Mountain Brook Lodging, LLC
as mortgagor (Borrower)

to

CHARTERBANK,
as mortgagee (Lender)

MORTGAGE AND

SECURITY AGREEMENT

Shelby County, Alabama

Dated: **April 3, 2008**
Address: **4627 Highway 280**
County: **Shelby**
State: **Alabama**

PREPARED BY AND UPON
RECORDATION RETURN TO:
Curt Johnson
Johnson, Caldwell & McCoy
Suite 201, 117 North Lanier Avenue
Lanett, AL 36863

CharterBank Loan No. **19946680**

THIS MORTGAGE AND SECURITY AGREEMENT (the "Security Instrument") is made on **April 3, 2008, by Mountain Brook Lodging, LLC a Alabama Limited Liability Company**, having its principal place of business at **2451 Moody Parkway, Moody, AL 35004** as mortgagor ("Borrower") to CharterBank, a Federal Savings Association, having an address at 600 3rd Avenue, West Point, Georgia, 31833 as mortgagee ("Lender").

RECITALS:

WHEREAS, Borrower is justly indebted to Lender, and hereby executes this Mortgage to secure the payment of **THREE MILLION SIX HUNDRED SEVENTY TWO THOUSAND AND 00/100 DOLLARS ($3,672,000.00)**, as evidenced by promissory note of even date herewith and payable in accordance with the terms of said Note.

WHEREAS, Borrower may hereafter become further indebted to Lender as may be evidenced by promissory note(s) or otherwise, and it is the intent of parties hereto that this mortgage shall secure any and all indebtedness(es) of Borrower to Lender, whether now existing or hereafter arising, due or to become due, absolute or contingent, liquidated or unliquidated, direct or indirect, and this mortgage is to secure not only the indebtedness evidenced by the note hereinabove specifically referred to, but any and all other debts, obligations or liabilities of Borrower to Lender, now existing or hereafter arising, and any and all extensions or renewals of same, or any part thereof, whether evidenced by note, open account, endorsement, guaranty, pledge or otherwise (collectively be referred to as the "Note") .

Article 1 GRANTS OF SECURITY

Article 1.1 **PROPERTY MORTGAGED.** Borrower and all others executing this mortgage, in consideration of the premises, and to secure the payment of the Obligations, whether evidenced by the Note or otherwise, and the compliance with all of the covenants and stipulations herein contained, has bargained and sold, and does hereby grant, bargain, sell, alien, convey, transfer, mortgage. and or grant Lender, its successors and assigns, a security interest in the following property, rights, interests, and estates now owned or hereafter acquired by the Borrower (collectively, the "Property"), to wit:

a All property now or hereinafter owned by the Borrower, including, but not limited to the items listed hereinafter;

b **Land.** The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

c **Additional Land**. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

d **Improvements.** The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land, including any additions, enlargements, extensions, modifications, repairs or replacements thereto (the "Improvements" or the "Facility"). To the extent that any of the foregoing are owned by tenants of the Land, the "Improvements" shall mean Borrower's right, title or interest in or with respect to the foregoing;

e **Easements**. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

f **Leases and Rents**. All leases, subleases rental agreements, registration cards and agreements, if any, and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors ("Creditors Rights Law") (the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues, registrations fees, if any and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, all income, rents, room rates, issues, profits, revenues, deposits, accounts and other benefits from the operation of the hotel on the Land and/or the Improvements, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, mini-bars, meeting rooms, banquet rooms and recreational facilities and otherwise, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land and/or Improvements, or personally located thereon, or rendering of services by Borrower or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space, guest room or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, licenses, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land and/or the Improvements whether paid or accruing before or after the filing by or against Borrower or any petition for relief under the Creditors Rights Laws (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

g **Tax Certiorari.** All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Land, the Improvements, the Personal Property, the Leases and/or the Rents, and other collateral granted under this Section 1.1 as a result of tax certiorari or any applications or proceedings for reduction;

h **Conversion**. All proceeds of the conversion voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

i **Actions of Proceedings**. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect of the Land, the Improvements, the Personal Property, the Leases and/or the Rents, and other collateral granted under this Section 1.1 and to commence any action or proceeding to protect the interest of Lender in the Land, the Improvements, the Personal Property, the Leases and/or the Rents, and other collateral granted under this Section 1.1;

j **Intangibles**. All accounts, escrows, chattel paper, deposits, trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles related to or used in connection with the operation of the Property;

k **Causes of Action**. All causes of action and claims against any Person (including without limitation, all causes of action of claims arising in tort, by contract or for fraud or concealment of material fact) for damages or injury to the Property or in connection with any transaction financed in whole or in part by the proceeds of the Loan ("Cause of Action");

l **Proceeds; Other Rights.** Any and all proceeds of, and any and all other rights of Borrower in and to the Property;

m **Construction Supplies**. All construction supplies and materials now or hereafter located on the Land;

n **Exhibit A-1**. All items set forth in Exhibit A-1; and,

m) **OTHER RIGHTS.** Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (l) above.

Article 1.2 **ASSIGNMENT OF LEASES AND RENTS.** Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.8, Lender grants to Borrower a revocable license to collect and receive the Rents, which license shall be deemed to be automatically revoked and shall terminate automatically without notice upon the occurrence of an Event of Default (defined in Section 9.1), and upon the occurrence of an Event of Default, Lender shall be entitled to the Rents without the necessity of Lender's taking any action whatsoever, and the Rents shall thereupon be deemed to be cash collateral for all purposes, including without limitation for purposes of Section 363 of Title 11 of the United States Code, as the same may be amended. Borrower shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums.

Article 1.3 **SECURITY AGREEMENT**. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in all types and items of property included in the Property and/or covered by Section 1.4 in which a security interest may be created under the Uniform Commercial Code (collectively, the "UCC Property"). Immediately upon the execution and delivery of this Security Instrument, and thereafter from time to time, Borrower shall execute and deliver, and cause to be filed, recorded and/or registered in the appropriate public records, all such documents and instruments, including, without limitation, financing statements, notice filings and continuation statements, as Lender may deem necessary or desirable in order to publish notice of and fully to perfect, preserve and protect Lender's security interest in the UCC Property. Compliance with Uniform Commercial Code requirements relating to the UCC Property shall not be construed as altering in any way the rights and remedies of Lender as determined by this Security Instrument under any other statute or law, but is declared to be solely for the protection of Lender in the event that such compliance is at any time held to be necessary to preserve the priority of Lender's security interest against any other claims. Lender shall have all rights, remedies and recourses with respect to the UCC Property afforded to a secured party under the Uniform Commercial Code, in addition to, and not in limitation of, all other rights, remedies and recourses afforded hereunder and under any other documents which secure the Debt (as defined in Section 2.1) and/or or grant Lender a interest in any property of the Borrower (the "Other Security Documents") or at law or in equity.

a Borrower warrants that (i) Borrower's true name, identity or corporate structure, and residence or principal place of business is as follows: **Mountain Brook Lodging, LLC**, with its principal place of business at **2451 Moody Parkway, Moody, AL 35004** ; (ii) Borrower has been using or operating under said name, identity or corporate structure without change from the date of its formation; (iii) Borrower's taxpayer identification number as supplied to Lender is true and correct; and (iv) Borrower will furnish the Lender with notice of any change in the matters addressed by clauses (i), (ii) and (iii) of this Paragraph within thirty (30) days of the effective date of any such change and Borrower will promptly execute any financing statements or other instruments as Lender shall deem necessary to prevent any filed financing statement from becoming misleading or losing its perfected status.

b The information contained in the preceding paragraph is provided in order that this Security Instrument shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements. The names of the "Debtor" and the "Secured Party", the identity or corporate structure and residence or principal place of business of the "Debtor" and the "Secured Party" are as set forth in Exhibit B attached hereto and by this reference made a party hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of the "Debtor", are as set forth in said Exhibit B attached hereto; and a statement indicating the types or describing the items of collateral is set forth hereinabove.

Article 1.4 **PLEDGE OF MONIES HELD.** Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Escrow Fund (defined in Section 3.5), Net Proceeds (defined in Section 3.7) and condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

Article 1.5 **CONDITIONS TO GRANT**. To have and to hold the above granted and described Property to the use and benefit of Lender, and the successors and assigns of Lender, forever; PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall perform the Other Obligations as set forth in this Security Instrument and shall comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

Article 2 DEBT AND OBLIGATIONS SECURED

Article 2.1 **DEBT**. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

a the indebtedness evidenced by the Note in lawful money of the United States of America;

b interest, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the any other documents executed in connection with this transaction;

c all other monies agreed or provided to be paid by Borrower in the Note, this Security Instrument or the Other Security Documents;

d all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby;

e all sums advanced to pay taxes and assessments, and/or insurance premiums;

f all sums advanced to repair or maintain the Property, or to complete Improvements on the Property (whether or not the original Borrower remains the owner of the Property at the time of such advances and whether or not the original Lender remains the owner of the indebtedness secured hereby and this instrument);

g any and all expenses incident to the collection of the indebtedness secured hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained;

h all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender;

i any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, however and whenever incurred or evidenced, whether direct or indirect, absolute or contingent, due or to become due, together with any and all renewal or renewals and extension or extensions of said other indebtedness, whether evidenced by note, open account, endorsement, guaranty, pledge or otherwise;

For the purposes of this Security Instrument, the term "Debt" shall not include any sums payable or other obligations of Borrower or any Indemnitor (defined in Section 12.4) under the Environmental Indemnity (defined in Section 12.4).

