES, ASSESSMENTS, ENCUMBRANCES.** Hotel Owner shall pay prior to delinquency all Taxes, CID Special Assessments, payments in lieu of taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any Governmental Authority which are (or if not paid, may become) a lien or encumbrance on, or charge against, all or part of the Property or any interest in it (each a "Property Tax", and collectively "Property Taxes"). Notwithstanding the preceding sentence, Hotel Owner shall not be required to pay or discharge any such Property Tax that is being contested in good faith by appropriate proceedings in accordance with Section 13.7 and such contest will not result in a default under any of the Material Agreements to which either Loan Party is a party. If Lender is holding funds to pay Property Taxes in the Tax Reserve Account or such funds are being held by the Bond Trustee and the Loan Parties request Lender or Bond Trustee, as applicable, to pay the applicable Property Tax, then Loan Parties shall have fulfilled their obligations under this Section 9.23 and no Event of Default shall occur as a result of a failure to pay such Property Taxes.

**9.24. TAX RESERVE ACCOUNT.** In the event that the LCRA Loan is no longer outstanding, Hotel Owner shall establish an account in Hotel Owner's name with Administrative Agent for the purpose of holding reserve funds to pay the Property Taxes (the "Tax Reserve Account"). Hotel Owner shall deposit into the Tax Reserve Account an amount equal to one twelfth of the Property Taxes that Administrative Agent reasonably estimates (taking into account amounts already on deposit in the Tax Reserve Account) will be payable during the next ensuing twelve (12) months in order to accumulate sufficient funds to pay all such Property Taxes attributable to the Property at least ten (10) days prior to their respective due dates (the "Monthly Tax Deposit"). Within five (5) Business Days following submission in writing of a request therefor by Hotel Owner, Administrative Agent shall provide to Hotel Owner from the Tax Reserve Account (to the extent of funds available therein) funds sufficient to pay Property Taxes, provided

that such request is accompanied by (a) applicable bills, statements or estimates procured from the appropriate public office evidencing such Property Taxes sufficient to permit Administrative Agent to determine that such funds are being disbursed to pay Property Taxes and (b) a certification by Hotel Owner that such funds will be used to pay Property Taxes. If the amount of the funds deposited in accordance with this Section 9.24 shall exceed the amounts due for Property Taxes, Administrative Agent shall, at Hotel Owner's option (so long as no Event of Default is then continuing), either return any excess to Hotel Owner or credit such excess against future payments to be made under this Section 9.24. If Administrative Agent reasonably determines that any amounts being deposited into the Tax Reserve Account will be insufficient for the payment in full of any Property Taxes on their respective due dates, Administrative Agent shall notify Loan Parties in writing of such determination and, the Monthly Tax Deposit shall be increased by the amount that Administrative Agent reasonably estimates is sufficient to make up the deficiency at least ten (10) days prior to the respective due dates for the Property Taxes; provided that if Loan Parties receive notice of any deficiency after the date that is ten (10) days prior to the date that Property Taxes are due, Hotel Owner will deposit such amount within five (5) Business Days after its receipt of such notice. Amounts deposited under this Section 9.24 shall, at Hotel Owner's option, bear interest at the standard rate then applicable to deposit accounts with Administrative Agent of a type similar to the Tax Reserve Account. During the continuance of an Event of Default, Administrative Agent may apply all or any part of amounts deposited pursuant to this Section 9.24 (including any interest earned on such amounts) to any amounts due pursuant to the Loan Documents and/or to cure such Event of Default, in which event Hotel Owner shall be required to restore all amounts so applied, as well as to cure any other aspect of such Event of Default not cured by such application. Administrative Agent shall have the right to assign all amounts collected and in its possession to any successor Administrative Agent whereupon Administrative Agent shall be released from all liability with respect thereto. Following full repayment of the Loan (other than full repayment of the Loan as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Loan under the Loan Documents) or at such time as Administrative Agent may elect, the balance of all amounts collected and in Administrative Agent's possession and not applied to the payment of Property Taxes as set forth in this Section 9.24 shall be paid to Loan Parties and no other party shall have any right or claim thereto. Notwithstanding anything to the contrary in this Section 9.24, so long as the LCRA Loan is outstanding, any Property Taxes pledged to the Bond Trustee shall not be required to be deposited into the Tax Reserve Account.

**9.25. INSURANCE RESERVE ACCOUNT.** Promptly following Lender's reasonable request, Hotel Owner shall establish an account in Hotel Owner's name with Administrative Agent for the purpose of holding insurance reserve funds (the "Insurance Reserve Account"). Hotel Owner shall deposit into the Insurance Reserve Account an amount equal to one twelfth of the insurance premiums that Administrative Agent reasonably estimates (taking into account amounts already on deposit in the Insurance Reserve Account) will be payable during the next ensuing twelve (12) months in order to accumulate sufficient funds to pay all such insurance premiums at least ten (10) days prior to their respective due dates (the "Monthly Insurance Deposit"). Within five (5) Business Days following submission in writing of a request therefor by Hotel Owner, Administrative Agent shall provide to Hotel Owner from the Insurance Reserve Account (to the extent of funds available therein) funds sufficient to pay insurance premiums, provided that such request is accompanied by (a) applicable bill or statements sufficient to permit Administrative Agent to determine that such funds are being disbursed to pay insurance premiums and (b) a



certification by Hotel Owner that such funds will be used to pay insurance premiums. If the amount of the funds deposited in accordance with this Section 9.25 shall exceed the amounts due for insurance premiums, Administrative Agent shall either return any excess to Hotel Owner or credit such excess against future payments to be made under this Section 9.25. If Administrative Agent reasonably determines that any amounts being deposited into the Insurance Reserve Account will be insufficient for the payment in full of any insurance premiums on their respective due dates, Administrative Agent shall notify Loan Parties in writing of such determination and, the Monthly Insurance Deposit shall be increased by the amount that Administrative Agent reasonably estimates is sufficient to make up the deficiency at least ten (10) days prior to the respective due dates for the insurance premiums; provided that if Loan Parties receive notice of any deficiency after the date that is ten (10) days prior to the date that insurance premiums are due, Hotel Owner will deposit such amount within five (5) Business Days after its receipt of such notice. Amounts deposited under this Section 9.25 shall, at Loan Parties' option, bear interest at the standard rate then applicable to deposit accounts with Administrative Agent of a type similar to the Insurance Reserve Account. During the continuance of an Event of Default, Administrative Agent may apply all or any part of amounts deposited pursuant to this Section 9.25 (including any interest earned on such amounts) to any amounts due pursuant to the Loan Documents and/or to cure such Event of Default, in which event Hotel Owner shall be required to restore all amounts so applied, as well as to cure any other aspect of such Event of Default not cured by such application. Administrative Agent shall have the right to assign all amounts collected and in its possession to any successor Administrative Agent whereupon Administrative Agent shall be released from all liability with respect thereto. Following full repayment of the Loan (other than full repayment of the Loan as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Loan under the Loan Documents) or at such earlier time as Administrative Agent may elect, the balance of all amounts collected and in Administrative Agent's possession and not applied to the payment of insurance premiums as set forth in this Section 9.25 shall be paid to Loan Parties and no other party shall have any right or claim thereto. Notwithstanding the foregoing, in the event Hotel Owner maintains a blanket insurance policy which includes the Property and the Improvements, Hotel Owner shall only be required to deposit into the Insurance Reserve Account upon the occurrence and during the continuance of an Event of Default.

**9.26. MATERIAL AGREEMENTS.** Subject to the last sentence of this Section 9.26, Hotel Owner shall not, without the prior written consent of the Requisite Lenders, (a) surrender, assign, terminate or cancel any Material Agreement, (b) reduce or extend or consent to the reduction of or extension of the term of any Material Agreement (except for "as of right" reductions or extensions contained in such Material Agreement); (c) increase or consent to the increase by any material amount of the amount of any sums payable by either of the Loan Parties under any Material Agreement; (d) decrease or consent to the decrease by any material amount of the amount of any sums payable to either of the Loan Parties under any Material Agreement; or (e) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under any Material Agreement if such modification, change, supplement, alteration or amendment would result in a Material Adverse Effect. Hotel Owner shall perform in all material respects its obligations under each Material Agreement to which it is a party in accordance with its terms. Without limitation of any of the foregoing, Loan Parties shall not make any prepayments on or with respect to any of the Series A Bonds or Series B Bonds, other than (i) super sink payments required by the Super-TIF Financing Agreement, or (ii) the mandatory redemption requirements of the Series A Bond Indenture (as defined in the Intercreditor Agreement) and the Series B Bond

Indenture (as defined in the Intercreditor Agreement). Hotel Owner shall promptly provide Administrative Agent with copies of all written notices with respect to such Material Agreements delivered to or received by Hotel Owner under or with respect to any of such Material Agreements (including, without limitation, any submissions for funds and any annual, compliance and other reports and affidavits submitted by or on behalf of Hotel Owner under the CID Agreement). Notwithstanding any of the foregoing to the contrary, as used in this Section 9.26 only, the term “Material Agreements” shall not include the Hotel Lease, the Management Agreement, or the Use Agreement.

#### **9.27. CID.**

(a) During the continuance of an Event of Default, Administrative Agent shall have the immediate right (which may be exercised more than once from time to time) to cause the resignation of any and all directors on the Board of Directors of the CID (the “CID Board”) as described in clause (b) below, subject to the terms of the CID Documents and Applicable Law, and thereupon Administrative Agent, its nominee, designee, successor or assignee shall have the exclusive right to exercise the rights and powers of the Loan Parties under Section 37.4 of the Hotel Real Property Lease (to the extent permitted by the CID Documents and Applicable Law) to nominate directors to the CID Board chosen by Administrative Agent, in replacement for those directors so removed, subject to the terms of the CID Documents and Applicable Law, and Loan Parties shall thereafter cooperate with Administrative Agent to cause such directors to be appointed. At such time as Administrative Agent shall reasonably request, each Loan Party agrees to execute and deliver to Administrative Agent such documents as Administrative Agent and its counsel may reasonably require in order to insure that the provisions of this Section 9.27 will be validly and legally enforceable and effective against Loan Parties and all parties claiming by, through under or against Loan Parties.

(b) Hotel Owner shall (or shall cause each member of the CID Board appointed by or for the benefit of Loan Parties to) execute and deliver to Administrative Agent an undated resignation (a “CID Board Resignation”) for each new member of the CID Board nominated by Loan Parties for which Loan Parties have not already provided a CID Board Resignation, whereby Loan Parties (or the member of the CID Board appointed by or for the benefit of Loan Parties) tenders its resignation from the CID Board and instructs the CID Board that the successor members shall, to the extent permitted by the CID Documents and Applicable Law, be designated by Administrative Agent in the event an Event of Default exists and is continuing. During the continuance of an Event of Default, Administrative Agent may, by written notice to Loan Parties, date and tender any CID Board Resignation, now or hereafter delivered in connection with the Loan to the CID Board, whereupon the resignation of any such member shall become effective and interim members to the CID Board shall be designated by Administrative Agent by its exercise of the rights and powers of the Loan Parties under Section 37.4 of the Hotel Real Property Lease (to the extent permitted by the CID Documents and Applicable Law). Following any cure of an Event of Default, Administrative Agent shall reasonably cooperate with Loan Parties to have Loan Parties’ chosen board member(s) re-appointed to the CID Board in lieu of any appointed at the request of Administrative Agent. Loan Parties shall notify Administrative Agent promptly after the removal or replacement of any of the members of the CID Board appointed by or for the benefit of Loan Parties.

(c) Notwithstanding any of the foregoing to the contrary, in no event shall Administrative Agent tender any CID Board Resignation unless and until Administrative Agent has selected a replacement nominee for the board member resigning pursuant to any such CID Board Resignation.

**9.28. HOTEL LEASE AND USE AGREEMENT.** Recognizing that Borrower is not a party to the Use Agreement and has no rights or obligations thereunder, the Loan Parties make the following covenants and agreements, respectively. With respect to the Hotel Lease, each Loan Party hereby covenants and agrees as for itself only, as applicable, and with respect to the Use Agreement, Hotel Owner hereby covenants and agrees as for itself only, as follows:

(a) Hotel Owner shall pay or cause to be paid all rents, additional rents and other sums required to be paid by Hotel Owner, as tenant under and pursuant to the provisions of the Hotel Lease and under and pursuant to the provisions of the Use Agreement on or before the date on which such rent or other charges are payable. Upon the written request of the Administrative Agent, Hotel Owner shall deliver to the Administrative Agent evidence reasonably satisfactory to the Administrative Agent that all such rents and other sums payable, pursuant to such Hotel Lease and Use Agreement, which are then due and payable, have been paid.

(b) Loan Parties shall diligently perform and observe all of the terms, covenants and conditions of the Hotel Lease and the Use Agreement on the part of Loan Parties to be performed and observed prior to the expiration of any applicable grace period therein provided and do everything necessary to preserve and to keep unimpaired and in full force and effect the Hotel Lease and the Use Agreement.

(c) Loan Parties shall promptly notify the Administrative Agent of: (i) the giving of any notice by either such Loan Party or any other applicable party of any default by the other or any other applicable party under the Hotel Lease and/or the Use Agreement, and promptly deliver to the Administrative Agent a true copy of each such notice; and (ii) the commencement of any actions, suits, legal proceedings or arbitration proceedings between the Loan Parties and/or other applicable parties or otherwise relating to the Hotel Lease of which the Loan Parties have knowledge.

(d) If Hotel Owner shall be in default beyond any applicable notice and grace period under the Hotel Lease and/or the Use Agreement, then, subject to the terms of the Hotel Lease and/or Use Agreement, as applicable, unless all defaults are waived by the Borrower or any other applicable party, the Administrative Agent on behalf of the Lenders shall have the right (but not the obligation), to cause the default or defaults to be remedied and otherwise exercise any and all rights of Hotel Owner, as may be necessary to prevent or cure any default, and the Administrative Agent shall have the right to enter all or any portion of the Property at such times and in such manner as the Administrative Agent deems necessary, to prevent or to cure any such default; provided, that if a cure or grace period remains available to Hotel Owner with respect to such default under the terms of the Hotel Lease and/or Use Agreement, as applicable and if Hotel Owner has commenced and is diligently pursuing the cure of such default, and provided no Event of Default then exists, the Administrative Agent shall defer the commencement of its own activities with respect to such cure unless the Administrative Agent reasonably determines that Hotel Owner shall have ceased to pursue diligently the cure of such default or shall have communicated its

intention to do so (unless immediate steps are required to be taken in order to cure such default so as to preserve, maintain or protect the Property as Collateral for the Loan or to prevent any Material Adverse Effect thereon). Without limiting the foregoing, upon any such default, Loan Parties shall promptly execute, acknowledge and deliver to the Administrative Agent such instruments as may reasonably be required to permit the Administrative Agent to cure any default under the Hotel Lease and/or Use Agreement, as applicable, or permit the Administrative Agent to take such other action required to enable the Administrative Agent to cure or remedy the matter in default and preserve the security interest of the Administrative Agent under the Loan Documents with respect to the Property. Notwithstanding any of the foregoing, nothing in this Agreement shall limit any cure rights of Administrative Agent set forth in the Intercreditor Agreement. Hotel Owner irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Hotel Owner under or with respect to the Hotel Lease and/or Use Agreement or to preserve any rights of Hotel Owner whatsoever in respect of any part of the Hotel Lease and/or Use Agreement (and the above powers granted to the Administrative Agent are coupled with an interest and shall be irrevocable); provided that Administrative Agent shall not exercise its rights as attorney-in-fact except during the continuance of an Event of Default. The actions or payments of the Administrative Agent to cure any default by Loan Parties under the Hotel Lease and/or Use Agreement shall not remove or waive, as between Loan Parties and the Lenders, the default that occurred under this Agreement by virtue of the default by Loan Parties under the Hotel Lease and/or Use Agreement, as applicable. All out-of-pocket sums expended by the Administrative Agent to cure any such default shall be paid by Loan Parties to the Administrative Agent, upon demand, with interest on such sum at the Alternate Rate from the date such sum is expended to and including the date the reimbursement payment is made to the Administrative Agent. All such indebtedness shall be deemed to be secured by the Deed of Trust.

(e) Each of the Loan Parties shall use commercially reasonable efforts to enforce each material covenant or obligation of the Hotel Lease and the Use Agreement in accordance with their respective terms. Within ten (10) days after receipt of written demand by the Administrative Agent (but not more often than once per calendar year for so long as no Event of Default exists), Loan Parties shall furnish to Administrative Agent an estoppel certificate with respect to the Hotel Lease and Use Agreement that includes such items and statements as Administrative Agent shall require in its commercially reasonable discretion.

(f) Intentionally Omitted.

(g) Hotel Owner shall furnish to the Administrative Agent all information that the Administrative Agent may otherwise reasonably request from time to time concerning the Hotel Lease, the Use Agreement and each Loan Party's compliance with the same.

(h) Hotel Owner, promptly upon learning that the Borrower or any other applicable party has failed to perform the terms and provisions under the Hotel Lease and/or the Use Agreement and promptly upon learning of a rejection or disaffirmance or purported rejection or disaffirmance of the Hotel Lease and/or Use Agreement pursuant to any state or federal bankruptcy law, shall notify the Administrative Agent thereof.

(i) Each of the Loan Parties shall promptly notify the Administrative Agent of any request that any other party to the Hotel Lease or the Use Agreement makes for arbitration or other dispute resolution procedure pursuant to the Hotel Lease or the Use Agreement, as applicable, and of the institution of any such arbitration or dispute resolution. Loan Parties hereby authorize the Administrative Agent to participate in any such arbitration or dispute resolution only if an Event of Default exists. Loan Parties shall promptly deliver to the Administrative Agent a copy of the determination of each such arbitration or dispute resolution mechanism.

(j) If the Administrative Agent or its designee shall, as tenant, acquire or obtain a new lease following a termination of the Hotel Lease, then Hotel Owner shall have no right, title or interest whatsoever in or to such new Hotel Lease, or any proceeds or income arising from the estate arising under any such new Hotel Lease, including from any sale or other disposition thereof. The Administrative Agent or its designee shall hold such new hotel lease free and clear of any right or claim of Hotel Owner.

(k) Notwithstanding anything to the contrary contained in this Agreement with respect to the Hotel Lease or the Use Agreement:

- (i) The lien of the applicable Deed of Trust attaches to all of each applicable Loan Party's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including, without limitation, all rights, as debtor, to remain in possession of the Property.
- (ii) Loan Parties shall not, without the Administrative Agent's written consent, elect to treat the Hotel Lease or the Use Agreement as terminated under subsection 365(h)(1) of the Bankruptcy Code. Any such election made without the Administrative Agent's prior written consent shall be void.
- (iii) As security for the Loan, each of the Loan Parties unconditionally assigns, transfers and sets over to the Administrative Agent for the benefit of the Lenders all of its respective claims and rights to the payment of damages arising from any rejection by the Borrower or any other applicable party under the Hotel Lease or the Use Agreement under the Bankruptcy Code, including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents in any case in respect of the Borrower or other applicable party under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Loan shall have been satisfied and discharged in full. Any amounts received by the Administrative Agent or Loan Parties as damages arising out of the rejection of the Hotel Lease or Use Agreement as aforesaid shall be applied to all costs and expenses of and the Administrative Agent (including, without limitation, attorney's fees and costs) incurred in connection with the exercise of any of their rights or remedies in accordance with the applicable provisions of this Agreement.

- (iv) If, pursuant to subsection 365(h) of the Bankruptcy Code, Hotel Owner seeks to offset, against the rent reserved in the Hotel Lease or the Use Agreement the amount of any damages caused by the nonperformance by the Borrower or any other applicable party of any of their respective obligations thereunder after the rejection by Borrower or any other applicable party of the Hotel Lease or the Use Agreement under the Bankruptcy Code, then Hotel Owner shall not effect any offset of any amounts objected to by the Administrative Agent.
- (v) If any action, proceeding, motion or notice shall be commenced or filed in respect of the Borrower or any other applicable party of all or any part of the Property in connection with any case under the Bankruptcy Code, Hotel Owner shall conduct any such litigation with counsel reasonably approved by the Administrative Agent. Loan Parties shall, upon demand, pay to the Administrative Agent all reasonable costs and expenses (including reasonable attorneys' fees and costs) actually paid or actually incurred by the Administrative Agent in connection with the prosecution or conduct of any such proceedings. All such costs and expenses shall be secured by the lien of each Deed of Trust.
- (vi) Loan Parties shall promptly, after obtaining knowledge of such filing notify the Administrative Agent in writing of any filing by or against the Borrower under such Hotel Lease or any other applicable party under the Use Agreement of a petition under the Bankruptcy Code, including the court in which such petition was filed, and the relief sought in such filing. Loan Parties shall promptly deliver to the Administrative Agent any and all notices, summonses, pleadings, applications and other documents received by Loan Parties in connection with any such petition and any proceedings relating to such petition.
- (vii) Loan Parties shall promptly notify the Administrative Agent upon obtaining notice or knowledge that the Borrower or any other applicable party has filed a motion or sought other relief to sell or otherwise dispose of the Borrower's or such other party's respective interest in the Property free and clear of the Hotel Lease and/or the Use Agreement pursuant to Section 363(f) of the Bankruptcy Code, and Hotel Owner shall not consent to or fail to object to any such sale or other disposition.

(l) Intentionally Omitted.

(m) Loan Parties shall not, without the prior written consent of the Requisite Lenders, which consent shall not be unreasonably withheld, conditioned or delayed, (i) surrender, terminate or cancel the Hotel Lease or the Use Agreement (except to the extent otherwise expressly provided herein); (ii) reduce or extend or consent to the reduction of or extension of the term of the Hotel Lease or the Use Agreement (except for "as of right" reductions or extensions contained in the Hotel Lease or Use Agreement, as applicable); (iii) increase or consent to the increase by any material amount of the amount of any sums payable by Loan Parties under the Hotel Lease or the

Use Agreement; (iv) decrease or consent to the decrease by any material amount of the amount of any sums payable to Loan Parties under the Hotel Lease or the Use Agreement; or (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under the Hotel Lease or the Use Agreement in any material respect.

(n) Loan Parties shall not, without the Administrative Agent's prior written consent, cause, agree to, or permit to occur any subordination, or consent to the subordination of, the Hotel Lease or the Use Agreement to any mortgage, deed of trust or other Lien encumbering (or that may in the future encumber) the respective estates of the Loan Parties under the Hotel Lease or the Use Agreement.

**9.29. INTELLECTUAL PROPERTY.** Hotel Owner shall obtain Administrative Agent's prior written consent to the trade name under which the Property will be operated (which consent shall not be unreasonably withheld, conditioned or delayed), other than the name "Loews" which may be included in the Property's name pursuant to the terms and conditions of the Management Agreement and is hereby approved by Administrative Agent. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, nothing in this Agreement or any other Loan Document (X) constitutes or shall constitute the grant of a security interest in favor of the Administrative Agent or any Lender in any of the trademarks, service marks, or other intellectual property of the Manager or its respective affiliates (other than the Loan Parties as set forth herein), or in the name "Loews" or in any other proprietary information, methods, or systems of Manager or its respective affiliates, or (Y) gives Administrative Agent or any Lender any right to obtain or use any of the trademarks, service marks, or other intellectual property of the Manager or its respective affiliates (other than the Loan Parties as set forth herein), or the "Loews" name or any other proprietary information, methods, or systems of Manager or its respective affiliates, except as expressly set forth in the Management Agreement.

**9.30. SEPARATE TAX PARCEL.** Upon a Transfer permitted under Section 9.21, separate tax parcels for the Hotel Parcel and the Parking/Meeting Parcel may be designated if title to only one of the Hotel Parcel or Parking/Meeting Parcel is Transferred.

**9.31. ASSESSMENTS AND COMMUNITY FACILITIES DISTRICTS.** Except as contemplated by the Material Agreements as of the Effective Date, without Administrative Agent's prior written consent (not to be unreasonably withheld, conditioned or delayed): (A) Hotel Owner shall not (i) cause to become effective or otherwise consent to the formation of any new special assessment district or community facilities district which includes all or any part of the Property, (ii) cause or otherwise consent to the levying of any new material amount of special taxes or assessments against the Property by any such assessment district or community facilities district, or (iii) consent to Borrower causing either of (i) or (ii) above to occur; and (B) Borrower shall not: (i) voluntarily agree or consent in its capacity as the owner of the Property to subject all or any portion of the Property to any new or increase in existing Taxes, (ii) sign any petition or cast any vote in its capacity as the owner of the Property in support of any new or increase in existing Taxes which may be imposed or levied against all or any portion of the Property, or (iii) sign any petition or cast any vote in its capacity as the owner of the Property in favor of the formation of any special district with boundaries which would include all or any portion of the Property having the power to levy any Taxes or the expansion of the boundaries of an existing special district to include all

or any portion of the Property. Notwithstanding the foregoing, the parties hereto acknowledge that all or any portion of the Property may be subject to new Taxes or an increase in existing Taxes imposed or levied by taxing jurisdictions and approved in accordance with Applicable Law, and that all or any portion of the Property may be included in the boundaries of a new or expanded assessment district or communities facilities district having the power to impose or levy new Taxes or an increase in existing Taxes despite Loan Parties' compliance with this Section 9.31, and Loan Parties shall not be deemed to be in default under such circumstances. The restrictions in this Section shall only apply to the Property and not to the other property owned by Loan Parties.

**9.32. INTENTIONALLY OMITTED.**

**9.33. INTENTIONALLY OMITTED.**

**ARTICLE 10. REPORTING COVENANTS**

**10.1. FINANCIAL INFORMATION.** Hotel Owner shall furnish (or cause to be furnished) to Administrative Agent, the following financial statements at the following times:

(a) (i) As soon as available, but in no event later than one hundred twenty (120) days after the end of each calendar year, and certified as required by Section 10.9 below, a complete copy of Hotel Owner's and each other Guarantor's annual financial statements (which, in the case of Hotel Owner, must be audited, and in the case of Loews Guarantor only, must be certified by its authorized officer, including, without limitation, statements of (A) assets, liabilities and net worth, (B) income and expenses, and (C) cash flow except that Loews Guarantor shall not need to include a statement of cash flow or footnotes, and (ii) upon the reasonable request of the Administrative Agent, with respect to the Hotel Owner's financial statements described above, property schedules and other supporting information.

(b) As soon as available, but in no event later than sixty (60) days after the end of each calendar quarter, and certified as required by Section 10.9 below the following (except to the extent not required by Section 10.1(a)): unaudited financial statements of Loews Guarantor, including, without limitation, statements of: (A) assets, liabilities and net worth, and (B) income and expenses.

(c) (i) Within ten (10) days after receipt of same from Manager (but in no event later than thirty (30) days prior to the end of each calendar year), Hotel Owner shall provide to Administrative Agent an annual operating budget for the Hotel Owner's use of the Hotel (which shall include the "Operating Budget," as such term is defined in the Use Agreement) (the "Operating Budget") and capital budget (each, a "FF&E Budget") for the Hotel Improvements. The Operating Budget and FF&E Budget for each year shall not require Administrative Agent's prior consent, provided that during an Excess Cash Flow Sweep Period, any increase in the FF&E Budget (either of any line item therein or of the total annual budgeted amount) of more than ten percent (10%) over the amount shown on such initial FF&E Budget for such year shall require Administrative Agent's prior written consent (which shall not be unreasonably withheld, conditioned or delayed).

(d) Within twenty-five (25) days after the end of each calendar month, financial statements (including a balance sheet and income statement prepared in accordance with the



Uniform System of Accounts) for the Hotel Owner's use of the Hotel for the preceding calendar month, certified as required by Section 10.9, together with: (i) a comparison of the results for such month with (A) the projections for such month contained in the Operating Budget and (B) the actual results for the same calendar month in the immediately preceding calendar year (if applicable); (ii) if available, an operating statement for the twelve-month period ending with such month; (iii) an operating statement showing year-to-date results for the period ending with such month, together with a comparison of such operating statement with (A) the projections for such year-to-date period contained in the Operating Budget and (B) the actual results for the year-to-date period ending with the same calendar month in the immediately preceding calendar year (if applicable); (iv) the most recent Smith Travel Research STAR report (showing the Hotel together with the Hotel's primary competitive set), the Hotel Owner hereby agreeing to participate in and subscribe to such report; (v) budget reforecasts (showing year-to-date actual and remainder of year budget); and (vi) the reconciliation of amounts spent on capital expenditures in lieu of deposit into the FF&E Reserve Account as required pursuant to Section 9.17(c).

(e) As soon as available, but in no event later than twenty-five (25) days after each DSCR Test Date, and certified as required by Section 10.9, a certificate of Hotel Owner certifying as to the DSCR as of such DSCR Test Date, together with a reasonably detailed calculation of same and such other supporting materials and details as may be reasonably requested by Administrative Agent (each a "DSCR Certificate").

(f) In addition to the forgoing, as soon as reasonably practicable given the nature of the request, upon Administrative Agent's request, Hotel Owner shall also deliver to Administrative Agent such other information regarding Hotel Owner, Loews Guarantor and the operation of the Property as Administrative Agent may reasonably specify. Without limiting the generality of the foregoing, promptly following any request therefor by Administrative Agent, Hotel Owner shall deliver to Administrative Agent such other information and documentation reasonably requested by any Lender (acting through Administrative Agent) from time to time for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable Anti-Corruption Laws, Anti-Terrorism Laws (including those passed pursuant to the PATRIOT Act), and Anti-Money Laundering Laws.

**10.2. BOOKS AND RECORDS.** Hotel Owner shall maintain complete books of account and other records for the Hotel Owner's use of the Hotel and for disbursement and use of the proceeds of the Loan, and the same shall be available for inspection and copying by Administrative Agent upon reasonable prior notice. Hotel Owner shall reimburse the Administrative Agent for the cost of such inspection and copying incurred at any time that an Event of Default exists.

**10.3. REPORTS.** In addition to the forgoing, as soon as reasonably practicable given the nature of the request, upon Administrative Agent's request, Hotel Owner shall deliver to Administrative Agent monthly inventory reports, marketing and sales schedules and reports, marketing and sales information and/or leasing information, with respect to the Hotel Owner's use of the Hotel, all in form and substance reasonably acceptable to Administrative Agent.

**10.4. LEASING REPORTS.** Hotel Owner shall deliver to Administrative Agent within sixty (60) days of the end of each calendar quarter, rent rolls, leasing schedules, tenant schedules

and sales reports, operating statements and/or such other leasing information as Administrative Agent shall reasonably request with respect to the Hotel Owner's use of the Hotel, each in form and substance reasonably satisfactory to Administrative Agent.

**10.5. KNOWLEDGE OF DEFAULT; ETC.** Loan Parties shall promptly, upon obtaining knowledge thereof, report in writing to Administrative Agent the occurrence of any Event of Default. Additionally, unless Hotel Owner is exempt under Applicable Law from making any disclosures to Administrative Agent in the Beneficial Ownership Certification and is not otherwise required to do so pursuant Administrative Agent's standard policies, Hotel Owner shall promptly notify Administrative Agent and each Lender of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners that own more than 25% of the equity interests in Hotel Owner, or would result in any control party listed therein no longer being a control party, including as a result of any Transfer of equity interests in Hotel Owner or the direct or indirect owners thereof.

**10.6. FINANCIAL STATEMENTS.** All financial statements and reports provided pursuant to this Article 10 shall be prepared in accordance with Section 6.7 (to the extent applicable) (and, with respect to Loews Guarantor, Section 10.1(a)) above.

**10.7. LITIGATION, ARBITRATION OR GOVERNMENT INVESTIGATION.** Loan Parties shall promptly, upon obtaining knowledge thereof, report in writing to Administrative Agent, (i) the institution of, or receipt of a written threat of, any litigation or other judicial proceeding against Hotel Owner or Borrower which is related to the Property or otherwise affecting the Property, including any eminent domain or other condemnation proceedings affecting the Property, or (ii) any material development in any proceeding already disclosed, which, in either case, has a Material Adverse Effect, which notice shall contain such information as may be reasonably available to Loan Parties to enable Administrative Agent and its counsel to evaluate such matters, subject to such disclosure being permitted by Applicable Law.

**10.8. INTENTIONALLY OMITTED.**

**10.9. CERTIFICATE OF HOTEL OWNER AND GUARANTOR.** Together with each delivery of any operating statement, certificate or financial statement pursuant to this Article 10 or elsewhere in this Agreement where specific reference is made to this Section 10.9, each of the Hotel Owner (or Loews Guarantor, if relevant) shall provide the certificate of an authorized signatory that is familiar with the financial condition of Hotel Owner (or Loews Guarantor, if relevant) and the operation of the Property that such Person has reviewed the terms of this Agreement and the other Loan Documents, certifies that the information provided in any operating statement, financial statement or certificate is true and accurate, to the extent applicable, has made a review in reasonable detail of the transactions and condition of Hotel Owner (or Loews Guarantor, if relevant) during the accounting period covered by such operating statements or financial statements, and that such review has not disclosed the existence during or at the end of such accounting period, and that such person does not have knowledge of the existence as of the date of such certificate, of any condition or event which constitutes an Event of Default or a Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action has been taken, is being taken and is proposed to be taken with respect thereto.