Article 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the "Other Obligations"):

a each obligation of Borrower contained herein;

b each obligation of Borrower contained in any documents relating to this Loan (the "Loan Documents");

c each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Loan Documents or any future advances by the Lender;

d any and all other obligations now owing or which may hereafter be owing by Borrower to Lender, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether expressed or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements, and extensions thereof;

e Any and all additional advances made by Lender to protect or preserve the property or the security interest created hereby in the property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or for any other purpose provided herein (whether or not the original Borrower is the owner of the property at the time of such advances); and

f Any and all costs, expenses, and attorneys' fees which Lender, its successors or assigns, may incur in the collection of all or any portion of said Indebtedness.

Article 2.3 PAYMENT OF DEBT. Borrower shall pay the Debt at the time and in the manner provided in the Note and in this Security Instrument. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively as the "Obligations."

Article 2.4 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an Obligation secured hereby and any amendments, modifications or changes thereto.

Article 2.5 PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks; provided, however, Lender shall not be required to accept payment for any Obligation in cash. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

Article 2.6 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Obligations or are otherwise executed and delivered in connection with the Loan (collectively such documents together with the Note and Security Instrument, the "Loan Documents") are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article 3 BORROWER COVENANTS

Borrower covenants and agrees that:

Article 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Article 3.2 MANAGEMENT.

a The Property shall be managed by either: (i) Borrower or an entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated entity is managing the Property in a first-class manner; (ii) a professional property management company approved by Lender or (iii) leased to an entity to operate as a Hotel provided that the Lender approve the Tenant. Management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Lender (the "Management Agreement"). In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Lender.

b All Proceeds generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to the Loan Documents, and none of the Proceeds generated by or derived from the Property shall be diverted by Borrower and utilized for any other purpose unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

Article 3.3 INSURANCE.

a Borrower at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

i **Property Insurance.** Insurance with respect to the Improvements and Personal Property insuring against any peril now or hereafter included within the classification "All Risk of Physical Loss" or "Special Perils" in amounts at all times sufficient to prevent Lender from becoming a co-insurer within the terms of the applicable policies and under applicable law, but in any event such insurance shall be maintained in an amount which, after application of deductible, shall be equal to the full insurable value of the Improvements and Personal Property, the term "full insurable value" to mean the actual replacement cost of the Improvements and Personal Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by Borrower and in no event less than the coverage required pursuant to the terms of any Lease;

ii **Liability Insurance**. Commercial general liability insurance on the so- called "occurrence" form, including bodily injury, death and property damage liability, insurance, including "Dram Shop" or other liquor liability coverage if alcoholic beverages are sold from or may be consumed at the Property, against any and all claims, including all legal liability to the extent insurable and imposed upon Lender and all court costs and legal fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property but in any event for a limit per occurrence of at least **ONE MILLION DOLLARS ($1,000,000.00)** and an annual aggregate of at least **TWO MILLION DOLLARS ($2,000,000.00)**;

iii **Workers' Compensation Insurance**. Statutory workers' compensation insurance with respect to any work on or about the Property;

iv **Flood Insurance**. If required, flood insurance in an amount at least equal to the lesser of (A) the principal balance of the Note, or (B) the maximum limit of coverage available for the Property under the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994, as each may be amended (the "Flood Insurance Acts");

v **Boiler and Machinery Insurance.** Broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery, and equipment located in, on or about the Property (including "system breakdown coverage") and insurance against loss of occupancy or use arising from any breakdown in such amounts as are generally required by institutional lenders for properties comparable to the Property;

vi **Business Interruption/Rental Insurance.** Business interruption and/or loss of "rental income" insurance in an amount sufficient to avoid any co-insurance penalty and to provide proceeds which will cover a period of not less than **twelve (12)** months from the date of casualty or loss, containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income returns to the same level it was prior to the loss. The term "rental income" means for purposes of this Section the sum of (A) the total then ascertainable Rents payable under the Leases and (B) the total ascertainable amount of all other amounts to be received by Borrower from third parties which are the legal obligation of the tenants, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non-occupancy of that portion of the Property then not being occupied.

vii **Builder's Risk Insurance**. At all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Subsection 3.3(a)(i) written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.3(a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions; and

viii **Other Insurance.** Such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by Lender or by the Franchise Agreement (hereinafter defined) against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, including, without limitation, sinkhole, mine subsidence, earthquake and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

b **General Requirements of Policies.** All insurance provided for in Subsection 3.3(a) shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), and shall be issued by either the insurers who insure the Improvements on the date of this Security Instrument or one or more other domestic primary insurer(s) having (i) a claims paying ability rating by one or more credit rating agencies approved by Lender (a "Rating Agency") of not less than one rating category below the highest rating at any time assigned to the Securities (defined below), but in no event a rating less than investment grade by such Rating Agency and (ii) a general policy rating of A or better and a financial class of "A" or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company Inc. is no longer available, a similar rating from a similar or successor service) (each such insurer shall be referred to below as a "Qualified Insurer"). All insurers providing insurance required by this Security Instrument shall be authorized and admitted to issue insurance in the state in which the Property is located. The Policy referred to in Subsection 3.3(a)(ii) above shall name Lender as an additional insured and the Policies referred to in Subsection 3.3(a)(i), (iv), (v), (vi) and (vii), and as applicable (viii), above shall provide that all proceeds be payable to Lender as set forth in Section 3.7 hereof. The Policies referred to in Subsections 3.3(a)(i), (v), (vi) and (vii) shall also contain: (i) a standard "non- contributory mortgagee" endorsement or its equivalent relating, inter alia, to recovery by Lender notwithstanding the negligent or willful acts or omission of Borrower; (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Lender; and (iii) an endorsement providing for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of similar properties in the general vicinity of the Property, but in no event in excess of **TWENTY FIVE THOUSAND DOLLARS AND 00/100 ($25,000.00)**. The Policy referred to in Subsection 3.3(a)(i) above shall provide coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, together with an "Ordinance or Law Coverage" or "Enforcement" endorsement. All Policies shall contain (i) a provision that such Policies shall not be denied renewal, materially changed (other than to increase the coverage provided), cancelled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for applicable premiums ("Insurance Premiums") against any mortgagee, loss payees, additional insureds and named insureds (other than Borrower). Certificates of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than twenty (20) days prior to the expiration date of any of the Policies required to be maintained hereunder which certificates shall bear notations evidencing payment of Insurance Premiums. Originals or certificates of such replacement Policies shall be delivered to Lender promptly after Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or certificates of insurance required by this Security Instrument, upon ten (10) days' prior notice to Borrower, Lender may procure such insurance at Borrower's sole cost and expense.

c **Compliance with Policy Conditions.** Borrower shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Section 3.3.

d **Foreclosure.** In the event of a foreclosure of the Security Instrument or other transfer of title to the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to the Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in Lender or the purchaser at such foreclosure or other transferee in the event of such other transfer of title.

Article 3.4 PAYMENT OF TAXES, ETC.

a Borrower shall promptly pay by their due date all taxes, assessments, water rates, sewer rents and other governmental impositions, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes") not paid from the Escrow Fund (defined in Section 3.5), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property as same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument. Borrower shall furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

b After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost and (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, or Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon, taking into consideration the amount in the Escrow Fund available for payment of Taxes.

Article 3.5 **ESCROW FUND.** If Lender requires that Borrower establish and escrow fund for the payment of taxes and insurance, then in addition to the initial deposits with respect to Taxes and Insurance Premiums made by Borrower to Lender on the date hereof to be held by Lender in escrow Borrower shall pay to Lender on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the "Escrow Fund"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Provided there are sufficient amounts in the Escrow Fund and no Event of Default exists, Lender shall be obligated to pay the Taxes and Insurance Premiums as they become due on their respective due dates on behalf of Borrower by applying the Escrow Fund to the payments of such Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall reasonably estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. Unless otherwise required by Applicable Law, no earnings or interest on the Escrow Fund shall be payable to Borrower.