## ARTICLE 11. DEFAULTS AND REMEDIES

**11.1. EVENT OF DEFAULT.** The occurrence of any one or more of the following shall constitute an event of default ("Event of Default") under this Agreement and the other Loan Documents:

(a) Monetary. Loan Parties' failure to pay (i) when due (A) any scheduled monthly payment of principal or interest or (B) any payment due at maturity or (ii) within ten (10) days of Borrower's receipt of notice from the Administrative Agent of such failure, any other sums payable under the Note(s), the Fee Letter, this Agreement or any of the other Loan Documents; or

(b) Performance of Obligations. Borrower's, Hotel Owner's or any other Guarantor's failure to perform any obligation in addition to those in Section 11.1(a) above under this Agreement, the other Loan Documents when such obligation is to be performed; provided, however, that (i) if a notice and cure period is specifically provided in the applicable provision giving rise to such obligation, Borrower's, Hotel Owner's or such Guarantor's failure to perform will not constitute an Event of Default until such date as the specified notice and cure period expires; and (ii) in all other cases except those described in the other subsections of this Section 11.1, Loan Parties, Loews Guarantor or any other Guarantor shall have a cure period of thirty (30) days following Borrower's, Hotel Owner's or such Guarantor's receipt of written notice of such failure to perform; or in the case of any Event of Default that is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and Loan Parties or Guarantor shall have (i) commenced to cure or cause the cure of such Event of Default within such thirty (30) day period, (ii) submitted to Administrative Agent an officer's certificate setting forth an explanation of the inability to cure such Event of Default within such thirty (30) day period and describing Borrower's, Hotel Owner's or Guarantor's past and intended efforts to cure or cause the cure of, such Event of Default, and (iii) thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for up to an additional ninety (90) days, and if the default is by Borrower and is not capable of cure then it shall not be an Event of Default unless it has a Material Adverse Effect; provided, however that the parties acknowledge and agree that the occurrence of any of the events specified in Section 11.1(f) and 11.1(g) as to Borrower shall not be deemed to be incapable of cure and shall be an Event of Default; or

(c) Intentionally Omitted; or

(d) Liens. The recording of any claim of Lien against the Property (other than Permitted Liens) and the continuance of such claim of Lien for thirty (30) days without discharge, satisfaction or provision for payment being made by Hotel Owner in a manner satisfactory to Administrative Agent; or

(e) Representations and Warranties. Any representation or warranty made or deemed made by the Borrower, Hotel Owner or any other Guarantor in the Loan Documents shall prove to have been materially incorrect or materially misleading when made or deemed made; provided, however, if such untrue representation or warranty is susceptible of being cured, Loan Parties shall have the right to cure or cause to be cured, such representation or warranty within thirty (30) days after the earlier of the date either of the Hotel Owner or Guarantor has knowledge thereof or the date Loan Parties receive notice from the Administrative Agent; or in the case of any such

representation or warranty that is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and Loan Parties shall have (i) commenced to cure or cause the cure of such representation or warranty to be commenced within such thirty (30) day period, (ii) submitted to Administrative Agent an officer's certificate setting forth an explanation of the inability to cure such Default within such thirty (30) day period and describing Loan Parties' past and intended efforts to cure or cause the cure of, such Default, and (iii) thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such longer period of time as may be necessary, and if the default is by Borrower and is not capable of cure then it shall not be an Event of Default unless it has a Material Adverse Effect; or

(f) Voluntary Bankruptcy; Insolvency; Dissolution. (i) The filing of a petition by Borrower for relief under the Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) the filing of any pleading or an answer by Borrower in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; (iii) a general assignment by Borrower for the benefit of creditors; or (iv) Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property, unless as to Borrower such application or appointment affects only certain assets of Borrower, and such assets do not include the Property; or

(g) Involuntary Bankruptcy. The failure of Borrower to effect a full dismissal of any involuntary petition under the Bankruptcy Code or under any other debtor relief law that is filed against Borrower or in any way restrains or limits Borrower, Administrative Agent or Lenders regarding the Loan, the Property, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or one hundred twenty (120) days after the date of filing of such involuntary petition; or

(h) Guarantors. The occurrence of any of the events specified in Section 11.1(f) or Section 11.1(g) as to Hotel Owner, Loews Guarantor or any other Guarantor; or

(i) Prohibited Transfers. The occurrence of a Prohibited Property Transfer or a Prohibited Equity Transfer (unless, in the case of a Prohibited Equity Transfer, the Loan is prepaid in full pursuant to Section 2.7(c) within five (5) Business Days after the occurrence of the Prohibited Equity Transfer); or

(j) Loss of Priority. The failure at any time of: (i) the Hotel Owner Deed of Trust to be a valid first priority lien upon the Hotel Owner's leasehold interest in the Property or any portion thereof (subject to Permitted Liens); or (ii) the Borrower Deed of Trust to be a valid first priority lien upon Borrower's fee interest in the Property or any portion thereof (subject to Permitted Liens); in each such case other than as a result of any release, reconveyance or subordination of either Deed of Trust with respect to all or any portion of the Property pursuant to the terms and conditions of this Agreement; or

(k) Separate Tax Parcel. The failure to cause the Property to be designated as a separate tax lot within the time period set forth in, and otherwise in accordance with and as contemplated by, Section 9.30.

(l) Financial Reporting. Hotel Owner's failure to comply with the reporting covenants set forth in Article 10 within the time frames set forth therein and such failure continues for five (5) Business Days after written notice of such failure from the Administrative Agent, provided, however, that Hotel Owner shall only be entitled to the notice and cure rights described in this Section 11.1(l) three (3) times over the term of the Loan; or

(m) Insurance. Hotel Owner's failure to comply with each of the terms and provisions of Article 5 hereof or any of the policies referred herein are not in full force and effect; or

(n) Liquor License. If any liquor license for the Property is revoked or for any reason, or the applicable Government Authorities (or any of them) require the cessation or suspension of the sale of alcoholic beverages at the Property, and such liquor license has not been reinstated or replaced, or the sale of alcoholic beverages at the Property has not otherwise resumed, as applicable, within sixty (60) days following the revocation, cessation or suspension, as applicable, or within such longer period as is reasonably necessary so long as Loan Parties are diligently pursuing same; or

(o) Management Agreement. (i) The Management Agreement is terminated by the Loan Party that is the counterparty thereto without having obtained any consent required pursuant to the Loan Documents or replacing the counterparty to such agreement pursuant to the terms of the Loan Documents on or prior to the date that the existing counterparty is terminated, (ii) the Management Agreement is terminated by the counterparty thereto as a result of an event of default thereunder by Hotel Owner and such agreement is not replaced with an agreement acceptable to Administrative Agent in its sole discretion within thirty (30) days of the effective date of such termination; or

(p) Loss of Requisite Benefits. If the Use Agreement or any other material easements, restrictions, covenants or operating agreements benefiting the Property shall no longer be in full force and effect and the same has a Material Adverse Effect; or

(q) Intentionally Omitted; or

(r) Request for Termination. If Hotel Owner requests a termination of the Loan, other than in connection with the repayment in full of the Loan; or

(s) Single Purpose Entity Covenants. Failure of Hotel Owner to comply with the terms and provisions of Section 9.11 hereof in any material respect and, if such non-compliance is susceptible to cure, such non-compliance continues for thirty (30) days following receipt of notice of such material breach; or

(t) Intentionally Omitted; or

(u) Guarantor Covenants. Loews Guarantor fails at any time to satisfy the requirements of Section 9.15 hereof; or

(v) Guarantor Defaults. Loews Guarantor defaults (after notice and cure periods) with respect to indebtedness in an aggregate amount of \$20,000,000 or more; or

(w) Money Laundering. The indictment or conviction of any Borrower, Hotel Owner, Loews Guarantor or any other Guarantor, or any other party to the Loan (other than Administrative Agent or any Lender), on any charge involving money laundering or a predicate crime to money laundering; or

(x) Breach of Sanctions Provisions. The failure of either Loan Party, or any Loan Party's failure to perform or observe the covenant in Section 9.13; or

(y) Hotel Lease. If at any time: (i) the Hotel Lease merges with the fee interest in the Land without the consent of the Administrative Agent, (ii) the Hotel Lease is amended, modified or supplemented without Requisite Lenders' prior written consent, to the extent consent is required under Section 9.28 herein, (iii) except as otherwise expressly permitted hereunder, the Hotel Lease is terminated by either of the Loan Parties without having obtained any consent required pursuant to the Loan Documents, or (iv) an event of default by Hotel Owner under the Hotel Lease shall have occurred (after expiration of any notice and cure period thereunder) without having been waived by the landlord under the Hotel Lease; or

(z) Use Agreement. If at any time: (i) the Use Agreement is amended, modified or supplemented without Requisite Lenders' prior written consent, to the extent consent is required under Section 9.28 herein, (ii) the Use Agreement is terminated without having obtained any consent required pursuant to the Loan Documents, or (iii) an event of default by Hotel Owner under the Use Agreement shall have occurred (after expiration of any notice and cure period thereunder) without having been waived by the applicable parties to the Use Agreement.

(aa) Divisions. Hotel Owner or Guarantor: (i) creates or adopts a Plan of Division, or file a Certificate of Division, or otherwise effectuates a LLC Division or LP Division of any such entity or Person; (ii) is liquidated, terminated, dissolved, or merged or consolidated into another entity (including, in each case, without limitation, pursuant to a LLC Division or LP Division); (iii) is divided into two or more Persons, including, without limitation, becoming a Divided LLC or Divided LP (whether or not the original Person survives such division); or (iv) is created, or reorganized into, one or more series pursuant to a LLC Division, LP Division or otherwise.

**11.2. ACCELERATION UPON DEFAULT; REMEDIES.** If any Event of Default described in Section 11.1(f), (g) or (h) hereof occurs, all sums owing to Lenders under the Notes, this Agreement and the other Loan Documents shall be immediately due and payable without any election or action on the part of Administrative Agent or any Lender. Upon the occurrence of any other Event of Default specified in this Article 11, Requisite Lenders may, at their sole option, declare all sums owing to Lenders under the Notes, this Agreement and the other Loan Documents immediately due and payable. Upon any such acceleration, Administrative Agent may, and at the direction of Requisite Lenders, shall, in addition to all other remedies permitted under this Agreement and the other Loan Documents and at law or equity, apply any sums in the Accounts to the sums owing under the Loan Documents and any and all obligations of Lenders to fund further disbursements under the Loan shall terminate.

**11.3. DISBURSEMENTS TO THIRD PARTIES.** Upon the occurrence of an Event of Default occasioned by any Loan Party's failure to pay money to a third party as required by this Agreement, Administrative Agent may but shall not be obligated to make such payment from the

Loan proceeds or other funds of Lenders. If such payment is made from proceeds of the Loan, Loan Parties shall promptly deposit with Administrative Agent, upon written demand, an amount equal to such payment. If such payment is made from funds of Lenders, Loan Parties shall promptly repay such funds upon written demand of Administrative Agent. In either case, the Event of Default with respect to which any such payment has been made by Administrative Agent or Lenders shall not be deemed cured until such deposit or repayment (as the case may be) has been made by Loan Parties to Administrative Agent.

**11.4. ADMINISTRATIVE AGENT'S COMPLETION OF CONSTRUCTION.**

During any period of construction, upon the occurrence of an Event of Default, Administrative Agent may, upon five (5) days prior written notice to Loan Parties and with or without legal process, remove Loan Parties and all agents, employees and contractors of Loan Parties from the Land, and complete the work of construction. Solely for this purpose, each Loan Party irrevocably appoints Administrative Agent as its attorney-in-fact, which agency is coupled with an interest. As attorney-in-fact, Administrative Agent may, in each respective Loan Party's name, take or omit to take any action Administrative Agent may deem appropriate, including, without limitation, exercising Loan Parties' respective rights under the Loan Documents and all contracts concerning the Property.

**11.5. INTENTIONALLY OMITTED.**

**11.6. REPAYMENT OF FUNDS ADVANCED.** Any funds expended by Administrative Agent or any Lender in the exercise of its rights or remedies under this Agreement and the other Loan Documents shall be payable to Administrative Agent upon demand, together with interest at the rate applicable to the principal balance of the Loan from the date the funds were expended.

**11.7. RIGHTS CUMULATIVE, NO WAIVER.** All Administrative Agent's and Lenders' rights and remedies provided in this Agreement and the other Loan Documents, together with those granted by law or at equity, are cumulative and may be exercised by Administrative Agent or Lenders at any time. Administrative Agent's or any Lender's exercise of any right or remedy shall not constitute a cure of any Event of Default unless all sums then due and payable to Lenders under the Loan Documents are repaid and Loan Parties have cured all other Event(s) of Default. No waiver shall be implied from any failure of Administrative Agent or any Lender to take, or any delay by Administrative Agent or any Lender in taking, action concerning any Event of Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Event of Default or failure of condition. Any waiver or approval under any of the Loan Documents must be in writing and shall be limited to its specific terms.

**ARTICLE 12. THE ADMINISTRATIVE AGENT; INTERCREDITOR PROVISIONS**

**12.1. APPOINTMENT AND AUTHORIZATION.**

(a) Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement, the other Loan Documents and the Other Related Documents (if applicable) as are specifically delegated to the Administrative Agent by the terms hereof and

thereof, together with such powers as are reasonably incidental thereto (including, without limitation, executing the settlement statement at closing). Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents (other than this Agreement) and Other Related Documents (if applicable) for the benefit of the Lenders.

(b) Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this Agreement, the Loan Documents or Other Related Documents (if applicable), and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders.

(c) Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms “Administrative Agent”, “Agent”, “agent” and similar terms in the Loan Documents or Other Related Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(d) The Administrative Agent shall deliver to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Article 10. The Administrative Agent will also furnish to any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative Agent by Borrower, any Loan Party or any Affiliate of Hotel Owner, pursuant to this Agreement or any other Loan Document not already delivered to such Lender pursuant to the terms of this Agreement or any such other Loan Document.

(e) As to any matters not expressly provided for by the Loan Documents and Other Related Documents (including, without limitation, enforcement or collection of any of Loan Parties’ obligations hereunder), Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the obligations of Loan Parties; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Applicable Law. Not in limitation of the foregoing, the Administrative Agent may exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement, the other Loan Documents, or the Other Related Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all the Lenders.



**12.2. WELLS FARGO AS LENDER.** Wells Fargo, as a Lender, shall have the same rights and powers under this Agreement and any other Loan Document as any other Lender and may exercise the same as though it were not the Administrative Agent; and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated, include Wells Fargo in each case in its individual capacity. Wells Fargo and its Affiliates may each accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with the Borrower, Loan Parties or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the other Lenders. Further, the Administrative Agent and any Affiliate may accept fees and other consideration from the Loan Parties for services in connection with this Agreement and otherwise without having to account for the same to the other Lenders. The Lenders acknowledge that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding the Borrower, other Significant Parties, other subsidiaries and other Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

**12.3. INTENTIONALLY OMITTED.**

**12.4. DISTRIBUTION AND APPORTIONMENT OF PAYMENTS;  
DEFAULTING LENDERS.**

(a) Subject to Section 12.4(b) below, payments actually received by Administrative Agent for the account of Lenders shall be paid to them promptly after receipt thereof by Administrative Agent, but in any event within two (2) Business Days, provided that Administrative Agent shall pay to Lenders interest thereon, at the lesser of (i) the Federal Funds Rate and (ii) the rate of interest applicable to the Loan, from the Business Day following receipt of such funds by Administrative Agent until such funds are paid in immediately available funds to Lenders. All payments of principal, interest, and other payments under the Loan Documents or Other Related Documents shall be allocated among such Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares in the Loan or otherwise as provided herein or as separately agreed by Administrative Agent and any Lender. Administrative Agent shall promptly distribute, but in any event within two (2) Business Days, to each Lender at its primary address set forth on the appropriate signature page hereof or on the Assignment and Assumption Agreement, or at such other address as a Lender may request in writing, such funds as it may be entitled to receive, provided that Administrative Agent shall in any event not be bound to inquire into or determine the validity, scope or priority of any interest or entitlement of any Lender and may suspend all payments and seek appropriate relief (including, without limitation, instructions from Requisite Lenders or all Lenders, as applicable, or an action in the nature of interpleader) in the event of any doubt or dispute as to any apportionment or distribution contemplated hereby. The order of priority herein is set forth solely to determine the rights and priorities of Lenders as among themselves and may at any time or from time to time be changed by Lenders as they may elect, in writing in accordance with this Agreement, without necessity of notice to or consent of or approval by Loan Parties or any other Person. All payments or other sums received by Administrative Agent for the account of Lenders shall not constitute property or assets of the Administrative Agent and shall be held by Administrative Agent, solely in its capacity as agent for itself and the other Lenders, subject to the Loan Documents and the Other Related Documents.

Notwithstanding any provision hereof to the contrary, until such time as a Defaulting Lender has funded its Pro Rata Share of a Protective Advance or prior Loan disbursement which was previously a Non-Pro Rata Advance, or all other Lenders have received payment in full (whether by repayment or prepayment) of the amounts due in respect of such Non-Pro Rata Advance, all of the indebtedness and obligations owing to such Defaulting Lender hereunder shall be subordinated in right of payment, as provided in the following sentence, to the prior payment in full of all principal, interest and fees in respect of all Non-Pro Rata Advances in which the Defaulting Lender has not funded its Pro Rata Share (such principal, interest and fees being referred to as “Senior Loans”). All amounts paid by Loan Parties and otherwise due to be applied to the indebtedness and obligations owing to the Defaulting Lender (other than a Performing Defaulting Pfandbrief Lender) pursuant to the terms hereof shall be distributed by Administrative Agent to the other Lenders in accordance with their respective Pro Rata Shares of the Loan (recalculated for purposes hereof to exclude the Defaulting Lender’s (other than a Performing Defaulting Pfandbrief Lender’s) Pro Rata Share of the Loan), until all Senior Loans have been paid in full. This provision governs only the relationship among Administrative Agent, each Defaulting Lender, and the other Lenders; nothing hereunder shall limit the obligations of Loan Parties under this Agreement. The provisions of this section shall apply and be effective regardless of whether an Event of Default occurs and is then continuing, and notwithstanding (a) any other provision of this Agreement to the contrary, (b) any instruction of Hotel Owner as to its desired application of payments or (c) the suspension of such Defaulting Lender’s (other than a Performing Defaulting Pfandbrief Lender’s) right to vote on matters which are subject to the consent or approval of Requisite Lenders or all Lenders. Administrative Agent shall be entitled to (i) withhold or setoff, and to apply to the payment of the defaulted amount and any related interest, any amounts to be paid to such Defaulting Lender under this Agreement, and (ii) bring an action or suit against such Defaulting Lender in a court of competent jurisdiction to recover the defaulted amount and any related interest. In addition, the Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all liabilities and costs, plus interest thereon at the Alternate Rate, which they may sustain or incur by reason of or as a direct consequence of the Defaulting Lender’s failure or refusal to perform its obligations under this Agreement. Notwithstanding anything to the contrary contained in this Section 12.4 or elsewhere in this Agreement, including the definition of “Requisite Lenders” or Section 13.12:

(i) the rights of a Performing Defaulting Pfandbrief Lender to participate in the administration of the Loan and the Loan Documents as set forth in this Agreement with respect to actions requiring Requisite Lender or all Lender approval shall not be suspended so long as such Performing Defaulting Pfandbrief Lender responds to any communication or request under the Loan Documents within ten (10) Business Days after receipt thereof (or such lesser time as may be required by the Loan Documents); and

(ii) any payments received or payable in respect of such Performing Defaulting Pfandbrief Lender’s Pro Rata Share in the Loan shall not be subject to any subordination, escrow or holdback, and shall be distributed to such Performing Defaulting Pfandbrief Lender in accordance with the terms of the Loan Documents as if such Performing Defaulting Pfandbrief Lender was not a Defaulting Lender.

(d) Notwithstanding the provisions of Section 12.4(c), the rights provided to a Performing Defaulting Pfandbrief Lender hereunder shall apply if, and only to the extent that, such rights are necessary or required to maintain such Performing Defaulting Pfandbrief Lender's interest in the Loan in the cover pool for German Pfandbrief. Further, for the avoidance of doubt, except as expressly provided in this Section 12.4(d), a Performing Defaulting Pfandbrief Lender shall remain a Defaulting Lender for all other purposes under this Agreement and the Loan Documents.

**12.5. PRO RATA TREATMENT.** Except to the extent otherwise provided herein: (a) each borrowing from Lenders shall be made from the Lenders, each payment of the fees shall be made for the account of the Lenders, and each termination or reduction of the amount of the Commitments pursuant to this Agreement shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (b) each payment or prepayment of principal of the Loan by the Loan Parties shall be made for the account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loan held by them, provided that if immediately prior to giving effect to any such payment in respect of the Loan the outstanding principal amount of the Loan shall not be held by the Lenders pro rata in accordance with their respective Commitments in effect at the time the Loan was made, then such payment shall be applied to the Loan in such manner as shall result, as nearly as is practicable, in the outstanding principal amount of the Loan being held by the Lenders pro rata in accordance with their respective Commitments; and (c) each payment of interest on the Loan by the Loan Parties shall be made for the account of the Lenders pro rata in accordance with the amounts of interest on the Loan then due and payable to the respective Lenders.

**12.6. SHARING OF PAYMENTS, ETC.** Lenders agree among themselves that (i) with respect to all amounts received by them which are applicable to the payment of the obligations of Loan Parties or Guarantor under the Loan, equitable adjustment will be made so that, in effect, all such amounts will be shared among them ratably in accordance with their Pro Rata Shares in the Loan, whether received by voluntary payment, by counterclaim or cross action or by the enforcement of any or all of such obligations, (ii) if any of them shall by voluntary payment or by the exercise of any right of counterclaim or otherwise, receive payment of a proportion of the aggregate amount of such obligations held by it which is greater than its Pro Rata Share in the Loan of the payments on account of such obligations, the one receiving such excess payment shall purchase, without recourse or warranty, an undivided interest and participation (which it shall be deemed to have done simultaneously upon the receipt of such payment) in such obligations owed to the others so that all such recoveries with respect to such obligations shall be applied ratably in accordance with such Pro Rata Shares; provided, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to that party to the extent necessary to adjust for such recovery, but without interest except to the extent the purchasing party is required to pay interest in connection with such recovery. Loan Parties agree that any Lender so purchasing a participation from another Lender pursuant to this Section 12.6 may, to the fullest extent permitted by Applicable Law, exercise all its rights of payment with respect to such participation as fully as if such Lender were the direct creditor of Loan Parties in the amount of such participation.

## **12.7. COLLATERAL MATTERS; PROTECTIVE ADVANCES.**

(a) Each Lender hereby authorizes the Administrative Agent, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral, Loan Documents or Other Related Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to any of the Loan Documents or Other Related Documents.

(b) The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release or subordinate any Lien granted to or held by the Administrative Agent upon any Collateral and/or to enter into a non-disturbance or similar agreement (i) upon termination of the Commitments and indefeasible payment and satisfaction in full of all of the obligations of Loan Parties hereunder; (ii) as expressly permitted by, but only in accordance with, the terms of the applicable Loan Document; (iii) in connection with Leases or easements relating to the Property; and (iv) if approved, authorized or ratified in writing by the Requisite Lenders (or such greater number of Lenders as this Agreement or any other Loan Document may expressly provide). Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section.

(c) Upon any sale and transfer of Collateral which is expressly permitted pursuant to the terms of this Agreement, and upon at least five (5) Business Days' prior written request by Hotel Owner, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Administrative Agent for the benefit of the Lenders herein or pursuant hereto upon the Collateral that was sold or transferred; provided, however, that (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the obligations of Loan Parties or any Liens upon (or obligations of the Loan Parties or any other Loan Party in respect of) all interests retained by the Loan Parties or any other Loan Party, including (without limitation) the proceeds of such sale or transfer, all of which shall continue to constitute part of the Collateral. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, the Administrative Agent shall be authorized to deduct all of the expenses reasonably incurred by the Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(d) The Administrative Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or that the Liens granted to the Administrative Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Administrative Agent in this Section or in any of the Loan Documents or Other Related Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given the Administrative Agent's own interest in the Collateral

as one of the Lenders and that the Administrative Agent shall have no duty or liability whatsoever to the Lenders, except to the extent resulting from its gross negligence or willful misconduct.

(e) The Administrative Agent may make, and shall be reimbursed by the Lenders (in accordance with their Pro Rata Shares) to the extent not reimbursed by the Hotel Owner for, Protective Advances during any one calendar year with respect to any Property that is Collateral up to the sum of (i) amounts expended to pay real estate taxes, assessments and governmental charges or levies imposed upon such Property; (ii) amounts expended to pay insurance premiums for policies of insurance related to such Property; and (iii) \$500,000.00. Protective Advances in excess of said sum during any calendar year for any Property that is Collateral shall require the consent of the Requisite Lenders. The Hotel Owner agrees to pay on demand all Protective Advances.

(f) Each Lender agrees that it will not take any action, nor institute any actions or proceedings, against Loan Parties or any other obligor hereunder under the Loan Documents or the Other Related Documents with respect to exercising claims against or rights in the Collateral without the written consent of Requisite Lenders.

**12.8. POST-FORECLOSURE PLANS.** If all or any portion of the Collateral is acquired by the Administrative Agent as a result of a foreclosure or the acceptance of a deed or assignment in lieu of foreclosure, or is retained in satisfaction of all or any part of the obligations of Loan Parties hereunder, the title to any such Collateral, or any portion thereof, shall be held in the name of the Administrative Agent or a nominee or subsidiary of the Administrative Agent, as agent, for the ratable benefit of all Lenders. The Administrative Agent shall prepare a recommended course of action for such Collateral (a “Post-Foreclosure Plan”), which shall be subject to the approval of the Requisite Lenders. In accordance with the approved Post-Foreclosure Plan, the Administrative Agent shall manage, operate, repair, administer, complete, construct, restore or otherwise deal with the Collateral acquired, and shall administer all transactions relating thereto, including, without limitation, employing a management agent, leasing agent and other agents, contractors and employees, including agents for the sale of such Collateral, and the collecting of rents and other sums from such Collateral and paying the expenses of such Collateral. Actions taken by the Administrative Agent with respect to the Collateral, which are not specifically provided for in the approved Post-Foreclosure Plan or reasonably incidental thereto, shall require the written consent of the Requisite Lenders by way of supplement to such Post-Foreclosure Plan. Upon demand therefor from time to time, each Lender will contribute its share (based on its Pro Rata Share) of all reasonable costs and expenses incurred by the Administrative Agent pursuant to the approved Post-Foreclosure Plan in connection with the construction, operation, management, maintenance, leasing and sale of such Collateral. In addition, the Administrative Agent shall render or cause to be rendered to each Lender, on a monthly basis, an income and expense statement for such Collateral, and each Lender shall promptly contribute its Pro Rata Share of any operating loss for such Collateral, and such other expenses and operating reserves as the Administrative Agent shall deem reasonably necessary pursuant to and in accordance with the approved Post-Foreclosure Plan. To the extent there is net operating income from such Collateral, the Administrative Agent shall, in accordance with the approved Post-Foreclosure Plan, determine the amount and timing of distributions to the Lenders. All such distributions shall be made to the Lenders in accordance with their respective Pro Rata Shares. The Lenders acknowledge and agree that if title to any Collateral is obtained by the

Administrative Agent or its nominee, such Collateral will not be held as a permanent investment but will be liquidated as soon as practicable. The Administrative Agent shall undertake to sell such Collateral, at such price and upon such terms and conditions as the Requisite Lenders reasonably shall determine to be most advantageous to the Lenders. Any purchase money mortgage or deed of trust taken in connection with the disposition of such Collateral in accordance with the immediately preceding sentence shall name the Administrative Agent, as agent for the Lenders, as the beneficiary or mortgagee. In such case, the Administrative Agent and the Lenders shall enter into an agreement with respect to such purchase money mortgage or deed of trust defining the rights of the Lenders in the same Pro Rata Shares as provided hereunder, which agreement shall be in all material respects similar to this Article insofar as the same is appropriate or applicable.

**12.9. APPROVALS OF LENDERS.** All communications from the Administrative Agent to any Lender requesting such Lender's determination, consent, approval or disapproval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, approval, consent or disapproval is requested, or shall advise such Lender where information, if any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved, (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials and a summary of all oral information provided to the Administrative Agent by the Loan Parties in respect of the matter or issue to be resolved, and (d) shall include the Administrative Agent's recommended course of action or determination in respect thereof. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the recommendation or determination of the Administrative Agent (together with a reasonable written explanation of the reasons behind such objection) within ten (10) Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents or Other Related Documents) of receipt of such communication, such Lender shall be deemed to have conclusively approved of or consented to such recommendation or determination.

**12.10. NOTICE OF DEFAULTS.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of an Event of Default or Default unless the Administrative Agent has received notice from a Lender or the Loan Parties referring to this Agreement, describing with reasonable specificity such Event of Default or Default and stating that such notice is a "notice of default". If any Lender (excluding the Lender which is also serving as the Administrative Agent) becomes aware of any Event of Default or Default, it shall promptly send to the Administrative Agent such a "notice of default". Further, if the Administrative Agent receives such a "notice of default," the Administrative Agent shall give prompt notice thereof to the Lenders.

**12.11. ADMINISTRATIVE AGENT'S RELIANCE, ETC.** Notwithstanding any other provisions of this Agreement, any other Loan Documents or the Other Related Documents, neither the Administrative Agent nor any of its directors, officers, agents, employees or counsel shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein. Without limiting the generality of the foregoing, the Administrative Agent: may consult with legal counsel (including its own counsel or counsel for the Loan Parties or any other Loan Party), independent public accountants and other

experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Neither the Administrative Agent nor any of its directors, officers, agents, employees or counsel: (a) makes any warranty or representation to any Lender or any other Person and shall be responsible to any Lender or any other Person for any statement, warranty or representation made or deemed made by the Borrower, any other Loan Party, or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of the Loan Parties or other Persons or inspect the property, books or records of the Loan Parties or any other Person; (c) shall be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any Collateral covered thereby or the perfection or priority of any Lien in favor of the Administrative Agent on behalf of the Lenders in any such Collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or Other Related Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; and (e) shall incur any liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, telecopy or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties. The Administrative Agent may execute any of its duties under the Loan Documents or Other Related Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

**12.12. INDEMNIFICATION OF ADMINISTRATIVE AGENT.** Regardless of whether the transactions contemplated by this Agreement, the other Loan Documents and Other Related Documents are consummated, each Lender agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Hotel Owner and without limiting the obligation of the Hotel Owner to do so) pro rata in accordance with such Lender's respective Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Administrative Agent (in its capacity as Administrative Agent but not as a "Lender") in any way relating to or arising out of the Loan Documents or Other Related Documents, any transaction contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under the Loan Documents and Other Related Documents (collectively, "Indemnifiable Amounts"); provided, however, that no Lender shall be liable for any portion of such Indemnifiable Amounts to the extent resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment provided, however, that no action taken in accordance with the directions of the Requisite Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Administrative Agent (to the extent not reimbursed by Hotel Owner and without limiting the obligation of the Hotel Owner to do so) promptly upon demand for its ratable share of any out-of-pocket expenses (including the reasonable fees and expenses of the counsel to the Administrative Agent) incurred by the

Administrative Agent in connection with the preparation, negotiation, execution, administration, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice with respect to the rights or responsibilities of the parties under, the Loan Documents and Other Related Documents, any suit or action brought by the Administrative Agent to enforce the terms of the Loan Documents and Other Related Documents and/or collect any obligation of Loan Parties hereunder, any “lender liability” suit or claim brought against the Administrative Agent and/or the Lenders, and any claim or suit brought against the Administrative Agent and/or the Lenders arising under any Hazardous Materials Laws. Such out-of-pocket expenses (including counsel fees) shall be advanced by the Lenders on the request of the Administrative Agent notwithstanding any claim or assertion that the Administrative Agent is not entitled to indemnification hereunder upon receipt of an undertaking by the Administrative Agent that the Administrative Agent will reimburse the Lenders if it is actually and finally determined by a court of competent jurisdiction that the Administrative Agent is not so entitled to indemnification. The agreements in this Section shall survive the repayment of the Loan and all other amounts payable hereunder or under the other Loan Documents or Other Related Documents and the termination of this Agreement. If Hotel Owner shall reimburse the Administrative Agent for any Indemnifiable Amount following payment by any Lender to the Administrative Agent in respect of such Indemnifiable Amount pursuant to this Section, the Administrative Agent shall share such reimbursement on a ratable basis with each Lender making any such payment.

**12.13. LENDER CREDIT DECISION, ETC.** Each Lender expressly acknowledges and agrees that neither the Administrative Agent nor any of its officers, directors, employees, agents, counsel, attorneys-in-fact or other affiliates has made any representations or warranties to such Lender and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Borrower, any other Loan Party or Affiliate, shall be deemed to constitute any such representation or warranty by the Administrative Agent to any Lender. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent, or any of their respective officers, directors, employees, agents or counsel, and based on the financial statements of the Borrower, the other Loan Parties or Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Borrower, the other Loan Parties and other Persons, its review of the Loan Documents and the Other Related Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate, made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent or any of their respective officers, directors, employees and agents, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents or Other Related Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Loan Parties or any other Loan Party of the Loan Documents or Other Related Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, the Loan Parties or any other Loan Party. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent under this Agreement, any of the other Loan Documents or Other Related Documents, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business,



operations, property, financial and other condition or creditworthiness of the Borrower, any other Loan Party or any other Affiliate thereof which may come into possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or other Affiliates. Each Lender acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to such Lender.

**12.14. SUCCESSOR ADMINISTRATIVE AGENT.** Administrative Agent may resign at any time as Administrative Agent under the Loan Documents and Other Related Documents by giving written notice thereof to the Lenders and the Loan Parties. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Event of Default or Default exists, be subject to the Loan Parties' approval, which approval shall not be unreasonably withheld or delayed. If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within thirty (30) days after the current Administrative Agent's giving of notice of resignation, then the current Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a Lender, if any Lender shall be willing to serve. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents and the Other Related Documents. After any Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article 12 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents and the Other Related Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents and the Other Related Documents to any of its Affiliates by giving Loan Parties and each Lender prior written notice.

**12.15. NO SET-OFFS.** Each Lender hereby acknowledges that the exercise by any Lender of offset, set-off, banker's lien or similar rights against any deposit account or other property or asset of any Loan Party, could result under Applicable Law in significant impairment of the ability of all Lenders to recover any further amounts in respect of the Loan. Therefore, each Lender agrees not to charge or offset any amount owed to it by Loan Parties against any of the accounts, property or assets of Loan Parties or any of its Affiliates held by such Lender without the prior written approval of Administrative Agent and Requisite Lenders.

**12.16. ALLOCATION OF PROCEEDS.** If an Event of Default exists and maturity of any of Loan Parties' respective obligations have been accelerated or the Maturity Date has occurred, unless otherwise agreed to by Requisite Lenders, all payments received by the Administrative Agent under any of the Loan Documents, in respect of any principal or interest on the Loan or any other amounts payable by the Loan Parties hereunder and in conjunction with any AAIRPA, shall be applied in the following order and priority:

(a) amounts due to Administrative Agent constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to Administrative Agent in its capacity as such, including, without limitation, amounts due under Section 2.9 and Section 13.1;

(b) amounts due to Administrative Agent and Lenders pursuant to Section 2.9 and Section 13.1, to be paid to such Persons equally and ratably in accordance with the respective amounts thereof then due and owing to such Persons;

(c) amounts due to the Administrative Agent and the Lenders in respect of expenses due hereunder until paid in full, and then all outstanding fees as set forth in the Fee Letter;

(d) amounts due to the Administrative Agent and the Lenders in respect of Protective Advances;

(e) payments of interest on the Loan to be paid to Lenders in accordance with the respective amounts thereof then due and owing;

(f) payments of principal on the Loan and payments of the termination value in respect of any AAIRPA, if any, to be paid to Administrative Agent (or its Affiliates) and Lenders equally and ratably in accordance with the respective amounts thereof then due and owing to such Persons;

(g) payments of all other sums, obligations and other amounts due under any of the Loan Documents and any AAIRPA, to be paid to such Persons equally and ratably in accordance with the respective amounts thereof then due and owing to such Persons; and

(h) any amount remaining after application as provided above, shall be paid to the Loan Parties or whomever else may be legally entitled thereto.