Article 3.6 **CONDEMNATION.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings to the extent permitted by law. Upon an Event of Default, Borrower shall deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Borrower shall not make any agreement in lieu of condemnation of the Property or any portion thereof without the prior written consent of Lender in each instance, which consent shall not be unreasonably withheld or delayed in the case of a taking of an insubstantial portion of the Property. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), and whether or not any award or payment made in any condemnation or eminent domain proceeding (an "Award") is made available to Borrower for Restoration in accordance with Section 3.7, Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Borrower shall cause the Award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender. Subject to Section 3.7, Lender may apply any Award or payment to the reduction or discharge of the Debt whether or not then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Article 3.7 RESTORATION AFTER CASUALTY/CONDEMNATION.

a If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Property or any portion thereof is taken in any condemnation or eminent domain proceeding, Borrower shall give prompt notice of such damage or taking to Lender. Borrower shall promptly commence and diligently proceed to restore, repair, replace or rebuild the Property (the "Restoration") in a workmanlike manner to the extent practicable to be of at least equal value and condition and substantially the same character as the Property was immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender.

b The term "Net Proceeds" for purposes of this shall mean: (i) the net amount of all insurance proceeds under the Policies carried pursuant to Subsections 3.3(a)(i), (iv), (v), (vi), (vii) and (viii) of this Security Instrument as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to reasonable legal fees), if any, in collecting the same, or (ii) the net amount of all Awards after deduction of Lender's reasonable costs and expenses (including, but not limited to reasonable legal fees), if any, in collecting the same, whichever the case may be. If (i) the Net Proceeds do not exceed **$50,000.00** (the "Availability Threshold"); (ii) the costs of completing the Restoration as reasonably estimated by Borrower shall be less than or equal to the Net Proceeds; (iii) no Event of Default shall have occurred and be continuing under any of the Loan Documents; (iv) the Property and the use thereof after the Restoration will be in compliance with, and permitted under, all Applicable Laws; (v) (A) if the Net Proceeds are insurance proceeds, less than **10%** of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty; or (B) if the Net Proceeds are condemnation awards, less than **10%** of the Land constituting the Property is taken, such Land that is taken is located along the perimeter or periphery of the Property, no portion of the Improvements is located in such Lands, and such taking does not materially impair access to the Property; and (vi) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower, then the Net Proceeds will be disbursed directly to Borrower.

c If the Net Proceeds are greater than the Availability Threshold, such Net Proceeds shall, subject to the provisions of the Leases that are superior to the lien of this Security Instrument or with respect to which subordination and non-disturbance agreements binding upon Lender have been entered into and such subordination and non-disturbance agreements apply to the deposits of Net Proceeds, be forthwith paid to Lender, to be held by Lender in a segregated account to be made available to Borrower for the Restoration in accordance with the provisions of this Subsection 3.7(c).

The Net Proceeds held by Lender pursuant to this Subsection other than the Net Proceeds paid under the Policy described in Subsection 3.3(a)(iv) (the "Rental Loss Proceeds") shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration, subject to the following conditions:

i no Event of Default shall have occurred and be continuing under any of the Loan Documents;

ii Lender shall, within a reasonable period of time prior to a request for an initial disbursement, be furnished with an estimate of the cost of the Restoration accompanied by an independent architect's opinion based on due professional investigation as to such costs and appropriate plans and specifications for the Restoration, such plans and specifications and cost estimates to be subject to Lender's approval, not to be unreasonably withheld or delayed;

iii the Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient to cover the cost of the Restoration as such costs are certified by the independent architect;

iv Net Proceeds are less than the then outstanding principal balance of the Note;

v (A) in the event that the Net Proceeds are insurance proceeds, less than **10%** of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty; or (B) in the event that the Net Proceeds are condemnation awards, less than **10%** of the Land constituting the Property is taken, such Land that is taken is located along the perimeter or periphery of the Property, no portion of the Improvements is located in such Lands and such taking does not materially impair access to the Property;

vi Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower;

vii Lender shall be satisfied that, upon the completion of the Restoration, the net cash flow of the Property will be restored to a level sufficient in Lender's sole judgement to cover all carrying costs and operating expenses of the Property, including, without limitation, debt service on the Note at a coverage ratio (after deducting all reserves required by Lender from net operating income) of at least **1.25** and all required replacement reserves, reserves for tenant improvements and leasing commissions;

viii the Restoration can reasonably be completed on or before the earliest to occur of (A) six (6) months prior to the Maturity Date, (B) the earliest date required for such completion under the terms of any Major Leases (the term Major Lease means any leases designated in this Agreement or another agreement as a Major Lease) and (C) such time as may be required under Applicable Laws in order to repair and restore the Property to as nearly as possible the condition it was in immediately prior to such fire or other casualty or to such taking, as applicable;

ix the Property and its use after the Restoration will be in compliance with, and permitted under, all Applicable Laws;

x each Major Lease in effect as of the date of the occurrence of such fire or other casualty shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration;

xi Borrower and Guarantor shall execute and deliver to Lender a completion guaranty in form and substance satisfactory to Lender and its counsel pursuant to the provisions of which Borrower and Guarantor shall jointly and severally guaranty to Lender the lien-free completion by Borrower of the Restoration in accordance with the provisions of this Subsection.

d The Net Proceeds held by Lender until disbursed in accordance with the provisions of this Section shall constitute additional security for the Obligations. The Net Proceeds other than the Rental Loss Proceeds shall be disbursed by Lender to, or as directed by, Borrower, in an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration less customary retainage from time to time during the course of the Restoration, not more frequently than once per month, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file the same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument. The Rental Loss Proceeds shall be disbursed by Lender to pay for debt service under the loan evidenced by the Note, to pay other expenses incurred by Borrower in connection with the ownership and operation of the Property, and the remainder thereof, to, or as directed by, Borrower to pay for the cost of the Restoration in accordance with this Subsection. Final payment shall be made after submission to Lender of all licenses, permits, certificates of occupancy and other required approvals of governmental authorization having jurisdiction ("Licenses & Permits") and a certification of an independent consulting engineer selected by Lender (the "Restoration Consultant") that the Restoration has been fully completed.

e Lender shall have the use of the plans and specifications and all permits, Licenses & Permits and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Restoration Consultant, such acceptance not to be unreasonably withheld or delayed. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable legal fees and disbursements and the fees of the Restoration Consultant, shall be paid by Borrower.

f If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Restoration Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Restoration Deficiency") in immediately available funds with Lender before any further disbursement of the Net Proceeds shall be made. The Restoration Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section shall constitute additional security for the Obligations.

g Except upon the occurrence and continuance of an Event of Default, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than the Availability Threshold. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than the Availability Threshold. If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

h The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Restoration Deficiency deposited with Lender after (i) the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section, and (ii) the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full and all required permits, licenses, certificates of occupancy and other required approvals of governmental authorities having jurisdiction have been issued, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under any of the Loan Documents.

i All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection (h) shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same shall be paid, either in whole or in part, to Borrower. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Debt.

Article 3.8 LEASES AND RENTS.

a **Leases.** Borrower may enter into a proposed Lease (including the renewal or extension of an existing Lease (a "Renewal Lease")) without the prior written consent of Lender, provided such proposed Lease or Renewal Lease (i) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (ii) is an arm's-length transaction with a bona fide, independent third-party tenant, (iii) does not have a materially adverse effect on the value of the Property taken as a whole, (iv) is subject and subordinate to the Security Instrument and the lessee thereunder agrees to attorn to Lender, (v) is written on the standard form of lease approved by Lender, and (vi) is not a Major Lease. All proposed Leases which do not satisfy the requirements set forth in this Subsection 3.8(a) shall be subject to the prior approval of Lender and its counsel, at Borrower's expense. Borrower shall promptly deliver to Lender copies of all Leases which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Subsection. For purposes of this Section, the term "Major Lease" shall mean any Lease accounting for more than 25% of the total floor area of the improvements together with any instrument guaranteeing or providing credit support therefor.

b **Performance.** Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of any of the Leases as security for the Debt; (ii) upon request, shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in the Leases upon the part of the tenant thereunder to be observed or performed; (iv) shall not collect any of the Rents more than one (1) month in advance (except security deposits shall not be deemed Rents collected in advance); (v) shall not execute any other assignment of the lessor's interest in any of the Leases or the Rents; and (vi) shall not consent to any assignment of or subletting under any Leases not in accordance with their terms, without the prior written consent of Lender.

c **Modification of Leases.** Except for Major Leases, Borrower may, without the consent of Lender, amend, modify or waive the provisions of any Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Lease provided that such action (taking into account, in the case of a termination, reduction in rent, surrender of space or shortening of term, the planned alternative use of the affected space) does not have a materially adverse effect on the value of the Property taken as a whole, and provided that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Security Instrument and any subordination agreement binding upon Lender with respect to such Lease. A termination of a Lease with a tenant who is in default beyond applicable notice and grace periods shall not be considered an action which has a materially adverse effect on the value of the Property taken as a whole. Any amendment, modification, waiver, termination, rent reduction, space surrender or term shortening which does not satisfy the requirements set forth in this Subsection shall be subject to the prior approval of Lender and its counsel, at Borrower's expense. Borrower shall promptly deliver to Lender copies of amendments, modifications and waivers which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Subsection.

d **Subordination Agreements.** Borrower shall caused to executed subordination and/or estoppel agreements by any lessees or other parties having contracts with Borrowers in a form and content acceptable to Lender.