#### **12.17. ERRONEOUS PAYMENTS.**

(a) The parties hereto agree that if (i) Administrative Agent notifies (which such notice shall be conclusive absent manifest error) any Lender or any other Person that has received funds from Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender (each such recipient, a “Payment Recipient”) that Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 12.17(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an “Erroneous Payment”), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or

recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of Administrative Agent, and upon demand from Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrative Agent at the Overnight Rate.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by Administrative Agent for any reason, after demand therefor by Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an “Erroneous Payment Return Deficiency”), then at the sole discretion of Administrative Agent and upon Administrative Agent’s written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of a portion of its Loan (but not its Commitments) in the amount of such portion to Administrative Agent or, at the option of Administrative Agent, Administrative Agent’s applicable lending Affiliate, in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as Administrative Agent may specify) (such assignment of the Loan (but not Commitments), the “Erroneous Payment Deficiency Assignment”) plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by Administrative Agent or its applicable lending Affiliate as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, Administrative Agent may cancel any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such revocation the portion of the Loan assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 13.13 and (3) Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off,

net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by Administrative Agent to such Payment Recipient from any source, against any amount due to Administrative Agent under this Section 12.17 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Administrative Agent from Borrower or any other Loan Party for the purpose of making a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 12.17 shall survive the resignation or replacement of Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

Nothing in this Section 12.17 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

## **ARTICLE 13. MISCELLANEOUS PROVISIONS**

**13.1. INDEMNITY.** HOTEL OWNER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS EACH OF ADMINISTRATIVE AGENT AND EACH LENDER, EACH CORPORATION CONTROLLED BY ANY SUCH LENDER, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (INCLUDING, WITHOUT LIMITATION, ANY PARTICIPANTS IN THE LOAN) (COLLECTIVELY, THE "INDEMNITEES" AND EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) ("LOSSES") WHICH SUCH INDEMNITEE INCURS AS A DIRECT OR INDIRECT CONSEQUENCE OF: (A) ADMINISTRATIVE AGENT OR LENDERS ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED THEREBY; (B) THE MAKING OF THE LOAN TO BORROWER; (C) THE PURPOSE TO WHICH ANY LOAN PARTY APPLIES THE LOAN PROCEEDS; (D) THE FAILURE OF ANY LOAN PARTY TO PERFORM ANY OBLIGATIONS AS AND WHEN REQUIRED BY THIS AGREEMENT, THE MANAGEMENT AGREEMENT, ANY FRANCHISE AGREEMENT OR THE LOAN DOCUMENTS; (E) ANY FAILURE AT ANY TIME OF ANY LOAN PARTY'S REPRESENTATIONS OR WARRANTIES TO BE TRUE AND CORRECT IN ALL MATERIAL RESPECTS; (F) ALLEGATIONS THAT ADMINISTRATIVE AGENT OR LENDERS, AS MATERIAL CREDITORS OF BORROWER, HAVE DIRECT OR INDIRECT INFLUENCE OVER ANY LOAN PARTY; (G) THE EXERCISE BY ADMINISTRATIVE AGENT OR LENDERS OF ANY RIGHTS OR REMEDIES RELATED TO THE LOAN OR

THE COLLATERAL; (H) ANY CIVIL PENALTIES OR FINES (TOGETHER WITH ALL RELATED COSTS AND EXPENSES) ASSESSED BY OFAC AS A RESULT OF ANY LOAN PARTY'S ACTION OR INACTION; (I) THE VIOLATION OR NON-COMPLIANCE BY ANY LOAN PARTY OR ANY AFFILIATE OF ANY LOAN PARTY WITH ANY APPLICABLE LAW; (J) ANY ACT OR OMISSION BY ANY LOAN PARTY, ANY CONSTITUENT PARTNER OR MEMBER OF ANY LOAN PARTY, ANY CONTRACTOR, SUBCONTRACTOR OR MATERIAL SUPPLIER, ENGINEER, ARCHITECT OR OTHER PERSON WITH RESPECT TO ANY OF THE PROPERTY; OR (K) ANY CLAIM BY ANY BROKER OR OTHER PERSON FOR ANY COMMISSION OR COMPENSATION IN CONNECTION WITH THE LOAN DOCUMENTS. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE FOREGOING INDEMNITY SHALL NOT BE AVAILABLE AS TO ANY INDEMNITEE TO THE EXTENT LOSSES RESULTED EXCLUSIVELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE AS DETERMINED BY A COURT OF COMPETENT JURISDICTION PURSUANT TO A FINAL, NON-APPEALABLE JUDGMENT. HOTEL OWNER SHALL PROMPTLY PAY TO ADMINISTRATIVE AGENT OR LENDER UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE LOAN. HOTEL OWNER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS ADMINISTRATIVE AGENT AND EACH LENDER SHALL SURVIVE CANCELLATION OF THE NOTES AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF ANY DEED OF TRUST. THIS SECTION 13.1 SHALL NOT APPLY WITH RESPECT TO TAXES.

**13.2. FORM OF DOCUMENTS.** The form and substance of all documents, instruments, and forms of evidence to be delivered to Administrative Agent under the terms of this Agreement and any of the other Loan Documents shall be subject to Administrative Agent's approval and shall not be modified, superseded or terminated in any respect without Administrative Agent's prior written approval.

**13.3. NO THIRD PARTIES BENEFITED.** No Person other than Administrative Agent, Lenders and Loan Parties and their permitted successors and assigns shall have any right of action under any of the Loan Documents (other than as expressly set forth in this Agreement).

**13.4. NOTICES.** All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "Notice") required, permitted, or desired to be given hereunder shall be in writing (x) sent by registered or certified mail, postage prepaid, return receipt requested, (y) delivered by hand or reputable overnight courier, or (z) sent via email followed with notice pursuant to a method described in (x) or (y), and in each case, addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 13.4. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, and (b) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as at the address set forth on the signature page of this Agreement (subject to change from time to time by written notice to all other parties to this Agreement).

**13.5. ATTORNEY-IN-FACT.** Each Loan Party hereby irrevocably appoints and authorizes Administrative Agent, as such Loan Party's attorney-in-fact, which agency is coupled with an interest, upon the occurrence and during the continuance of any Event of Default, to execute and/or record in Administrative Agent's or such Loan Party's name any notices, instruments or documents that Administrative Agent deems appropriate to protect Lenders' interest under any of the Loan Documents or Other Related Documents.

**13.6. ACTIONS.** Loan Parties agree that Administrative Agent or any Lender, in exercising the rights, duties or liabilities of Administrative Agent, Lenders or Loan Parties under the Loan Documents or Other Related Documents, may commence, appear in or defend any action or proceeding purporting to affect the Property, the Loan Documents or the Other Related Documents and Hotel Owner shall promptly reimburse Administrative Agent or such Lender upon demand for all such expenses so incurred or paid by Administrative Agent or such Lender, including, without limitation, reasonable attorneys' fees and expenses and court costs.

**13.7. RIGHT OF CONTEST.** Loan Parties may contest in good faith any claim, Lien, demand, levy or assessment or Applicable Law by any Person other than Administrative Agent or Lenders if: (a) Loan Parties pursue the contest diligently and in good faith by appropriate proceedings; (b) adequate reserves with respect thereto are maintained on the books of the Loan Parties in conformity with GAAP; (c) there exists no risk of imminent loss by Loan Parties of any portion of its interest in the Property. Loan Parties may contest in good faith any Taxes if: (i) Loan Parties pursue the contest diligently and in good faith by appropriate proceedings and (ii) (x) Loan Parties have paid such Tax in full prior to such contest, or (y) adequate reserves with respect thereto are maintained on the books of the Loan Parties in conformity with GAAP. Loan Parties' compliance with this Section shall operate to prevent such claim, lien, Tax, demand, levy or assessment from becoming an Event of Default.

**13.8. RELATIONSHIP OF PARTIES.** The relationship of Borrower, Administrative Agent and Lenders under the Loan Documents and Other Related Documents is, and shall at all times remain, solely that of borrower and lender, and Administrative Agent and Lenders neither undertake nor assume any responsibility or duty to Borrower, any Significant Party, or to any third party with respect to the Property, except as expressly provided in this Agreement, the other Loan Documents and the Other Related Documents.

**13.9. DELAY OUTSIDE LENDER'S CONTROL.** No Lender or Administrative Agent shall be liable in any way to Borrower, any Significant Party, or any third party for Administrative Agent's or such Lender's failure to perform or delay in performing under the Loan Documents (and Administrative Agent or any Lender may suspend or terminate all or any portion of Administrative Agent's or such Lender's obligations under the Loan Documents) if such failure to perform or delay in performing results directly or indirectly from, or is based upon, the action, inaction, or purported action, of any Governmental Authority, or because of war, rebellion, insurrection, strike, lock-out, boycott or blockade (whether presently in effect, or announced), or from any Act of God or other cause or event beyond Administrative Agent's or such Lender's control.

**13.10. ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If any attorney is engaged by Administrative Agent or any Lender to enforce or defend any provision of this

Agreement, any of the other Loan Documents or Other Related Documents, or as a consequence of any Event of Default under the Loan Documents or Other Related Documents, with or without the filing of any legal action or proceeding, and including, without limitation, any reasonable fees and expenses incurred in any bankruptcy proceeding of any Significant Party then, except in the case of any non-bankruptcy related proceeding by Administrative Agent or Lenders against any Significant Party where a court of competent jurisdiction enters a final non-appealable judgment in favor of such Loan Party with respect to the matter for which Administrative Agent or Lenders are seeking reimbursement of attorney's fees or expenses, Hotel Owner shall promptly pay to Administrative Agent or such Lender, upon demand, the amount of all reasonable attorneys' fees and expenses and all reasonable costs incurred by Administrative Agent or such Lender in connection therewith, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance of the Loan.

**13.11. IMMEDIATELY AVAILABLE FUNDS.** Unless otherwise expressly provided for in this Agreement, all amounts payable by any Significant Party to Administrative Agent or any Lender shall be payable only in United States Dollars, immediately available funds.

**13.12. AMENDMENTS AND WAIVERS.**

(a) Generally. Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or in any Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document may be amended, (iii) the performance or observance by any Significant Party or any other Person of any terms of this Agreement or such other Loan Document may be waived, and (iv) except as specifically set forth in Section 13.12(b)(ix) below, the continuance of any Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (or the Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Significant Party which is party thereto and of the Hotel Owner. Lender agrees that any amendment which is not consented to by Hotel Owner is void ab initio and of no force and effect. Notwithstanding the previous sentence, the Administrative Agent, shall be authorized on behalf of all the Lenders, without the necessity of any notice to, or further consent from, any Lender, to waive the imposition of the late fees provided in Section 2.6(c), up to a maximum of three (3) times per calendar year.

(b) Unanimous Consent. Notwithstanding the foregoing, no amendment, waiver or consent shall, unless in writing, and signed by all of the Lenders (or the Administrative Agent at the written direction of the Lenders), do any of the following:

- (i) change the definition of "Commitment" or otherwise increase the Commitments of the Lenders (excluding any increase as a result of an assignment of Commitments permitted under Section 13.13) or subject the Lenders to any additional obligations;
- (ii) reduce the principal of, or interest rates that have accrued or that will be charged on the outstanding principal amount of, the Loan;

- (iii) reduce the amount of any fees payable to the Lenders hereunder;
- (iv) postpone any date fixed for any payment of principal of, or interest on, the Loan (including, without limitation, the Maturity Date) or for the payment of fees or any other obligations of Loan Parties or Guarantor;
- (v) change the Pro Rata Shares (excluding any change as a result of an assignment of Commitments permitted under Section 13.13) or change the definition of “Pro Rata Shares”;
- (vi) amend this Section or amend the definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section;
- (vii) modify the definition of the term “Requisite Lenders” or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof;
- (viii) release any Guarantor from its obligations under any Guaranty;
- (ix) waive an Event of Default under Section 11.1(a); or
- (x) release or dispose of any material portion of the Collateral unless released or disposed of as permitted by, and in accordance with, Section 12.7 (for the avoidance of doubt, Administrative Agent shall have authority to subordinate the lien of any Deed of Trust to customary easements and other similar encumbrances not adversely affecting the Property in any material respect, and to enter into non-disturbance agreements with respect to Leases and similar agreements).

(c) Amendment of Administrative Agent’s Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement, any of the other Loan Documents or Other Related Documents. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as such Event of Default is waived in writing in accordance with the terms of this Section, notwithstanding any attempted cure or other action by Borrower, any other Significant Party or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon any Loan Party shall entitle the Loan Parties to other or further notice or demand in similar or other circumstances.



### 13.13. SUCCESSORS AND ASSIGNS.

(a) Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Loan Parties may not assign or otherwise transfer any of their rights under this Agreement without the prior written consent of all the Lenders (and any such assignment or transfer to which all of the Lenders have not consented shall be void).

(b) Participations. Any Lender may, at such Lender's sole cost and expense, at any time grant to a Lender, an Affiliate of a Lender, an Approved Fund or any other Person (other than a natural person), regularly engaged in the business of making or owning commercial real estate loans (or interests therein) similar to the Loan (each a "Participant") participating interests in its Commitment or the obligations owing to such Lender hereunder provided that, so long as no Event of Default is continuing at the time the participating interest is granted, such Participant is not an Excluded Transferee. No Participant shall have any rights or benefits under this Agreement or any other Loan Document. In the event of any such grant by a Lender of a participating interest to a Participant, such Lender shall remain responsible for the performance of its obligations hereunder and under the other Loan Documents, and the Loan Parties and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. Any agreement pursuant to which any Lender may grant such a participating interest shall provide that such Lender shall retain the sole right and responsibility to enforce the obligations of the Loan Parties hereunder and under the other Loan Documents including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement; provided however, such Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase such Lender's Commitment, (ii) extend the date fixed for the payment of principal on the Loan or a portion thereof owing to such Lender, or (iii) reduce the rate at which interest is payable thereon. An assignment or other transfer which is not permitted by subsection (c) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this subsection (b).

Each Lender that grants a participation shall, acting solely for this purpose as a non-fiduciary agent of the Loan Parties, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(c) Assignments. Any Lender may, at such Lender's sole cost and expense, with the prior written consent of Administrative Agent and Hotel Owner (which consent, in each case, shall not be unreasonably withheld or delayed) at any time assign to one or more Eligible Assignees (each an "Assignee") all or a portion of its rights and obligations under this Agreement and the Notes; provided, however, (i) no such consent by Hotel Owner shall be required (x) if an Event of Default shall exist, (y) in the case of an assignment to another Lender or an Affiliate of another Lender or (z) in the case of an assignment to an Approved Fund; (ii) no such consent by Administrative Agent shall be required (x) in the case of an assignment to another Lender or an Affiliate of another Lender or (y) in the case of an assignment to an Approved Fund; (iii) any partial assignment shall be in an amount at least equal to \$10,000,000.00 and after giving effect to such assignment the assigning Lender retains a Commitment, or if the Commitments have been terminated, holds a Note having an outstanding principal balance, of at least \$10,000,000.00, and (iv) each such assignment shall be effected by means of an Assignment and Assumption Agreement. Written requests for Hotel Owner's consent to an assignment may include the following language in all caps at the top of such written requests: "HOTEL OWNER'S RESPONSE IS REQUIRED WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS BETWEEN THE UNDERSIGNED, THE BORROWER, THE HOTEL OWNER AND THE LENDERS PARTY THERETO". If such language is included and Hotel Owner fails to provide its written consent or its written denial of consent (together with Hotel Owner's specific reasons for such denial) by the end of such five (5) Business Day period, Hotel Owner shall be deemed to have provided its written consent to the proposed assignment. Upon execution and delivery of such instrument and payment by such Assignee to such transferor Lender of an amount equal to the purchase price agreed between such transferor Lender and such Assignee, such Assignee shall be deemed to be a Lender party to this Agreement and shall have all the rights and obligations of a Lender with a Commitment as set forth in such Assignment and Assumption Agreement, and the transferor Lender shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this subsection (c), the transferor Lender, the Administrative Agent and the Loan Parties shall make appropriate arrangement so the new Notes are issued to the Assignee and such transferor Lender, as appropriate. In connection with any such assignment, the transferor Lender shall pay to the Administrative Agent an administrative fee for processing such assignment in the amount of \$4,500.00 (or if a Defaulting Lender is the assignor, \$7,500.00). Anything in this Section to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to any Loan Party, or any of their respective Affiliates or subsidiaries.

The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a copy of each assignment and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Loan Parties, the Administrative Agent and the 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 the Loan Parties and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Intentionally Omitted.

(e) Certain Pledges; Pfandbriefbank Transfers. In addition to the assignments and participations permitted under the foregoing provisions of this Section 13.13, and without the need to comply with any of the formal or procedural requirements of this Section 13.13, including any requirement to provide notice to, or obtain the consent of, Hotel Owner, Borrower, Administrative Agent or any other Lender, any Lender may at any time and from time to time: (i) pledge and assign all or any portion of its rights under all or any of the Loan Documents to a Federal Reserve Bank; and/or (ii) pledge and assign all or any portion of its rights under all or any of the Loan Documents to any Person which is a trustee, administrator or receiver (or their respective nominees, collateral agents or collateral trustees) of a mortgage pool securing covered mortgaged bonds issued by an eligible German bank (Pfandbriefbank), the bondholders (as a collective whole) thereof, or by any other Person otherwise permitted to issue covered mortgage bonds (Hypothekendarlehen) under German Pfandbrief legislation, as such legislation may be amended and in effect from time to time, or any successor or substitute legislation, and any such Person shall have the right to be a “Lender” in lieu of the Lender which assigned, pledged or otherwise transferred its interest to such Person; provided that, in either case, no such pledge or assignment shall release such Lender from its obligations hereunder.