Article 3.9 MAINTENANCE AND USE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair and in the condition required under the Franchise Agreement. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

Article 3.10 WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Article 3.11 COMPLIANCE WITH LAWS.

a Borrower shall promptly comply with all Applicable Laws (defined hereinafter) affecting the Property, or the use thereof, including all Environmental Laws (defined hereinafter).

b Borrower shall from time to time, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws.

c Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would materially increase Borrower's responsibilities for compliance with Applicable Laws without the prior written approval of Lender. Lender's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other person acceptable to Lender.

d Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

e After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents; (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iv) neither the Property, any part thereof or interest therein, any of the tenants or occupants thereof, nor Borrower shall be affected in any material adverse way as a result of such proceeding; (v) non-compliance with the Applicable Laws shall not impose civil or criminal liability on Borrower or Lender; and (vi) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

Article 3.12 BOOKS AND RECORDS.

a Borrower and Guarantor, if any, shall keep adequate books and records of account in accordance with generally accepted accounting principles ("GAAP"), or in accordance with other methods acceptable to Lender in its sole discretion, consistently applied and furnish to Lender:

i annual (or quarterly if required by Lender) operating statements of the Property, prepared and certified by Borrower in the form required by Lender detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements for each month and containing appropriate year-to-date information,

ii annual balance sheet, profit and loss statements, statement of cash flows, financial statement, and a statement of change in financial position of Borrower prepared in accordance wih GAAP and in the form required by Lender, prepared and certified by Borrower and reviewed by Borrower's independent accountant; and

iii an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property, including cash flow projections for the upcoming year, and all proposed capital replacements and improvements at least fifteen (15) days prior to the start of each fiscal year; and

iv annual statements showing percentage occupancy for each month.

All such reports shall, as appropriate, be furnished within twenty (20) days after the end of each calendar month, thirty (30) days after the end of each fiscal quarter or sixty (60) days after the close of each fiscal year of Borrower, as applicable;

b At Lender's request, Individual Guarantors will provide personal financial statements to Lender annually within one hundred twenty (120) days of year-end. Guarantors who are corporations, limited liability companies, partnerships, trusts or other such entities shall annually provide Lender with their balance sheets, profit and loss statements, and certified financial statements and such other information as Lender may from time to time reasonably require. All Guarantors shall also provide to Lender copies of their Federal Income Tax Returns and copies of any extensions filed within fifteen (15) days of filing. In addition Guarantors agree to provide such other financial information as Lender may reasonably require, including, but not limited to, annual financial statements.

c Upon request from Lender, Borrower, any Guarantor and any Indemnitor shall furnish in a timely manner to Lender:

i A true, correct and complete copy of the Borrower's check register showing all paid invoices, indicating date paid, amount paid and check number;

ii A true, correct and complete copy of the Borrower's cash disbursements journal;

iii A reforecast of Borrower's income and expenses for the remainder of the current fiscal year as compared to the annual operating budget;

iv A report explaining variances, the basis for reforecasts, changes in competition and market conditions and other items; and

v Evidence of the timely payment of all Taxes.

d Borrower, any Guarantor, Indemnitor or Manager shall furnish Lender with such other additional financial or management information (including State and Federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance satisfactory to Lender.

e Borrower, any Guarantor Indemnitor or Manager shall furnish to Lender and its agents convenient facilities for the examination and audit of any such books and records.

f All items requiring the certification of Borrower shall, except where Borrower is an individual, require a certificate executed by the general partner, managing member or chief executive officer of Borrower, as applicable (and the same rules shall apply to any sole shareholder, general partner or managing member which is not an individual).

Article 3.13 **Property Use.** The Property shall be used only for operation of a **hotel/motel** and uses incidental thereto, and for no other use without the prior written consent of Lender.

Article 4 BORROWING ENTITY COVENANTS

Borrower covenants and agrees that:

Article 4.1 **EXISTENCE.** Borrower will continuously maintain (a) its existence and shall not dissolve or permit its dissolution, (b) its rights to do business in the state where the Property is located and (c) its franchises and trade names, if any.

Article 4.2 **ERISA.**

a It shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

b Borrower further covenants and agrees to deliver to Lender such certifications (subject to Article hereof) or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its sole discretion, that

i Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA;

ii Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and

iii one or more of the following circumstances is true:

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

B Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

C Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e) or an investment company registered under the Investment Company Act of 1940.

Article 4.3 **CHANGE OF PRINCIPAL PLACE OF BUSINESS/CHIEF EXECUTIVE OFFICE.** Borrower shall not change the principal place of business or chief executive office set forth in Subsection 5.18 below without the consent of Lender, which consent shall not be unreasonably withheld. Lender's consent shall be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business.

Article 4.4 **CHANGE OF NAME, IDENTITY OR STRUCTURE.** Except as may be expressly permitted under Article 8, Borrower will not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender.

Article 4.5 **NEGATIVE COVENANTS.** Borrower shall not, without express permission of Lender:

a Cause, create, suffer or otherwise permit to exist, any Lien against any portion of the Land or Personal Property, or any other Collateral which secures the Note;

b Engage in any business other than operation of the Facility, or create, incur, assume, guarantee or become or remain liable for any obligation or indebtedness (whether personal or nonrecourse, secured or unsecured, and whether owed to a third party or to an Affiliate) other than expenses related to the Facility.

c Permit or suffer any amendment or modification of the Formation Documents and shall not permit or suffer the admission or withdrawal of any new shareholders, partners or other equity holders.

d Permit any of Personal Property to be removed at any time from the Facility unless the removed item is consumed or sold in the usual and customary course of business, removed temporarily for maintenance and repair or, if removed permanently, replaced by an article of equivalent suitability and not materially less value, and shall be free of any lien other than the lien granted by Borrower to Lender.

e Commit to sell or deliver rooms, suites or other classification of rooms and accept payment therefor more than thirty (30) days in advance of delivery and at less than Borrower's normal rates.

f. Transfer title to any of the Personal Property used in the operation of the Facility to any Tenant or Management Company.

Article 5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Article 5.1 WARRANTY OF TITLE. Borrower has good title to the Property and has the right to grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "Permitted Exceptions"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever to the extent that the same is not insured under the Lender's title insurance policy

Article 5.2 LEGAL STATUS AND AUTHORITY S. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the state where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Property. Borrower has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to, and to keep and observe all of, the terms of this Security Instrument. Borrower has furnished to Lender true, correct and complete copies of all documents, instruments and other papers relating to the corporate governance of Borrower (the "**Formation Documents**"). The Formation Documents are in full force and effect and have not been modified, amended or terminated, and all fees due in connection therewith have been paid. There exists no breach of obligation by any party or any failure of a condition to the effectiveness of the Formation Documents, and no circumstance exists which given notice or the passage of time or both would constitute a breach of obligation or failure of condition under the Formation Documents.

Article 5.3 VALIDITY OF DOCUMENTS S. (a) The execution, delivery and performance of the Loan Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) have been authorized by all requisite organizational action; (iii) to the best of Borrower's knowledge, have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership or trust agreement, articles of organization, operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Security Instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby), (b) the Loan Documents have been duly executed and delivered by Borrower through the undersigned authorized representative of Borrower and (c) to the best of Borrower's knowledge, the Loan Documents constitute the legal, valid and binding obligations of Borrower.

Article 5.4 LITIGATION . There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against Borrower or any Guarantor or against or affecting the Property that has not been disclosed to Lender by Borrower in writing.

Article 5.5 STATUS OF PROPERTY . To the best of Borrower's knowledge:

a Borrower has obtained all necessary certificates, Licenses & Permits and other approvals, governmental and otherwise, necessary for the construction and operation of the Facility as **a Hotel** and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

b The Property and the present and contemplated use and occupancy thereof are in full compliance with all Applicable Laws.

c The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

d All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

e The Property is served by public water and sewer systems.

f The Property is free from damage caused by fire or other casualty.

g All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full or lien waivers have been executed and delivered to Lender for work not yet paid in full.

h Borrower has paid in full for, and is the owner of, all Personal Property (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

i All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

j All security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Borrower except as noted on the certified rent roll.

k Borrower has received no notice of any actual or threatened condemnation or eminent domain proceedings by any public or quasi-public authority.

l No portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Borrower has obtained and will maintain the insurance prescribed in Section .

m All the Improvements lie within the boundaries of the Land.

Article 5.6 **NO FOREIGN PERSON .** Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

Article 5.7 **SEPARATE TAX LOT .** The Land and Improvements are assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Article 5.8 **LEASES .** To the extent that any leases exist and except as disclosed in the rent roll for the Property delivered to and approved by Lender, (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable and in full force and effect; (c) all of the Leases are arm's-length agreements with bona fide, independent third parties; (d) no party under any Lease is in default; (e) all Rents due have been paid in full; (f) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified occupancy statement delivered to and approved by Lender; (g) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (h) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (i) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (j) there exist no offsets or defenses to the payment of any portion of the Rents and Borrower has no monetary obligation to any tenant under any Lease; (k) Borrower has received no notice from any tenant challenging the validity or enforceability of any Lease; (l) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (m) the Leases are valid and enforceable against Borrower and the tenants set forth therein; (n) no Lease contains an option to purchase, right of first refusal to purchase, right of first refusal to relet, or any other similar provision; (o) no Person has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (p) each Lease is subordinate to this Security Instrument, either pursuant to its terms or a recordable subordination agreement; (q) no Lease has the benefit of a non-disturbance agreement that would be considered unacceptable to prudent institutional lenders; (r) all security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Borrower; and (s) no brokerage commissions or finders fees are due and payable regarding any Lease.

Article 5.9 **FINANCIAL CONDITION.**

a (i) Borrower is solvent, and no proceeding under Creditors Rights Laws with respect to Borrower has been initiated, and (ii) Borrower has received reasonably equivalent value for the granting of this Security Instrument.

b No petition in bankruptcy has been filed by or against Borrower, any Guarantor, any Indemnitor or any related entity, or any principal, general partner or member thereof, in the last seven (7) years, and neither Borrower, any Guarantor, any Indemnitor nor any related entity, or any principal, general partner or member thereof, in the last seven (7) years has ever made any assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws.

Article 5.10 **BUSINESS PURPOSES.** The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Article 5.11 **TAXES.** To the best of their knowledge, Borrower, any Guarantor and any Indemnitor have filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower, any Guarantor nor any Indemnitor knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Article 5.12 **MAILING ADDRESS.** Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Article 5.13 **NO CHANGE IN FACTS OR CIRCUMSTANCES.** To the best of Borrower's knowledge, all information in the application for the Loan submitted to Lender and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the application or in satisfaction of the terms thereof, are accurate, complete and correct in all respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Article 5.14 **DISCLOSURE.** To the best of Borrower's knowledge, Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Article 5.15 **THIRD PARTY REPRESENTATION.** To the best of Borrower's knowledge, each of the representations and the warranties made by each Guarantor and Indemnitor in any Other Security Document(s) is true and correct in all material respects.

Article 5.16 **ILLEGAL ACTIVITY .** No portion of the Property has been or will be purchased, improved, equipped, fixtured, or furnished with proceeds of any criminal or other illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property.

Article 5.17 **PRINCIPAL PLACE OF BUSINESS/ CHIEF EXECUTIVE OFFICE .** Borrower's principal place of business and its chief executive office as of the date hereof is as disclosed in Section 1.3a.

Article 5.18 **SINGLE PURPOSE ENTITY.** Borrower is a single purpose entity whose sole assets are the Real Estate and Personal Property and whose sole business and purpose is to own and operate the Property as a **Hotel.**

Article 5.19 **ADEQUACY TO OPERATE AS A HOTEL** The Furniture, Fixtures and Equipment and the Inventory are adequate and sufficient for the use, occupancy, operation and maintenance of the "Facility" as an economy class hotel at full occupancy levels.

Article 5.20 **SERVICE AND MAINTENANCE AGREEMENTS.** To the best of Borrower's knowledge, all service and maintenance agreements affecting the Property may be terminated upon the giving of thirty (30) days or less prior written notice.

Article 5.21 **OPERATING ACCOUNT.** Borrower shall establish and maintain a single bank account with a depository institution approved by Lender into which all Property Revenues shall be promptly and directly deposited upon receipt thereof (the "Operating Account"). No funds of Borrower shall be commingled with any other funds, including without limitation, other funds held by Manager. All Property Revenues shall be billed and collected in the name of Borrower or its names which are Trademarks and in no other name. So long as there is no Default hereunder, and no Default shall be created thereby, disbursements may be made from the Operating Account to pay Property Expenses.

Article 5.22 **PAYROLL ACCOUNT.** Borrower may maintain a segregated account for payroll and other employee payments. Such account shall be funded by transfers from the Operating Account and shall be used solely for payments to employees at the Facility.

Article 5.23 **FURNISHING NOTICES.** Borrower shall deliver to Lender copies of all notices of default or termination received or given by Borrower (or its agents or representatives) under any Agreements, including but not limited to Licenses, & Permits, Contracts, and/or Insurance Policies within three (3) Business Days after such notice is given or received, as the case may be. Borrower shall also provide Lender with copies of all notices and correspondence pertaining to the Property or any part thereof received by Borrower (or any of Borrower's agents or employees) from any Governmental Authority or from any company providing Insurance and all other material notices, within three (3) business days after such notices are received.

Article 5.24 **REPRESENTATIONS AND WARRANTIES.** Borrower shall take no action that would cause any of the representations or warranties contained in Article 5 to cease to be, and shall take each action necessary to maintain each such representation and warranty as, true and complete.

Article 5.25 **SPECIAL HOTEL COVENANTS.** Borrower shall:

a) Fund and operate the Hotel in a manner reasonably consistent with similarly situated hotels and in compliance with the Franchise Agreement and the Management Agreement.

b) Maintain Inventory in amounts sufficient to meet the hotel industry standard for hotels comparable to the Hotel, and at levels sufficient for the operation of the Hotel at full occupancy levels.

c) Make, or cause to be made, all renovations and capital improvements to the Hotel in a good and workmanlike manner, with materials of high quality, free of defects and liens, in accordance with all Plans & Specifications and Laws.

d) Promptly comply with all applicable Laws of any Governmental Authority having jurisdiction over Borrower or the Project, including, without limitation, the Americans with Disabilities Act.

e) Keep all Licenses & Permits and Franchise Agreements in full force and effect and promptly comply with all conditions thereof.

f) Upon Lender's reasonable request, execute, deliver, record and furnish such documents as Lender may reasonably deem necessary or desirable to (i) perfect and maintain perfected as valid liens upon the Hotel and the other Collateral, the liens granted by Borrower to Lender under the Loan Documents as contemplated by this Agreement, (ii) correct any errors of a typographical nature or inconsistencies which may be contained in any of the other Loan Documents, and (iii) consummate fully the transaction contemplated under this Agreement.

g) **Franchise Agreement.** Borrower acknowledges and confirms that the Project is to be operated under a **Best Western** franchise. Borrower shall proceed with commercially reasonable haste to make to comply with all requirements of **Best Western** of the franchise agreement and shall within one hundred and eighty (180) days of Closing provide Lender with an executed copy of the franchise agreement and a "comfort letter" or security interest in the franchise agreement acceptable to lender.

h) **Change of Franchise Agreement.** Borrower shall have the right, during the term of this Loan, to substitute another franchise provided that: (i) the franchise shall have been approved by Lender in advance (which approval may be withheld by Lender in its sole discretion); (ii) such franchise arrangement shall be solely pursuant to a written agreement approved by Lender in advance of its execution; and, (iii) such franchise agreement shall be subject to Lender's lien.

i) **Special Franchise Covenants.** Borrower further covenants and agrees with Lender as follows: (a) Borrower shall cause the Hotel to be operated pursuant to the Franchise Agreement; (b) Borrower shall: (i) promptly perform or cause to be performed and/or observe all of the covenants and agreements required to be performed and observed by it under the Franchise Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) enforce the performance of each and every term, covenant, condition, agreements, requirement, restriction and provision of the Franchise Agreement to be performed by the Franchisor and shall not waive, excuse, condone, discount, set off, compromise or in any manner release or discharge the Franchisor under the Franchise Agreement from any of the foregoing; (iii) not alter, modify or amend the Franchise Agreement in any way, except as set out herein; (iv) not cancel or terminate the Franchise Agreement; (v) promptly notify Lender of any default under the Franchise Agreement of which it is aware: (vi) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Franchise Agreement; (vii) make no assignment, pledge or other disposition of the Franchise Agreement; (viii) not subordinate the Franchise Agreement to any deed of trust or mortgage or security agreement or any other encumbrance of any kind or permit, consent or agree to such subordination; (ix) at all times defend Lender's first and prior right in and to the Franchise Agreement against any and all claims adverse to the claim of Lender; (x) appear in and defend any action arising out of, or in any manner connected with, the Franchise Agreement or the duties, obligations, liabilities and responsibilities of Borrower or any guarantor or surety thereunder or with respect thereto and, upon request by Lender, shall make appearance in the name and on behalf of Lender but at the expense of Borrower; and, (xi) comply with any and all terms of any assignment of the franchise agreement executed by Borrower on behalf of Lender.

Article 6 OBLIGATIONS AND RELIANCE

Article 6.1 **RELATIONSHIP OF BORROWER AND LENDER .** The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor. Notwithstanding the foregoing, in case of a sale under power or upon foreclosure as provided in this Security Instrument, Borrower and any person in possession under Borrower, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants at sufferamce, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over; provided, however, it is expressly understood and agreed that in exercising its power of sale pursuant to this Security Instrument, Lender may, at its option, sell the Property or any part thereof at such sale subject to such Leases as shall be designated in any advertisement of sale required hereunder.

Article 6.2 **NO RELIANCE ON LENDER .** The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Article 6.3 **NO LENDER OBLIGATIONS.** Notwithstanding any provision of the Loan Documents, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Article 6.4 **RELIANCE.** Borrower recognizes and acknowledges that in accepting the Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 and Article 12 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Loan Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5 and Article 12.