(f) Information to Assignee, Etc. A Lender may furnish any information concerning the Borrower, any Guarantor, any other Significant Party or any subsidiary of any of the foregoing or any other information in the possession of such Lender from time to time to Assignees and Participants (including prospective Assignees and Participants), provided that such Assignees or Participants (including prospective Assignees and Participants) have entered into non-disclosure agreements with respect to such information acceptable to Hotel Owner. In connection with such negotiation, execution and delivery, Loan Parties authorize Administrative Agent and Lenders to communicate all information and documentation related to the Loan (whether to Loan Parties or to any Participant, Assignee, legal counsel, appraiser or other necessary party) directly by e-mail, fax, or other electronic means used to transmit information.

**13.14. INTENTIONALLY OMITTED.**

**13.15. INTENTIONALLY OMITTED.**

**13.16. CONFIDENTIALITY.** Administrative Agent and each Lender shall maintain the confidentiality of all Confidential Information (as defined below) but in any event may make disclosure: (a) to its Affiliates and to its and its Affiliates’ other respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential); (b) subject to an agreement containing provisions substantially the same as those of this Section 13.16 and otherwise acceptable to Hotel Owner, to (i) any actual or proposed assignee, Participant or other transferee in connection with a potential transfer of any Commitment or participation therein as permitted hereunder, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and its obligations; (c) as required or requested by any Governmental Authority or representative thereof or pursuant to legal process or in connection with any legal proceedings, or as otherwise required by Applicable Law; (d) to Administrative Agent’s or such Lender’s independent auditors and other professional

advisors (provided they shall be notified of the confidential nature of the information and instructed to keep such Confidential Information confidential); (e) in connection with the exercise of any remedies under any Loan Document (or any AAIRPA) or any action or proceeding relating to any Loan Document (or any such AAIRPA) or the enforcement of rights hereunder or thereunder; (f) to the extent such Confidential Information becomes publicly-available other than as a result of a breach of this Section 13.16; (g) to the extent required to be disclosed to any nationally recognized rating agency or regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) having or purporting to have jurisdiction over it; (h) to any other party hereto; and (i) with the consent of the Hotel Owner. Notwithstanding the foregoing, the Administrative Agent and each Lender may disclose any such confidential information, without notice to the Loan Parties or any other Significant Party, to Governmental Authorities in connection with any regulatory examination of the Administrative Agent or such Lender in accordance with the regulatory compliance policy of the Administrative Agent or such Lender. As used in this Section, the term “Confidential Information” means all information received from any Significant Party (other than Borrower), or any Affiliate of any Significant Party (other than Borrower) relating to the Property, any Significant Party or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Significant Party (other than Borrower), or any Affiliate of any Significant Party (other than Borrower), provided that, in the case of any such information received from any Significant Party (other than Borrower) or any Affiliate of any Significant Party (other than Borrower) after the Effective Date, such information is identified at the time of delivery as confidential or proprietary. Any Person required to maintain the confidentiality of Confidential Information as provided in this Section 13.16 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Confidential Information as such Person would accord to its own confidential information. As used in this Section, the term “Related Party” shall mean, with respect to any Person, such Person’s Affiliates and the partners, shareholders, directors, officers, employees, agents, counsel, other advisors and representatives of such Person and of such Person’s Affiliates. Notwithstanding the foregoing, Hotel Owner, Administrative Agent and Lender acknowledge that Borrower is a public entity subject to open records requests under Missouri law and that this Agreement and the Loan Documents are public documents.

**13.17. LENDER’S AGENTS.** Administrative Agent and/or any Lender may designate an agent or independent contractor to exercise any of such Person’s rights under this Agreement, any of the other Loan Documents and Other Related Documents. Any reference to Administrative Agent or any Lender in any of the Loan Documents or Other Related Documents shall include Administrative Agent’s and such Lender’s agents, employees or independent contractors. Hotel Owner shall pay the costs of such agent or independent contractor either directly to such person or to Administrative Agent or such Lender in reimbursement of such costs, as applicable.

**13.18. TAX SERVICE.** Administrative Agent, on behalf of Lenders, is authorized to secure, at Hotel Owner’s expense, a tax service contract with a third-party vendor which shall provide tax information on the Property and Improvements satisfactory to Administrative Agent.

**13.19. WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY

CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

**13.20. SEVERABILITY.** If any provision or obligation under this Agreement, the other Loan Documents or Other Related Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents and the Other Related Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of the Loan Documents or Other Related Documents, provided, however, that if the rate of interest or any other amount payable under the Notes or this Agreement or any other Loan Document, or the right of collectability therefor, are declared to be or become invalid, illegal or unenforceable, Lenders' obligations to make advances under the Loan Documents shall not be enforceable by the Loan Parties.

**13.21. TIME.** Time is of the essence of each and every term of this Agreement.

**13.22. HEADINGS.** All article, section or other headings appearing in this Agreement, the other Loan Documents and Other Related Documents are for convenience of reference only and shall be disregarded in construing this Agreement, any of the other Loan Documents and Other Related Documents.

**13.23. GOVERNING LAW**

(a) THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, THE RELATIONSHIP OF THE PARTIES HEREUNDER AND THEREUNDER, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES 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) THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA,

IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, LOAN PARTIES 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 EXCEPT AS SPECIFICALLY SET FORTH ABOVE.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ADMINISTRATIVE AGENT, ANY LENDER OR LOAN PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL 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 LOAN PARTIES WAIVE 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 LOAN PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. LOAN PARTIES HEREBY DESIGNATE AND APPOINT:

THE CORPORATION TRUST COMPANY WITH ADDRESS AT, CORPORATION TRUST CENTER, 1209 ORANGE ST., WILMINGTON, DELAWARE 19801

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO LOAN PARTIES IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON LOAN PARTIES, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. LOAN PARTIES (I) SHALL GIVE PROMPT NOTICE TO ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

#### **13.24. USA PATRIOT ACT NOTICE; COMPLIANCE.**

(a) The USA Patriot Act of 2001 (Public Law 107-56) and federal regulations issued with respect thereto require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an “account” with such financial institution. Consequently, a Lender or Administrative Agent (for itself and/or as Administrative Agent for all Lenders hereunder) may from time-to-time request, and Loan Parties shall provide to such Lender or Administrative Agent, Loan Parties’ name, address, tax identification number and/or such other identification information as shall be necessary for such Lender or Administrative Agent to comply with federal law. An “account” for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

(b) In order for the Administrative Agent to comply with the USA Patriot Act of 2001 (Public Law 107-56), prior to any Lender or Participant that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, the Administrative Agent may request, and such Lender or Participant shall provide to the Administrative Agent, its name, address, tax identification number and/or such other identification information as shall be necessary for the Administrative Agent to comply with federal law.

**13.25. ELECTRONIC DOCUMENT DELIVERIES.** Documents required to be delivered pursuant to the Loan Documents shall be delivered by electronic communication and delivery, including, the Internet, e-mail or intranet websites to which the Administrative Agent and each Lender have access (including a commercial, third-party website such as www.Edgar.com <<http://www.Edgar.com>> or a website sponsored or hosted by the Administrative Agent or the Loan Parties) provided that (A) the foregoing shall not apply to notices to any Lender pursuant to Article 2 and (B) the Lender has not notified the Administrative Agent or Loan Parties that it cannot or does not want to receive electronic communications. The Administrative Agent or the any Loan Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic delivery pursuant to procedures approved by it for all or particular notices or communications. Documents or notices delivered electronically shall be deemed to have been delivered twenty-four (24) hours after the date and time on which the Administrative Agent or Loan Parties posts such documents or the documents become available on a commercial website and the Administrative Agent or a Loan Party notifies each Lender of said posting and provides a link thereto provided if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 9:00 a.m. on the opening of business on the next Business Day for the recipient. Notwithstanding anything contained herein, in every instance the Loan Parties shall be required to provide paper copies of the certificate required by Section 10.1 to the Administrative Agent and shall deliver paper copies of any documents to the Administrative Agent or to any Lender that requests such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. Except for the certificates required by Section 10.1, the Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery. Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents.

**13.26. PUBLIC/PRIVATE INFORMATION.** Loan Parties shall cooperate, with Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of Loan Parties or the other Loan Parties. Documents required to be delivered pursuant to the Loan Documents shall be delivered by or on behalf of Loan Parties or the other Significant Parties to Administrative Agent and Lenders (collectively, “Information Materials”) pursuant to this Article and shall designate Information Materials (a) that are either available to the public or not material with respect to Borrower, the other Loan Parties and their subsidiaries or any of their respective securities for purposes of United States federal and state securities laws, as “Public Information” and (b) that are not Public Information as “Private Information”. Notwithstanding the foregoing, Hotel Owner, Administrative Agent and Lender acknowledge that Borrower is a public entity subject to open records requests under Missouri law and that this Agreement and the Loan Documents are public documents.

**13.27. INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Administrative Agent in writing. Wherever in this Agreement there is a requirement for Administrative Agent’s consent and/or a document to be provided or an action taken “to the satisfaction of Administrative Agent”, it is understood by such phrase that any such action shall not be binding upon Administrative Agent unless its consent, right or judgment is exercised in writing in a reasonable manner given the specific facts and circumstance applicable at the time.

**13.28. SEVERAL LIABILITY.** The liability of all persons and entities obligated in any manner under this Agreement, any of the Loan Documents or Other Related Documents, other than Administrative Agent and/or Lenders, shall be several except to the extent otherwise set forth in the Loan Documents or Other Related Documents.

**13.29. ACKNOWLEDGEMENT AND CONSENT TO BAIL-IN OF EEA FINANCIAL INSTITUTIONS.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent



undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

- (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**13.30. COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

**13.31. NON-RECOURSE OBLIGATIONS.**

(a) Notwithstanding any other provision herein to the contrary, the obligations, liabilities, and any amounts due and owing by Borrower pursuant to the provisions hereof (including, without limitation, fees (including attorney's fees), claims, demands, payments, liabilities, penalties, taxes or assessments imposed upon or against Borrower under this Agreement or the Loan Documents, whether arising out of or based upon a claim of tort, contract, misrepresentation or any other legal theory) shall be non-recourse as to Borrower. No provision, representation, covenant, or agreement contained herein, or any obligation herein imposed upon Borrower, or the breach thereof, shall constitute or give rise to or impose upon Borrower a pecuniary liability. No provision hereof shall be construed to impose a charge against the general credit of Borrower or any personal or pecuniary liability upon any commissioner, officer, agent, or employee of Borrower. Borrower has no taxing power. The obligations of Borrower shall not be deemed to constitute a debt or liability of the State of Missouri or of any political subdivision thereof within the meaning of any State of Missouri constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the State of Missouri or any political subdivision thereof or of Borrower.

(b) All covenants, obligations, and agreements of Borrower contained in this Agreement and the other Loan Documents shall be effective to the extent authorized and permitted by Applicable Law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future commissioner, officer, agent, or employee of Borrower in other than his or her official capacity, and no official executing this Agreement shall be liable personally for this Agreement or the other Loan Documents or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement or the other Loan Documents or by reason of the covenants, obligations, or agreements of the Borrower contained in this Agreement and the other Loan Documents. No provision, covenant, or agreement contained in this Agreement or the other Loan Documents or any obligation of this instrument

imposed upon Borrower, or the breach thereof, shall constitute or give rise to or impose upon Borrower a pecuniary liability or a charge.

(c) Without limiting the foregoing non-recourse provisions, nothing in this Section 13.31 shall limit or be deemed to limit Administrative Agent's and Lenders' right to realize on any security related to Borrower's interest in the Property as expressly granted by Borrower pursuant to the provisions of this Agreement and the other Loan Documents (including, without limitation, any right to foreclose on Borrower's interest in the Property pursuant to the Borrower Deed of Trust). This Section 13.31 shall be deemed to apply to all of Borrower's obligations to Administrative Agent and any Lender under any of the Loan Documents, whether or not similar language is incorporated into such Loan Documents.

**13.32. EXCULPATION.** Notwithstanding anything to the contrary in this Agreement but without limiting the non-recourse provisions of Section 13.31, no present or future, direct or indirect, shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant or agent of or in (a) Hotel Owner or any Guarantor or (b) any Person that is or becomes a "Constituent Member" in Hotel Owner or any Guarantor shall have any personal liability, directly or indirectly, under or in connection with this Agreement, or any amendment or amendments hereto made at any time or times, heretofore or hereafter, and Administrative Agent and each Lender on behalf of itself and each of its successors and assigns, hereby waives any and all such personal liability. A "Constituent Member" in Hotel Owner or any Guarantor shall mean any direct shareholder, member or partner in Hotel Owner or any Guarantor and any Person that, directly or indirectly through one or more other partnerships, limited liability companies, corporations or other entities, owns an interest in Hotel Owner or any Guarantor. For purposes of this Agreement, neither the negative capital account of any Constituent Member in Hotel Owner or any Guarantor, nor any obligation of any Constituent Member in Hotel Owner or any Guarantor to restore a negative capital account or to contribute or loan capital to Hotel Owner or any Guarantor or to any other Constituent Member in a shall at any time be deemed to be the property or an asset of Hotel Owner or any Guarantor (or any such other Constituent Member) and neither Administrative Agent, any Lender nor any of their respective successors or assigns shall have any right to collect, enforce or proceed against any Constituent Member with respect to any such negative capital account or obligation to restore, contribute or loan.

**13.33. ACTIONS BY HOTEL OWNER ON BEHALF OF BORROWER.** Notwithstanding anything to the contrary herein but without limiting the foregoing non-recourse provisions of Section 13.31, Administrative Agent, Borrower, and Hotel Owner acknowledge and agree that (a) any action taken by Hotel Owner to satisfy a covenant, condition or provision of this Agreement or any other Loan Document is deemed to be taken on behalf of both or either of the Loan Parties, as necessary, and such action shall satisfy the obligation of either or both Loan Parties except to the extent such obligation is personal to Borrower and not susceptible to performance by Hotel Owner; (b) any term or provision of this Agreement or any other Loan Document to which the Hotel Owner is party which requires a request for consent, extension, waiver or otherwise shall only be exercised by Hotel Owner with no requirement for consent or approval from Borrower, (c) Borrower is estopped from claiming any defense against enforcement by Administrative Agent or the Lenders based on any action by Hotel Owner on behalf of the Loan Parties under the Loan Documents and (d) Borrower agrees to reasonably cooperate with Hotel Owner to approve and execute, in a form reasonably acceptable to Borrower, any ministerial document required by

Administrative Agent in connection with the Loan so long as no such document increases any obligation or decreases any rights of Borrower, as reasonably determined by Borrower, under the Loan Documents (including, without limitation, executing replacement Disbursement Instruction Agreements); provided, however, that if Borrower determines that authority from its Board of Commissioners is required for any such action then it may take thirty (30) days to obtain board authority. Notwithstanding any of the foregoing, no actions or inactions by Borrower shall reduce the obligations of Hotel Owner hereunder or under the Hotel Owner Guaranty.

**13.34. ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Interest Rate Protection Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions herein applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party shall be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 14.33, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following:

(i) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b);

(ii) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**13.35. AMENDMENT AND RESTATEMENT; OMNIBUS AMENDMENTS TO LOAN DOCUMENTS.**

(a) To the extent the following terms are used in the Loan Documents and such terms are not already defined by reference to the First A&R Loan Agreement (as amended and restated pursuant to this Agreement), such terms shall have the definitions ascribed to such terms in this Agreement: “Loan Agreement” and “Loan Documents”.

(b) The Payment Guaranty as defined in the Original Loan Agreement is hereby terminated in its entirety and of no further force or effect.

(c) Except as amended and modified hereby or by other Loan Documents executed in connection herewith, the Loan Documents shall remain unchanged and in full force and effect and each are hereby ratified and confirmed by Borrower and Hotel Owner.

(d) The parties to this Agreement agree that, upon the execution and delivery by each of the parties hereto of this Agreement, the terms and provisions of the First A&R Loan Agreement shall be and hereby are amended, superseded and restated in their entirety by the terms and provisions of this Agreement. Borrower and Hotel Owner each hereby acknowledges and reaffirms the existence and continuation of the liens and security interests granted under all existing deeds of trust, mortgages and security agreements, which shall remain in full force and effect, but in accordance with the terms of the Loan Documents as modified in connection with this Agreement. The parties to this Agreement agree that this Agreement is not intended to and shall not constitute a novation of any of the obligations Borrower or Hotel Owner under the Loan Documents.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Borrower, Hotel Owner, Administrative Agent and Lenders have executed this Agreement as of the date appearing on the first page of this Agreement.