Article 7 FURTHER ASSURANCES

Article 7.1 **RECORDING OF SECURITY INSTRUMENT, ETC.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a security title, lien or security interest or evidencing the security title, lien and security interest hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the security title, lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of any of the Loan Documents, any note, deed to secure debt or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any note, deed to secure debt or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Article 7.2 **FURTHER ACTS, ETC.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming to Lender the Property and rights hereby granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument, or other Loan Documents, or for filing, registering or recording this Security Instrument, or for complying with Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender, following 10 days' notice to Borrower, to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence or perfect more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2.

Article 7.3 **CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.**

a If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any.

b Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

c If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to any of the Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with all interest and penalties thereon.

Article 7.4 **ESTOPPEL CERTIFICATES.**

a After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under any of the Loan Documents, (vii) that the Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

b Borrower shall use its best efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including, but not limited to attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

c Upon any transfer or proposed transfer contemplated by Section 17.1, at Lender's request, Borrower and Guarantors shall provide an estoppel certificate to the Investor or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may require.

d After written request by Borrower not more than twice annually, Lender shall furnish Borrower a statement setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the balance of the sums in the Escrow Fund, if any, and (v) a statement regarding whether Lender has delivered to Borrower notice of an Event of Default.

Article 7.5 **FLOOD INSURANCE.** After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area" under the Flood Insurance Acts or, if it is, that Borrower has obtained insurance meeting the requirements of Section 3.3(a)(vi).

Article 7.6 **REPLACEMENT DOCUMENTS.** Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any of the Loan Documents which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Loan Document, Borrower will issue, in lieu thereof, a replacement Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor.

Article 7.7 **AMENDED FINANCIAL STATEMENTS.** Borrower will execute and deliver to the Lender, prior to or contemporaneously with the effective date of any change, any financing statement or financing statement change required by the Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of the Lender, Borrower shall execute a certificate in form satisfactory to the Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Article 8 DUE ON SALE/ENCUMBRANCE

Article 8.1 NO SALE/ENCUMBRANCE.

a Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (collectively, a "Prohibited Transfer"), other than pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 3.8, without the prior written consent of Lender.

b A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iii) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (iv) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (v) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests.

Article 8.2 **PERMITTED TRANSFERS.** Notwithstanding the provisions of Sections 8.1 and 8.2, a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party shall not be deemed to be a Prohibited Transfer.

Article 8.3 **LENDER'S RIGHTS.** Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon a modification of the terms hereof and on assumption of the Note, and the other Loan Documents as so modified by the proposed Prohibited Transfer, payment of a transfer fee, the amount to be determined in the sole discretion of Lender and all of Lender's expenses incurred in connection with such Prohibited Transfer, the proposed transferee's continued compliance with the covenants set forth in this Security or such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer without Lender's consent. This provision shall apply to every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Article 8.4 **TRANSFER DEFINITIONS.** For purposes of this Article 8, "Restricted Party" shall mean Borrower or any Guarantor or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower or any Guarantor or Affiliated Manager or any non-member manager; and a "Sale or Pledge" shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

Article 9 DEFAULT

Article 9.1 **EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default":

a) **Default under the Note.** If a default occurs under the Note (including but not limited to the failure of Borrower to meet its payment obligations).

b) **Default Under the Loan Documents.** If Borrower or Guarantor breaches any covenant, warranty or duty contained in the Loan Documents, including this Agreement, or commits any other act of default under the Loan Documents.

c) **Other Debt to Lender.** Borrower defaults in the payment of any amounts due to the Lender, or the Lender declares a default by Borrower (which has not been cured within any applicable cure periods) in connection with the observance or performance of any of he covenants or agreements contained in any credit agreements, notes, collateral or other documents relating to any Debt of Borrower to the Lender, other than the Obligations incurred pursuant to this Agreement.

d) **Other Debt to Other Lenders.** Without implying that such other Debt is permitted, Borrower defaults in the payment of any amount due to any Person (other than the Lender) or in the observance or performance of any of the covenants or agreements contained in any credit agreements, notes, leases, collateral or other documents relating to any Debt of Borrower to any Person (other than the Lender), in excess of Ten Thousand Dollars ($10,000.00), and any grace period.

e) **Representations and Warranties.** If any representations or warranty of, or with respect to, Borrower, any Indemnitor or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (a "Guarantor"), or any member, general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity (defined below) or in any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been knowingly false or misleading in any material respect when made.

f) **Guaranties and Indemnities.** If any default occurs under any guaranty or indemnity executed in connection herewith (including the Environmental Indemnity, defined in Section 12.4) and such default continues after the expiration of applicable grace periods, if any.

g) **Liens.** A lien or other encumbrance is filed against the Property or other improvements.

h) **Bankruptcy.** If (i) Borrower or any managing member or general partner of Borrower, or any Guarantor or Indemnitor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors ("Creditors Right Laws"), seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or any substantial part of its assets, or the borrower or any managing member or general partner of Borrower, or any Guarantor or Indemnitor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower or any managing member or general partner of Borrower or any Guarantor or Indemnitor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower or any managing member or general partner of Borrower, or any Guarantor or Indemnitor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order of any such relief which shall not have been vacated, discharged or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Borrower or any managing member or general partner of Borrower or any Guarantor or Indemnitor shall take any action in furtherance of, or indicating its consent to approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any managing member or general partner of Borrower, or any Guarantor or Indemnitor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay it debts as they become due.

i) **Default on Junior Liens.** Without implying that such other liens are permitted, if Borrower shall be in default beyond applicable notice and grace periods under any other mortgage deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument.

j) **Federal Tax Liens.** If any federal tax lien is filed against Borrower, any Guarantor, any Indemnitor or the Property and same is not discharged of record within thirty (30) days after same is filed.

k) **Franchise Agreement**. If a default has occurred and continues beyond any applicable cure period under the Franchise Agreement, if such default permits a party to terminate or cancel the Franchise Agreement, or if

Borrower terminates or cancels the Franchise Agreement or operates the Property under the name of any hotel chain or system other than **Best Western**, without Lender's prior written consent.

l) **Operation of Hotel**. If Borrower or its Lessee ceases to operate a hotel on the Property or terminates such business for any reason whatsoever (other than temporary cessation in connection with any renovations to the Property or restoration of the Property after casualty or condemnation).

m) **Undischarged Judgments.** Judgment for the payment of money in excess of Ten Thousand Dollars ($10,000.00) (which is not covered by insurance) is rendered by any court or other governmental body against Borrower or the Guarantor, and Borrower of the Guarantor do not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within thirty (30) days from the date of entry thereof, and within said period of thirty (30) days from the date of entry thereof or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefore as may be required under general accepted accounting principles.

n) **Assumption.** If any of the ownership interests of Borrower, the Property or Borrower's assets are sold, exchanged or transferred, without Lender's prior written consent, the Loan will not be assumable and all the Obligations shall be immediately due and payable.

o) **Destruction of Improvements.** If the Improvements are damaged or destroyed by fire or other casualty and Lender, in its sole discretion, determines that there is reasonable doubt by reason of such loss or damage or of delays in making settlements with insurers, as to Borrower's ability to rebuild the Improvements or comply with the Loan Documents (including but not limited to the ability to repay the Debt), Lender may apply all insurance proceeds, after deduction of any of Lender's cost in relations thereto, to the Loan balance and require that Borrower pay, upon demand, any items owing after the application of such proceeds.

p) **Conviction of Crime.** Borrower or any managing member or general partner of Borrower or any Guarantor shall be indicated for a federal crime, a punishment for which could include the forfeiture of any assets of Borrower, of any equity interest in Borrower, or the loss of eligibility for Licenses & Permits.

q) **Default under Licenses & Permits.** Borrower shall be in default or in breach of any term of any Contract or License or Permit (after any requisite notice or cure periods contained in such Contract or applicable to such License or Permit) and such default could, in Lender's reasonable judgment, have materially adverse effect on the use, occupancy, operation or Borrower's franchise agreement.

r) **Death of Guarantor.** The Death of any Guarantor, provided that Borrower shall have the right to substitute a new Guarantor upon Lender's reasonable approval. In determining the new Guarantor's suitability, Lender is entitled to utilize any criteria it deems appropriate. Without limiting the foregoing, the new Guarantor's financial strength must be no less that the financial strength of the deceased Guarantor at the time of the closing of this loan.

s) **Events Applicable to Construction Loans.** <u>Conditions Precedent to Any Advance</u>. If Borrower fails to satisfy all conditions precedent to any Advance, including, but not limited to:

i. **Cancellation of Building Permits or Licenses.** If any buildings permit, license, or other approval of any Governmental Authority is not maintained in full force and effect or is cancelled and not reinstated within thirty (30) days of such cancellation.