**“ADMINISTRATIVE AGENT”**

WELLS FARGO BANK, NATIONAL ASSOCIATION

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

Administrative Agent’s Address:

Wells Fargo Bank, National Association  
Hospitality Finance Group  
30 Hudson Yards, 62nd Floor  
500 West 33rd Street  
New York, NY 10001  
Attention: Spencer Russo  
Email: Spencer.J.Russo@wellsfargo.com

With a copy to:

Wells Fargo Bank, National Association  
Loan Administration  
550 S Tryon St, 20th Floor  
Charlotte, NC 28202  
Attention: Launy Reed  
Email: Launy.Reed@wellsfargo.com  
Loan No. 1017741

**“BORROWER”**

**LAND CLEARANCE FOR  
REDEVELOPMENT AUTHORITY  
OF KANSAS CITY, MISSOURI**

Borrower’s Address:  
300 Wyandotte St., Suite 400  
Kansas City, MO 64105  
Attention: Daniel Moye  
Email: dmoye@edckc.com

By: \_\_\_\_\_  
Name: Daniel Moye  
Title: Executive Director

ATTEST:

\_\_\_\_\_  
Assistant Secretary

**“HOTEL OWNER”**

**KC HOTEL PROPERTY OWNER, LLC**  
a Delaware limited liability company

KC Hotel Property Owner, LLC  
c/o Loews Hotels Holding Corporation  
9 West 57th Street, 20<sup>th</sup> Floor  
New York, New York 10019  
Attention: Chief Financial Officer  
Email: matthew.brenner@loewshotels.com

c/o Loews Hotels Holding Corporation  
9 West 57th Street, 20<sup>th</sup> Floor  
New York, New York 10019  
Attention: Corporate Secretary  
Email: gzarín@loewshotels.com

By: \_\_\_\_\_  
Name: Matthew L. Brenner  
Title: Chief Financial Officer and Treasurer

with a copy to:

Latham & Watkins LLP  
330 N. Wabash Avenue, Suite 2800  
Chicago, Illinois 60611  
Attention: Gary Axelrod  
Email: Gary.Axelrod@lw.com

**“LENDER”**

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

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

Lender’s Address:

Wells Fargo Bank, National Association  
Hospitality Finance Group  
30 Hudson Yards, 62nd Floor  
500 West 33rd Street  
New York, NY 10001  
Attention: Spencer Russo  
Email: [Spencer.J.Russo@wellsfargo.com](mailto:Spencer.J.Russo@wellsfargo.com)

With a copy to:

Wells Fargo Bank, National Association  
Loan Administration  
550 S Tryon St, 20th Floor  
Charlotte, NC 28202  
Attention: Launy Reed  
Email: [Launy.Reed@wellsfargo.com](mailto:Launy.Reed@wellsfargo.com)  
Loan No. 1017741

**“LENDER”**

[TBD IF APPLICABLE]

Lender’s Address:

[\_\_\_\_\_]

With a copy to:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name:

Title:



**SCHEDULE 1.1(B) – PRO RATA SHARES**

Schedule 1.1(b) to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS between LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, as “Borrower”, KC HOTEL PROPERTY OWNER, LLC, as “Hotel Owner” and WELLS FARGO BANK, NATIONAL ASSOCIATION, as “Administrative Agent”, and various Lenders, dated as of [December \_\_], 2024.

<b>Lender</b>	<b>Commitment</b>	<b>Pro Rata Share</b>
WELLS FARGO BANK, NATIONAL ASSOCIATION	\$[_____]	[_____]%
	\$[_____]	[_____]%
<b>TOTALS</b>	<b>\$110,000,000</b>	<b>100%</b>

**SCHEDULE 4.4 – INTENTIONALLY OMITTED**

## SCHEDULE 6.6 – LITIGATION DISCLOSURE

Schedule 6.6 to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS between LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, as “Borrower”, KC HOTEL PROPERTY OWNER, LLC, as “Hotel Owner” and WELLS FARGO BANK, NATIONAL ASSOCIATION, as “Administrative Agent”, and various Lenders, dated as of [December \_\_], 2024.

None.

## SCHEDULE 6.21 – LEASES

Schedule 6.21 to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS between LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, as “Borrower”, KC HOTEL PROPERTY OWNER, LLC, as “Hotel Owner” and WELLS FARGO BANK, NATIONAL ASSOCIATION, as “Administrative Agent”, and various Lenders, dated as of [December \_\_], 2024.

Lease, dated as of October 10, 2024, by and between Hotel Owner, as “Landlord”, and 1587 Prime KC, LLC, a Missouri limited liability company, as “Tenant”.

## EXHIBIT A1 - DESCRIPTION OF THE LAND

Exhibit A1 to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS between LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, as “Borrower”, KC HOTEL PROPERTY OWNER, LLC, as “Hotel Owner” and WELLS FARGO BANK, NATIONAL ASSOCIATION, as “Administrative Agent”, and various Lenders, dated as of [December \_\_], 2024.

### TRACT I:

ALL OF LOTS 19 THROUGH 22, TOGETHER WITH ALL THAT PART OF LOTS 14 THROUGH 18, AND ALL THAT PART OF LOT 23, AND ALL THAT PART OF THE VACATED ALLEY LYING BETWEEN LOTS 19 THROUGH 23 AND LOTS 14 THROUGH 18, ALL BEING IN BLOCK 2, J. H. MCGEE’S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, LYING IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 49 NORTH, RANGE 33 WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 19, BLOCK 2, J.H. MCGEE’S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI; THENCE SOUTH 87 DEGREES 29 MINUTES 53 SECONDS EAST, ALONG THE NORTH LINE OF SAID BLOCK 2, A DISTANCE OF 280.56 FEET TO A POINT ON THE WEST LINE OF BALTIMORE AVENUE RIGHT OF WAY, AS ESTABLISHED IN BOOK K1916, PAGE 892; THENCE SOUTH 02 DEGREES 08 MINUTES 09 SECONDS WEST, DEPARTING SAID NORTH LINE, ALONG SAID WEST LINE, A DISTANCE OF 239.92 FEET TO A POINT; THENCE NORTH 88 DEGREES 00 MINUTES 00 SECONDS WEST, DEPARTING SAID WEST LINE, A DISTANCE OF 280.45 FEET TO A POINT ON THE WEST LINE OF LOT 23 OF SAID BLOCK 2, J.H. MCGEE’S ADDITION; THENCE NORTH 02 DEGREES 06 MINUTES 42 SECONDS EAST, ALONG SAID WEST LINE, A DISTANCE OF 242.37 FEET TO THE POINT OF BEGINNING.

### TRACT II:

ALL OF LOTS 24 THROUGH 26, TOGETHER WITH ALL THAT PART OF LOTS 10 THROUGH 14, AND ALL THAT PART OF LOT 23 AND LOT 27, AND ALL THAT PART OF THE VACATED ALLEY LYING BETWEEN LOTS 23 THROUGH 27 AND LOTS 10 THROUGH 14, ALL BEING IN BLOCK 2, J. H. MCGEE’S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, LYING IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 49 NORTH, RANGE 33 WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 19, BLOCK 2, J.H. MCGEE’S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI; THENCE SOUTH 02 DEGREES 06 MINUTES 42 SECONDS WEST, ALONG THE WEST LINE OF SAID BLOCK 2, A DISTANCE OF 242.37 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 00 MINUTES 00 SECONDS EAST, DEPARTING SAID

WEST LINE, A DISTANCE OF 280.45 FEET TO A POINT ON THE WEST LINE OF BALTIMORE AVENUE RIGHT OF WAY, AS ESTABLISHED IN BOOK K1916, PAGE 892; THENCE SOUTH 02 DEGREES 08 MINUTES 09 SECONDS WEST, ALONG SAID WEST LINE, A DISTANCE OF 174.69 FEET TO A POINT OF CURVATURE, SAID POINT ALSO LYING ON THE NORTH LINE OF W. 16TH STREET RIGHT OF WAY, AS ESTABLISHED IN BOOK K1912, PAGE 327; THENCE IN A SOUTHERLY, SOUTHWESTERLY AND WESTERLY DIRECTION, DEPARTING SAID WEST LINE, ALONG SAID NORTH LINE AND ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET, THROUGH A CENTRAL ANGLE OF 90 DEGREES 29 MINUTES 14 SECONDS, AN ARC DISTANCE OF 23.69 FEET TO A POINT OF TANGENCY; THENCE NORTH 87 DEGREES 22 MINUTES 37 SECONDS WEST, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 265.26 FEET TO A POINT ON THE WEST LINE OF LOT 27 OF SAID BLOCK 2, J.H. MCGEE'S ADDITION; THENCE NORTH 02 DEGREES 06 MINUTES 42 SECONDS EAST, ALONG SAID WEST LINE, A DISTANCE OF 186.77 FEET TO THE POINT OF BEGINNING.

## EXHIBIT A2 - DESCRIPTION OF HOTEL PARCEL

Exhibit A2 to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS between LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, as “Borrower”, KC HOTEL PROPERTY OWNER, LLC, as “Hotel Owner” and WELLS FARGO BANK, NATIONAL ASSOCIATION, as “Administrative Agent”, and various Lenders, dated as of [December \_\_], 2024.

ALL OF LOTS 19 THROUGH 22, TOGETHER WITH ALL THAT PART OF LOTS 14 THROUGH 18, AND ALL THAT PART OF LOT 23, AND ALL THAT PART OF THE VACATED ALLEY LYING BETWEEN LOTS 19 THROUGH 23 AND LOTS 14 THROUGH 18, ALL BEING IN BLOCK 2, J. H. MCGEE’S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, LYING IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 49 NORTH, RANGE 33 WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 19, BLOCK 2, J.H. MCGEE’S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI; THENCE SOUTH 87 DEGREES 29 MINUTES 53 SECONDS EAST, ALONG THE NORTH LINE OF SAID BLOCK 2, A DISTANCE OF 280.56 FEET TO A POINT ON THE WEST LINE OF BALTIMORE AVENUE RIGHT OF WAY, AS ESTABLISHED IN BOOK K1916, PAGE 892; THENCE SOUTH 02 DEGREES 08 MINUTES 09 SECONDS WEST, DEPARTING SAID NORTH LINE, ALONG SAID WEST LINE, A DISTANCE OF 239.92 FEET TO A POINT; THENCE NORTH 88 DEGREES 00 MINUTES 00 SECONDS WEST, DEPARTING SAID WEST LINE, A DISTANCE OF 280.45 FEET TO A POINT ON THE WEST LINE OF LOT 23 OF SAID BLOCK 2, J.H. MCGEE’S ADDITION; THENCE NORTH 02 DEGREES 06 MINUTES 42 SECONDS EAST, ALONG SAID WEST LINE, A DISTANCE OF 242.37 FEET TO THE POINT OF BEGINNING

### **EXHIBIT A3 - DESCRIPTION OF THE PARKING/MEETING PARCEL**

Exhibit A3 to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS between LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, as “Borrower”, KC HOTEL PROPERTY OWNER, LLC, as “Hotel Owner” and WELLS FARGO BANK, NATIONAL ASSOCIATION, as “Administrative Agent”, and various Lenders, dated as of [December \_\_], 2024.

ALL OF LOTS 24 THROUGH 26, TOGETHER WITH ALL THAT PART OF LOTS 10 THROUGH 14, AND ALL THAT PART OF LOT 23 AND LOT 27, AND ALL THAT PART OF THE VACATED ALLEY LYING BETWEEN LOTS 23 THROUGH 27 AND LOTS 10 THROUGH 14, ALL BEING IN BLOCK 2, J. H. MCGEE’S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, LYING IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 49 NORTH, RANGE 33 WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 19, BLOCK 2, J.H. MCGEE’S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI; THENCE SOUTH 02 DEGREES 06 MINUTES 42 SECONDS WEST, ALONG THE WEST LINE OF SAID BLOCK 2, A DISTANCE OF 242.37 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 00 MINUTES 00 SECONDS EAST, DEPARTING SAID WEST LINE, A DISTANCE OF 280.45 FEET TO A POINT ON THE WEST LINE OF BALTIMORE AVENUE RIGHT OF WAY, AS ESTABLISHED IN BOOK K1916, PAGE 892; THENCE SOUTH 02 DEGREES 08 MINUTES 09 SECONDS WEST, ALONG SAID WEST LINE, A DISTANCE OF 174.69 FEET TO A POINT OF CURVATURE, SAID POINT ALSO LYING ON THE NORTH LINE OF W. 16TH STREET RIGHT OF WAY, AS ESTABLISHED IN BOOK K1912, PAGE 327; THENCE IN A SOUTHERLY, SOUTHWESTERLY AND WESTERLY DIRECTION, DEPARTING SAID WEST LINE, ALONG SAID NORTH LINE AND ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET, THROUGH A CENTRAL ANGLE OF 90 DEGREES 29 MINUTES 14 SECONDS, AN ARC DISTANCE OF 23.69 FEET TO A POINT OF TANGENCY; THENCE NORTH 87 DEGREES 22 MINUTES 37 SECONDS WEST, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 265.26 FEET TO A POINT ON THE WEST LINE OF LOT 27 OF SAID BLOCK 2, J.H. MCGEE’S ADDITION; THENCE NORTH 02 DEGREES 06 MINUTES 42 SECONDS EAST, ALONG SAID WEST LINE, A DISTANCE OF 186.77 FEET TO THE POINT OF BEGINNING.



## EXHIBIT B - DOCUMENTS

Exhibit B to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS between LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, as “Borrower”, KC HOTEL PROPERTY OWNER, LLC, as “Hotel Owner” and WELLS FARGO BANK, NATIONAL ASSOCIATION, as “Administrative Agent”, and various Lenders, dated as of [December \_\_], 2024.

Loan Documents. The documents listed below (in each case dated the Original Agreement Date, unless otherwise indicated), and amendments, modifications and supplements thereto which have received the prior written consent of Administrative Agent, together with any documents executed in the future that are approved by Administrative Agent and that recite that they are “Loan Documents” for purposes of this Agreement are collectively referred to herein as the Loan Documents.

Loan Documents:

1. [Second Amended and Restated Loan Agreement and Omnibus Amendment to Loan Documents, dated as of the Effective Date
2. Promissory Note
3. Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing
4. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Parking/Meeting Parcel)
5. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Hotel Parcel)
6. Assignment of Leases and Rents (Parking/Meeting Parcel)
7. Assignment of Leases and Rents (Hotel Parcel)
8. Assignment of Leases and Rents (Leasehold)
9. UCC-1 Financing Statements – State of Delaware
10. Hazardous Materials Indemnity Agreement
11. Non-Recourse Carveout Guaranty
12. Hotel Owner Guaranty
13. Assignment of Management Agreement and Manager’s Consent and Subordination of Management Agreement
14. Assignment, Pledge and Security Agreement (Interest Rate Protection Agreement)
15. Intercreditor Agreement
16. CID Director Cooperation Agreement]<sup>8</sup>

Other Related Documents. The documents listed below, and amendments, modifications and supplements thereto which have received the prior written consent of Administrative Agent, together with any documents executed in the future and that recite that they are “Other Related

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<sup>8</sup> NTD: to be updated prior to closing.

Documents” for purposes of this Agreement are collectively referred to herein as the Other Related Documents.

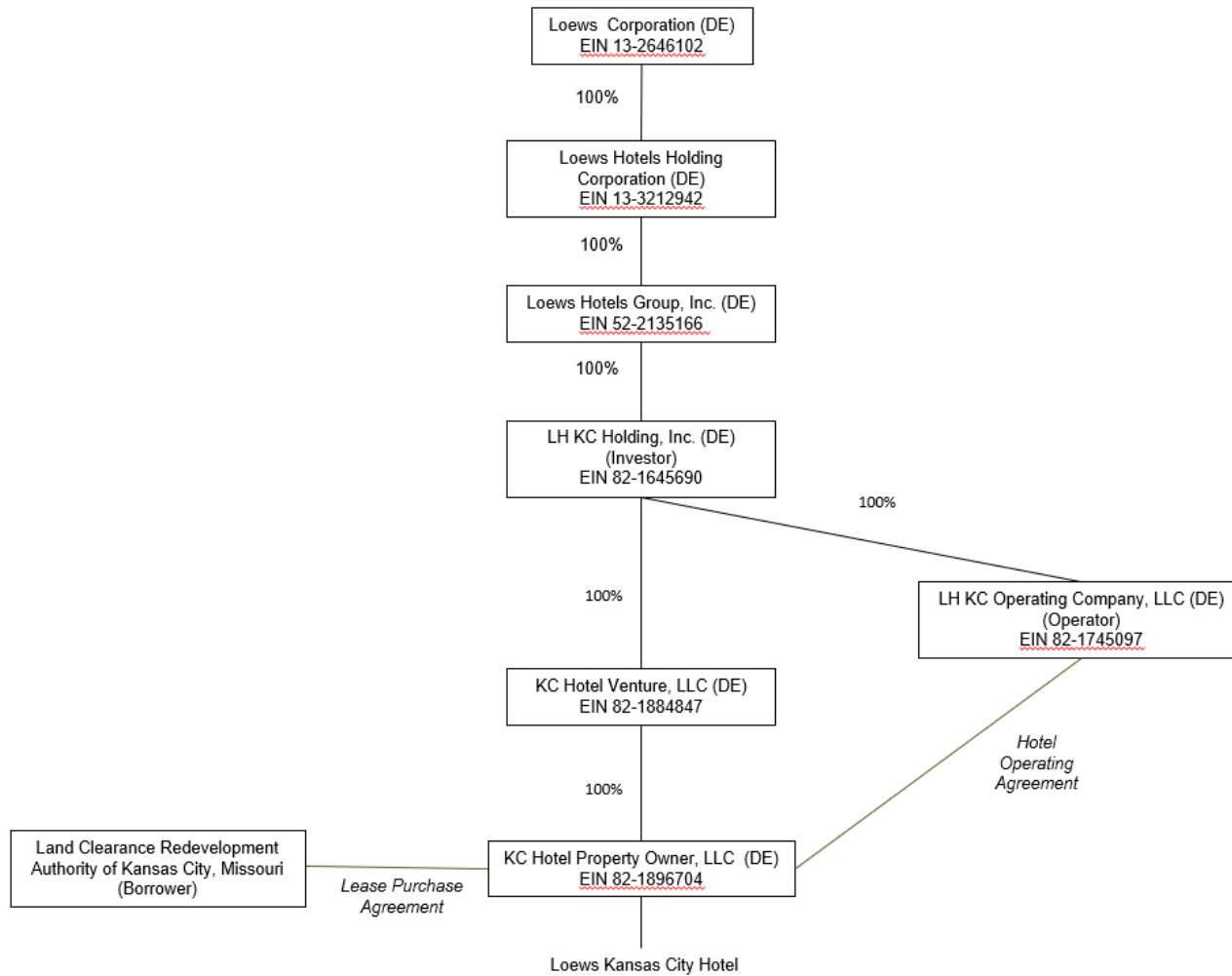
Other Related Documents:

1. [ALTA Loan Policy of Title Insurance
2. Survey
3. Title Escrow Letter
4. Fee Letter Agreement, dated as of the Effective Date
5. Disbursement Instruction Agreement
6. Wells Fargo Loan Closing Statement]<sup>9</sup>

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<sup>9</sup> NTD: to be updated prior to closing.