ii. **Delay in Construction.** If Borrower (i) fails to cause the work of construction of the Improvements to be commenced within a reasonable time after execution of this Agreement, (ii) fails to continuously and diligently construct the Improvements in a timely manner in accordance with the Project work schedule approved by Lender and in strict accordance with the Plans, (iii) permits or allows any interruption of construction of the Improvements, or (iv) fails to cause the construction of the Improvements to be completed (including all approaches, services, utilities and other improvements in connections therewith) and a certificate of occupancy or its equivalent to be issued on or before the Construction Termination Date.

iii. **Improper Materials.** If any materials, fixtures, or articles used in the construction of the Improvements or the appurtenances thereto, or to be used in the operation thereof, are not in accordance with the Plans and Specifications.

iv. **Injunction.** If any party obtains an order or decree in any court of competent jurisdiction enjoining or delaying the construction of the Improvements or completion of the Project or enjoining or prohibiting Borrower or Lender from carrying out the provisions of this Agreement and such order or decree is not vacated within fifteen (15) business days after the issuance thereof.

v. **Bills.** Borrower fails to promptly pay all bills for labor employed or material used during the Construction Project and/or fails to promptly furnish the Lender with affidavits or other evidence which the Lender requires to establish the fact that such payment(s) has been made.

vi. **Destruction of Improvements.** If during the Construction Phase the Improvements are damaged or destroyed by fire or other casualty and the Lender, in its sole discretion, determines that there is reasonable doubt that the project will be completed by the Construction Termination Date.

t) **Events Applicable where Borrower operates a bar, lounge or other facility which sells alcoholic beverages on the Premises.** If, for any reason any of the liquor license(s) for the Hotel is (are) revoked or if, for any reason, the applicable Governmental Authorities, or any of them, requires the cessation of the sale of alcoholic beverages at the Hotel for a period of more than five (5) consecutive days or if such cessation otherwise occurs for a period of more than five (5) consecutive days.

Article 10 RIGHTS AND REMEDIES

Article 10.1 REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower in and to the Property, including, but not limited to the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

a declare the entire unpaid Debt to be immediately due and payable;

b institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any Applicable Law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

c To the extent that the Property constitutes "Real Property", in addition to any other remedies granted hereunder or by applicable law Lender shall have the right to enter upon and take possession of the real estate and after, or without, taking such possession of the same, sell the mortgaged real estate at public outcry, in front of the courthouse door of the county wherein the real estate is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, the Lender, or the then holder of the Debt may bid at such sale and become the purchaser of the real estate if the highest bidder therefor.

d with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

e sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by Applicable Law;

f institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the any other Security Documents;

g recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;

h apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor, Indemnitor or of any person, firm or other entity liable for the payment of the Debt;

i subject to any Applicable Law, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all rent rolls, leases (including the form lease) and amendments and exhibits, subleases (including the form sublease) and amendments and exhibits and rental and license agreements with the tenants, subtenants and licensees in possession of the Property or any part or parts thereof; tenants', subtenants' and licensees' money deposits or other property (including, without limitation, any letter of credit) given to secure tenants', subtenants' and licensees' obligations under leases, subleases or licenses, together with a list of the foregoing; all lists pertaining to current rent and license fee arrears; any and all architects' plans and specifications, licenses and permits, documents, books, records, accounts, surveys and property which relate to the management, leasing, operation, occupancy, ownership, insurance, maintenance, or service of or construction upon the Property and Borrower agrees to surrender possession thereof and of the Property to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) either require Borrower (A) to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower, or (B) to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vi) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable legal fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

j exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property and other UCC Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property and other UCC Collateral, and (ii) request Borrower at its expense to assemble the Personal Property and other UCC Collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property and other UCC Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

k apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; and (v) all other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

l surrender the Policies maintained pursuant to Article 3, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney- in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such unearned Insurance Premiums;

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

n pursue such other remedies as Lender may have under applicable state or federal law. In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 10.1 to the contrary, if any Event of Default, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Article 10.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Article 10.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable legal fees to the extent permitted by law), with interest as provided in this Section, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

Article 10.4 ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property, and after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Article 10.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Article 10.6 EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right upon prior written notice to Borrower (unless an Event of Default exists, in which case no notice shall be required), to examine and audit, during reasonable business hours, the records, books, management and other papers of Borrower and its affiliates or of any Guarantor or Indemnitor which pertain to their financial condition or the income, expenses and operation of the Property, at the Property or at any office regularly maintained by Borrower, its affiliates or any Guarantor or Indemnitor where the books and records are located. Lender and its agents shall have the right upon notice to make copies and extracts from the foregoing records and other papers.

Article 10.7 OTHER RIGHTS, ETC.

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

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

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

Article 10.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Article 10.9 **VIOLATION OF LAWS.** If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Article 10.10 **RIGHT OF ENTRY.** Lender and its agents shall have the right to enter and inspect the Property at all times.

Article 10.11 **SUBROGATION.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

Article 10.12 **FAILURE TO PROVIDE ACCURATE INFORMATION.** In the event the Borrower, any Guarantor, Indemnitor or Affiliated Manager (a) fails to timely provide any such reports, information, statements or other material within fifteen (15) days of Lender's request, or (b) provides Lender with any such reports, information, statements or other materials which are inaccurate or false in any material respect, or (c) fails to permit Lender or its agents to inspect its books and records within fifteen (15) days of Lender's request, then for so long as each such occurrence described in the foregoing clauses (a) through (c) exists, and in addition to Lender's other remedies under the Loan Documents, Lender may assess a penalty against Borrower in the amount of the late fees specified in the Note.

Article 11 ENVIRONMENTAL HAZARDS

Article 11.1 **ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants, based upon information that Borrower knows or should reasonably have known, that: (a) there are no Hazardous Materials or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws and with permits issued pursuant thereto (if such permits are required), if any, and (ii) either (A) in amounts not in excess of that necessary to operate the Property or (B) fully disclosed to and approved by Lender in writing pursuant to an Environmental Report; (b) there are no past, present or threatened Releases of Hazardous Materials in violation of any Environmental Law and which would require remediation by a governmental authority in, on, under or from the Property except as described in the Environmental Report; (c) there is no threat of any Release of Hazardous Materials migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person relating to Hazardous Materials in, on, under or from the Property; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property known to Borrower or contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Materials in, on, under or migrating to or from the Property and/or to the environmental condition of the Property.

Article 11.2 **ENVIRONMENTAL COVENANTS.** Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property, whether by Borrower or any other Person controlled by Borrower, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Materials in, on, under or from the Property; (c) there shall be no Hazardous Materials in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required, and (ii) (A) in amounts not in excess of that necessary to operate the Property or (B) fully disclosed to and approved by Lender in writing; (d) Borrower shall keep the Property free and clear of all Environmental Liens; (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 11.4 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender, upon Lender's reasonable belief that the Property is not in full compliance with all Environmental Laws, and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate remediation of any Hazardous Materials in, on, under or from the Property; and (ii) comply with any Environmental Law; (h) Borrower shall not allow any tenant or other user of the Property to violate any Environmental Law; and (i) Borrower shall immediately notify Lender in writing after it has become aware of (A) any presence or Release or threatened Release of Hazardous Materials in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien against the Property; (D) any required or proposed remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Materials. Any failure of Borrower to perform its obligations pursuant to this Section shall constitute bad faith waste with respect to the Property.

Article 11.3 **LENDER'S RIGHTS.** Lender and any other Person designated by Lender, including but not limited to any representative of a governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

Article 11.4 **OPERATIONS AND MAINTENANCE PROGRAMS.** If recommended by the Environmental Report or any other environmental assessment or audit of the Property, Borrower shall establish and comply with an operations and maintenance program with respect to the Property, in form and substance reasonably acceptable to Lender, prepared by an environmental consultant reasonably acceptable to Lender, which program shall address any asbestos-containing material or lead based paint that may now or in the future be detected at or on the Property. Without limiting the generality of the preceding sentence, Lender may require (a) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (b) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (c) at Borrower's sole expense, supplemental examination of the Property by consultants specified by Lender, (d) access to the Property by Lender, its agents or servicer, to review and assess the environmental condition of the Property and Borrower's compliance with any operations and maintenance program, and (e) variation of the operations and maintenance program in response to the reports provided by any such consultants.

Article 11.5 **ENVIRONMENTAL DEFINITIONS.** "Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Borrower or the Property and relate to Hazardous Materials or protection of human health or the environment. "Environmental Liens" means all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person. "Environmental Report" means the written reports resulting from the environmental site assessments of the Property delivered to Lender. "Hazardous Materials" shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil;

explosives, flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material", "hazardous waste", "toxic substance", "toxic pollutant", "contaminant", or "pollutant" within the meaning of any Environmental Law. "Release" of any Hazardous Materials includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

Article 12 INDEMNIFICATION

Article 12.1 GENERAL INDEMNIFICATION. Borrower and Guarantors shall, at their sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Applicable Laws; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument. Any amounts payable to Lender by reason of the application of this Section shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense). The term "Indemnified Parties" shall mean (a) Lender, (b) any prior owner or holder of the Note, (c) any servicer or prior servicer of the Loan, (d) any Investor or any prior Investor in any Participations or Securities, (e) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any Investor or other third party, (f) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (g) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (h) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties' assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan.