## EXHIBIT C – ORGANIZATIONAL CHART



**EXHIBIT D – INTENTIONALLY OMITTED**

## EXHIBIT E – FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Exhibit E to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS dated as of [December \_\_], 2024 by and among LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI (“Borrower”), KC HOTEL PROPERTY OWNER, LLC, a Delaware limited liability company (“Hotel Owner”) each of the financial institutions initially a signatory hereto together with their assignees under Section 13.13 (“Lenders”) and WELLS FARGO BANK, NATIONAL ASSOCIATION (“Wells Fargo”) as contractual representative of the Lenders to the extent and in the manner provided in Article 12 (in such capacity, the “Administrative Agent”).

### ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ (“Assignor”) and \_\_\_\_\_ (“Assignee”).

#### RECITALS:

A. Assignor is a Lender under the Second Amended and Restated Loan Agreement and Omnibus Amendment to Loan Documents dated as of [December \_\_], 2024 (as from time to time amended, supplemented or restated, the “Loan Agreement”), by and among LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI (“Borrower”), KC HOTEL PROPERTY OWNER, LLC, a Delaware limited liability company (“Hotel Owner”), the persons named therein as Lenders and such other Persons as may become Lenders in accordance with the terms of the Loan Agreement, and WELLS FARGO BANK, NATIONAL ASSOCIATION (“Wells Fargo”) as contractual representative of the Lenders (in such capacity, the “Administrative Agent”). (Capitalized terms used in this Agreement without definition have the same meanings as in the Loan Agreement.)

B. Currently, Assignor’s Pro Rata Share of the Loan is equal to \_\_\_\_\_% and Assignee’s Pro Rata Share of the Loan is equal to \_\_\_\_\_%.

C. Assignor desires to assign to Assignee, and Assignee desires to accept and assume, [all/a portion of] the rights and obligations of Assignor under the Loan Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Assignment.

a) Effective on the Assignment Effective Date (as defined in Section 3 below), Assignor hereby assigns to Assignee the Assigned Share (as defined below) of [all/a portion of] of Assignor’s rights, title, interest and obligations under the Loan Agreement and other Loan Documents, including without limitation those relating to Assignor’s Pro Rata Share of the Loan. The Assigned Share of all such rights, title, interest and obligations is referred to collectively as the “Assigned Rights and Obligations”.

b) The “Assigned Share” means the portion of Assignor’s Pro Rata Share in the Loan being assigned hereby, such portion being equal to \_\_\_\_\_% of the Loan (or \$\_\_\_\_\_ of Commitment). The new Pro Rata Share of Loan being held by Assignee (after giving effect to the assignment hereunder), and the Pro Rata Share in the Loan retained by Assignor, shall be as specified on the signature pages of this Agreement.

2. Assumption. Effective on the Assignment Effective Date, Assignee hereby accepts the foregoing assignment of, and hereby assumes from Assignor, the Assigned Rights and Obligations.

3. Effectiveness. This Agreement shall become effective on a date (the “Assignment Effective Date”) selected by Assignor, which shall be on or as soon as practicable after the execution and delivery of counterparts of this Agreement by Assignor, Assignee, Administrative Agent and Borrower. Assignor shall promptly notify Assignee, Administrative Agent and Loan Parties in writing of the Assignment Effective Date.

4. Payments on Assignment Effective Date. In consideration of the assignment by Assignor to Assignee, and the assumption by Assignee, of the Assigned Rights and Obligations, on the Assignment Effective Date Assignee shall pay to Assignor such amounts as are specified in any written agreement or exchange of letters between them and additionally shall pay to Administrative Agent an assignment processing fee of \$\_\_\_\_\_.

5. Allocation and Payment of Interest and fees.

a) Administrative Agent shall pay to Assignee all interest and other amounts (including fees, except as otherwise provided in the written agreement referred to in Section 4 above) not constituting principal that are paid by or on behalf of Loan Parties pursuant to the Loan Documents and are attributable to the Assigned Rights and Obligations (“Borrower Amounts”), that accrue on and after the Assignment Effective Date. If Assignor receives or collects any such Borrower Amounts, Assignor shall promptly pay them to Assignee.

b) Administrative Agent shall pay to Assignor all Borrower Amounts that accrue before the Assignment Effective Date (or otherwise pursuant to the written agreement referred to in Section 4 above) when and as the same are paid by Administrative Agent to the other Lenders. If Assignee receives or collects any such Borrower Amounts, Assignee shall promptly pay such amounts to Assignor.

c) Unless specifically assumed by Assignee, Assignor shall be responsible and liable for all reimbursable liabilities and costs and indemnification obligations which accrue under Section 12.12 of the Loan Agreement prior to the Assignment Effective Date, and such liability shall survive the Assignment Effective Date.

6. Administrative Agent Liability. Administrative Agent shall not be liable for any allocation or payment to either Assignor or Assignee subsequently determined to be erroneous, unless resulting from Administrative Agent’s willful misconduct or gross negligence.

7. Representations and Warranties.

a) Each of Assignor and Assignee represents and warrants to the other and to Administrative Agent as follows:

(i) It has full power and authority, and has taken all action necessary, to execute and deliver this Agreement and to fulfill its obligations under, and to consummate the transactions contemplated by, this Agreement;

(ii) The making and performance of this Agreement and all documents required to be executed and delivered by it hereunder do not and will not violate any law or regulation applicable to it;

(iii) This Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable in accordance with its terms; and

(iv) All approvals, authorizations or other actions by, or filings with, any Governmental Authority necessary for the validity or enforceability of its obligations under this Agreement have been made or obtained.

b) Assignor represents and warrants to Assignee that Assignor owns the Assigned Rights and Obligations free and clear of any Lien or other encumbrance.

c) Assignee represents and warrants to Assignor as follows:

(i) Assignee is an Eligible Assignee;

(ii) Assignee has made and shall continue to make its own independent investigation of the financial condition, affairs and creditworthiness of Loan Parties and any other Significant Party; and

(iii) Assignee has received copies of the Loan Documents and such other documents, financial statements and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement.

8. No Assignor Responsibility. Assignor makes no representation or warranty regarding, and assumes no responsibility to Assignee for:

a) the execution (by any party other than Assignor), effectiveness, genuineness, validity, enforceability, collectability or sufficiency of the Loan Documents or any representations, warranties, recitals or statements made in the Loan Documents or in any financial or other written or oral statement, instrument, report, certificate or any other document made or furnished or made available by Assignor to Assignee or by or on behalf of any Significant Party to Assignor or Assignee in connection with the Loan Documents and the transactions contemplated thereby;

b) the performance or observance of any of the terms, covenants or agreements contained in any of the Loan Documents or as to the existence or possible existence of any Event of Default or Default under the Loan Documents; or

c) the accuracy or completeness of any information provided to Assignee, whether by Assignor or by or on behalf of any Significant Party.

Assignor shall have no initial or continuing duty or responsibility to make any investigation of the financial condition, affairs or creditworthiness of any of the Loan Parties, in connection with the assignment of the Assigned Rights and Obligations or to provide Assignee with any credit or other information with respect thereto, whether coming into its possession before the date hereof or at any time or times thereafter.

9. Assignee Bound by Loan Agreement. Effective on the Assignment Effective Date, Assignee (a) shall be deemed to be a party to the Loan Agreement and as such, shall be directly liable to Loan Parties for any failure by Assignee to comply with Assignee's assumed obligations thereunder, including, without limitation, Assignee's obligation to fund its Pro Rata Share of the Loan in accordance with provisions of the Loan Agreement, (b) agrees to be bound by the Loan Agreement to the same extent as it would have been if it had been an original Lender thereunder, and (c) agrees to perform in accordance with their respective terms all of the obligations which are required under the Loan Documents to be performed by it as a Lender. Assignee appoints and authorizes Administrative Agent to take such actions as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto.

10. Assignor Released from Loan Agreement. Effective on the Assignment Effective Date, Assignor shall be released from the Assigned Rights and Obligations; provided, however, that Assignor shall retain all of its rights to indemnification under the Loan Agreement and the other Loan Documents for any events, acts or omissions occurring before the Assignment Effective Date, and, to the extent not assumed by Assignee, Assignor shall continue to be responsible for the liabilities and obligations described in Section 5(c) of this Agreement.

11. New Notes. On or promptly after the Assignment Effective Date, Borrower, Administrative Agent, Assignor and Assignee shall make appropriate arrangements so that new Notes executed by Borrower, dated the Assignment Effective Date and in the amount of the respective Pro Rata Shares of Assignor and Assignee in the original Loan amount, after giving effect to this Agreement, are issued to Assignor and Assignee, in exchange for the surrender by Assignor and Assignee to Borrower of any applicable outstanding Notes, marked "Exchanged".

12. General.

a) No term or provision of this Agreement may be amended, waived or terminated orally, but only by an instrument signed by the parties hereto.

b) This Agreement may be executed in one or more counterparts. Each set of executed counterparts shall be an original. Executed counterparts may be delivered by facsimile transmission.

c) If Assignor has not assigned its entire remaining Pro Rata Share of the Loan to Assignee, Assignor may at any time and from time-to-time grant to others, subject to applicable provisions in the Loan Agreement, assignments of or participation in all of Assignor's remaining Pro Rata Share of the Loan.



d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither Assignor nor Assignee may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other and Administrative Agent and (subject to the provisions of Section 13.13 of the Loan Agreement) Hotel Owner. The preceding sentence shall not limit the right of Assignee to grant to others a participation in all or part of the Assigned Rights and Obligations subject to the terms of the Loan Agreement.

e) All payments to Assignor or Assignee hereunder shall, unless otherwise specified by the party entitled thereto, be made in United States Dollars, in immediately available funds, and to the address or account specified on the signature pages of this Agreement. The address of Assignee for notice purposes under the Loan Agreement shall be as specified on the signature pages of this Agreement.

f) If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions hereof will not be affected or impaired in any way.

g) Each party shall bear its own expenses in connection with the preparation and execution of this Agreement.

h) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

i) Foreign Withholding. On or before the Assignment Effective Date, Assignee shall comply with the provisions of Section 2.11(d) of the Loan Agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**ASSIGNOR:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Pro Rata Share: \_\_\_\_\_ %  
Share of Original Loan: \_\_\_\_\_ \$

Payment Instruction:

ABA No.: \_\_\_\_\_  
Account No. \_\_\_\_\_  
Reference: \_\_\_\_\_  
Loan No.: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**ASSIGNEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Pro Rata Share: \_\_\_\_\_ %  
Share of Original Loan: \_\_\_\_\_ \$

Payment Instruction:

ABA No.: \_\_\_\_\_  
Account No. \_\_\_\_\_  
Reference: \_\_\_\_\_  
Loan No.: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

ACKNOWLEDGED AND AGREED:

**BORROWER:**

**LAND CLEARANCE FOR  
REDEVELOPMENT AUTHORITY OF  
KANSAS CITY, MISSOURI**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HOTEL OWNER:**

**KC HOTEL PROPERTY OWNER, LLC  
a Delaware limited liability company**

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

**ADMINISTRATIVE AGENT:**

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## **EXHIBIT F - FORM OF PROMISSORY NOTE**

Exhibit F to SECOND AMENDED AND RESTATED LOAN AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS between LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, as “Borrower”, KC HOTEL PROPERTY OWNER, LLC, as “Hotel Owner” and WELLS FARGO BANK, NATIONAL ASSOCIATION, as “Administrative Agent”, and various Lenders, dated as of [December \_\_], 2024.

**(See attached)**

## EXHIBIT G – LIST OF ACCOUNT NUMBERS

<u>Account No.</u>	<u>Description</u>
4289387482	FF&E Reserve Account
4440830370	Cash Reserve Account
4807070131	Operating Account
4807070149	Credit Card Account

**EXHIBIT H – DISBURSEMENT INSTRUCTION AGREEMENT**

**(see attached)**

**EXHIBIT I – FORM OF CREDIT CARD DIRECTION LETTER**

[Date]

[Addressee]

Re: Payment Direction Letter for the [\_\_\_\_\_]

Dear [\_\_\_\_\_]:

KC HOTEL PROPERTY OWNER, LLC (the “Owner”), the owner of the Loews Kansas City Hotel (the “Property”), has mortgaged the Property to Wells Fargo Bank, National Association, as Administrative Agent for certain lenders (together with its successors and assigns, the “Agent”) and has agreed that all revenues received with respect to the Property will be paid directly to the account designated below. Therefore, from and after [DATE], please remit all payments due to the Property and/or LH KC Operating Company, LLC, the manager of the Property (the “Manager”), under that certain [REFERENCE AGREEMENT], dated \_\_\_\_\_ (the “Agreement”) between the [Owner][Manager] and you as follows:

Transfer such amounts by the ACH System or wire transfer to the following account:

[Insert wiring instructions for Credit Card Account]

These payment instructions cannot be withdrawn or modified without the prior written consent of the Agent or its agent (the “Servicer”), or pursuant to a joint written instruction from the Owner and the Lender or the Servicer. Until you receive written instructions from the Lender or the Servicer, continue to send all payments due under the Agreement as set forth in this letter. All payments due under the Agreement shall be remitted to pursuant to the foregoing instructions no later than the day on which such amounts are due.

**Notwithstanding anything to the contrary contained herein, in the event there are any charge backs with respect to the Agreement, you are to contact the Manager and/or Owner directly (and not the Lender or Servicer) so that the Manager and/or Owner can follow up with and collect and account for any such charge backs. Neither Lender nor Servicer shall have any responsibilities in connection with charge backs pursuant to the Agreement.**

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

Sincerely,

[OWNER] [PROPERTY MANAGER]

**EXHIBIT J – INTENTIONALLY OMITTED**



**EXHIBIT K – FORM OF EXCESS CASH FLOW CERTIFICATE**

[Attached]

**EXHIBIT L – INTENTIONALLY OMITTED**

**EXHIBIT M – FORM OF SNDA**

(see attached)

**EXHIBIT N – INTENTIONALLY OMITTED**

**EXHIBIT O – INTENTIONALLY OMITTED**

**EXHIBIT P-1**

**[FORM OF]**

**U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to that certain Second Amended and Restated Loan Agreement and Omnibus Amendment to Loan Documents, dated as of [December \_\_], 2024 (as amended, supplemented or otherwise modified from time to time, the “Agreement”), among Wells Fargo Bank, National Association, Land Clearance for Redevelopment Authority of Kansas City, Missouri (the “Borrower”), KC Hotel Property Owner (“Hotel Owner,” and individually and collectively with Borrower, “Loan Party”) and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.11 of the Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “ten percent shareholder” of either Loan Party within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to either Loan Party as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and each Loan Party with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform each Loan Party and the Administrative Agent, and (2) the undersigned shall have at all times furnished each Loan Party and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in this Agreement and used herein shall have the meanings given to them in this Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT P-2**

**[FORM OF]**

**U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax  
Purposes)**

Reference is hereby made to that certain Second Amended and Restated Loan Agreement and Omnibus Amendment to Loan Documents, dated as of [December \_\_], 2024 (as amended, supplemented or otherwise modified from time to time, the “Agreement”), among Wells Fargo Bank, National Association, Land Clearance for Redevelopment Authority of Kansas City, Missouri (the “Borrower”), KC Hotel Property Owner (“Hotel Owner,” and individually and collectively with Borrower, “Loan Party”) and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.11 of the Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “ten percent shareholder” of either Loan Party within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to either Loan Party as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in this Agreement and used herein shall have the meanings given to them in this Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT P-3**

**[FORM OF]**

**U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to that certain Second Amended and Restated Loan Agreement and Omnibus Amendment to Loan Documents, dated as of [November \_\_], 2024 (as amended, supplemented or otherwise modified from time to time, the “Agreement”), among Wells Fargo Bank, National Association, Land Clearance for Redevelopment Authority of Kansas City, Missouri (the “Borrower”), KC Hotel Property Owner (“Hotel Owner,” and individually and collectively with Borrower, “Loan Party”) and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.11 of the Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “ten percent shareholder” of either Loan Party within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to either Loan Party as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in this Agreement and used herein shall have the meanings given to them in this Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]



**EXHIBIT P-4**

**[FORM OF]**

**U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to that certain Second Amended and Restated Loan Agreement and Omnibus Amendment to Loan Documents, dated as of [November \_\_], 2024 (as amended, supplemented or otherwise modified from time to time, the “Agreement”), among Wells Fargo Bank, National Association, Land Clearance for Redevelopment Authority of Kansas City, Missouri (the “Borrower”), KC Hotel Property Owner (“Hotel Owner,” and individually and collectively with Borrower, “Loan Party”) and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.11 of the Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “ten percent shareholder” of either Loan Party within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to either Loan Party as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and each Loan Party with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform each Loan Party and the Administrative Agent, and (2) the undersigned shall have at all times furnished each Loan Party and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in this Agreement and used herein shall have the meanings given to them in this Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT Q**  
**INTENTIONALLY OMITTED**