Article 12.2 MORTGAGE AND/OR INTANGIBLE TAX . Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of any of the Loan Documents.

Article 12.3 DUTY TO DEFEND; LEGAL FEES AND OTHER FEES AND EXPENSES . Upon written request by any Indemnified Party, Borrower and Guarantors shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, at their own expense, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding.

Article 12.4 **ENVIRONMENTAL INDEMNITY .** Borrower and Guarantors shall defend, indemnify and hold Lender and its directors, officers, agents and employees harmless from and against all claims, demands, causes of action, liabilities, losses, costs and expenses (including, without limitation, costs of suit, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with (i) the presence on or under the Property of any hazardous substances or solid . wastes (as defined elsewhere in this Agreement), or any releases or discharges of any hazardous substances or solid wastes on, under or from the Property, (ii) any activity carried on or undertaken on or off the Property, whether prior to or during the term of this Agreement, and whether by Borrower or any predecessor in title or any officers, employees, agents, contractors or subcontractors of Borrower or any predecessor in title, or any third persons at any time occupying or present on the Property, in connection with the handling, use, generation, manufacture, treatment, removal, storage, decontamination, clean-up, transport or disposal of any hazardous substances or solid wastes at any time located or present on or under the Property, or (iii) any breach of any representation, warranty or covenant under Article 12 hereof. The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such hazardous substances or solid wastes, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances.

The liabilities of Borrower and Guarantor under this Agreement shall in no way be limited or impaired by, and Borrower and Guarantor hereby consent to and agree to be bound by, any amendment or modification of the provisions of the Loan Documents to or with Lender by Borrower and Guarantor. In addition, notwithstanding any terms of any of the Loan Documents to the contrary, the liability of Borrower and Guarantor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Loan Documents; (ii) any sale, assignment or foreclosure of the Note or Deed or any sale or transfer of all or any part of the Premises; (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to property encumbered by the Deed or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower or Guarantor or otherwise limiting Borrower's or Guarantor's liability in any manner thereunder; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Loan Documents; (v) the release of Borrower or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Documents by operation of law, Lender's voluntary act, or otherwise; (vi) the release or substitution, in whole or in part, of any security for the Note; or (vii) Lender's failure to record the Deed or file any UCC-1 financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Note; and, in any such case, whether with or without notice to Borrower or Guarantor and with or without consideration.

Article 13 WAIVERS

Article 13.1 **WAIVER OF COUNTERCLAIM.** Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the Other Security Documents, or the Obligations.

Article 13.2 **MARSHALLING AND OTHER MATTERS.** Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein.

Article 13.3 **WAIVER OF NOTICE.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and (b) with respect to matters for which Lender is required by Applicable Laws to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Article 13.4 WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Article 13.5 SOLE DISCRETION OF LENDER. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.

Article 13.6 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER, BY ACCEPTANCE OF THIS SECURITY INSTRUMENT, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER.

Article 13.7 WAIVER OF FORECLOSURE DEFENSE. Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

Article 14 EXCULPATION

Article 14.1 EXCULPATION. The provisions of Article 11 of the Note are hereby incorporated by reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

Article 15 NOTICES

All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender, as the case may be, at the addresses set forth on the first page of this Security Instrument or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Subsection, "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Article 16 CHOICE OF LAW

Article 16.1 CHOICE OF LAW. This Security Instrument and any determination of deficiency judgments shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and applicable federal law.

Article 16.2 PROVISIONS SUBJECT TO LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable state or federal law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable state or federal law.

Article 17 SECONDARY MARKET

Article 17.1 TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein (the "Participations") or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant, or investor in such Participations or Securities (collectively, the "Investor") or any Rating Agency rating such Participations and/or Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any Guarantor, any Indemnitor(s) and the Property, whether furnished by Borrower, any Guarantor, any Indemnitor(s) or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under applicable state or federal law to prohibit such disclosure, done in the course of transferring the loan, including but not limited to any right of privacy.

Article 17.2 COOPERATION. Borrower, any Guarantor and any Indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Section, including, without limitation, the delivery of an estoppel certificate required in accordance with Subsection 7.4(c) and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower, any Guarantor and any Indemnitor consent to Lender furnishing to such Investors or such prospective Investors or such Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower, any Guarantor and any Indemnitor as may be requested by Lender, any Investor, any prospective Investor or any Rating Agency in connection with any sale, transfer or Participations or Securities.

Article 17.3 RESERVES/ESCROWS. In the event that Securities are issued in connection with the Loan, all funds held by Lender in escrow or pursuant to reserves in accordance with this Security Instrument or the Other Security Documents shall be deposited in eligible accounts at eligible institutions as then defined and required by the Rating Agencies.

Article 18 COSTS

Article 18.1 PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "Event"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority. Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event or otherwise..

Article 18.2 LEGAL FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the Other

Security Documents; and (b) Borrower shall pay to Lender on demand any and all expenses, including legal fees incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable under the Note, this Security Instrument or the Other Security Documents, or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

Article 19 DEFINITIONS

Article 19.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the words "Applicable Laws" shall mean all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations and court orders, the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "legal fees" shall include any and all counsel, attorney, paralegal and law clerk fees and disbursements, including, but not limited to fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise.
Article 19.2 HEADINGS, ETC. The headings and captions of various Articles and Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Article 20 MISCELLANEOUS PROVISIONS

Article 20.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Article 20.2 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Article 20.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Article 20.4 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Article 20.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Article 20.6 ENTIRE AGREEMENT . The Note, this Security Instrument and the Other Security Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the Other Security Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the Other Security Documents.

Article 21 Affiliated Tenant Covenants

Article 21.1 The Guarantors have or intend to create **Mountain Brook Hospitality Management, LLC** ("Tenant") which will be owned by the Guarantors.

Article 21.2 Tenant and Borrower will executed a lease agreement whereby Tenant agrees to lease the Property from Borrower and operate the Facility.

Article 21.3 Tenant will execute such agreements as may be required by Lender including, but not limited to a Subordination Agreement in the form and content required by Lender.

Article 21.4 Should there be any change in the ownership structure of Tenant, Borrower will immediately notify Lender.

Article 22 Deposit Account Provisions

Article 22.1 The sum of $120,000.00 from the loan proceeds shall be deposited in a deposit account (the " Deposit Account") for the purpose of paying for upgrades to the Hotel.

Article 22.2 The monies held in the Deposit Account shall be disbursed in accordance with the following terms:

a **Lender Approval**. Borrower must obtain Lender approval for any items that it wishes to pay for from the the Deposit Account.

b **Personal Property**: After obtaining Lender approval, Borrower shall purchase and have the items of Personal Property delivered to the Hotel. Borrower shall request that Lender perform an inspection. Upon lender's inspection of the items and review of the documents relating to the purchase of the items, including but not limited to any invoices, Lender shall determine, in its discretion, the amount to be disbursed to Borrower from the Deposit Account for the items purchased.

c **Fixtures and Other Improvements Considered Attached to Real Property**. In the event that Borrower purchases fixtures or other improvements considered attached to real property, prior to any disbursement from the Deposit Account Borrower must: (1) complete the installation of the improvements or fixtures; and (2) request that Lender perform an inspection. Upon lender's inspection of the installation and review of any documents relating to the improvements or fixtures, Lender shall determine, in its discretion, the amount to be disbursed to Borrower from the Deposit Account.

d Lender, in its discretion, may waive inspection of the actual property purchased or fixtures or improvements installed and rely instead on documents presented by Borrower.

e Lender may require Borrower, as pre-condition of disbursement, to present and/or execute such documentation as lender may require.

f In no event shall Lender be required to disburse an amount greater than is deposited into the Deposit Account,

g Lender shall have the right to pay no interest on the funds in the Deposit Account, unless Borrower and Lender agree otherwise in a separate writing.

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

BORROWER:
Mountain Brook Lodging, LLC

Pravin Patel
Member

Joshna Patel
Member

Jayprakash D. Patel
Member

State of **Alabama**

County of **Jefferson**

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify **Pravin Patel**, **Joshna Patel**, and **Jayprakash D. Patel**who signed for foregoing instrument as members of **Mountain Brook Lodging, LLC** and who are known to as a member and with full authority acknowledged before me on this day that, being informed of the contents of said instrument, he/she, executed the same voluntarily on the day the same bears date.

Given under my hand and seal on **April 3, 2008**.

NOTARY PUBLIC
My Commission expires: 2/18/2010

Guarantors

Pravin Patel, Joshna Patel, and Jayprakash D. Patel ("Individual Guarantors) are the Guarantors of the loan made to **Mountain Brook Lodging, LLC** (collectively referred to as the "Guarantors").

Individual Guarantors are the sole owners of Borrower. The Guarantors do hereby agree to abide by the terms of this Agreement.

Pravin L patel

Pravin Patel
Individually

Joshna Patel
Individually

Jayprakash D. Patel
Individually

State of **Alabama**

County of **Jefferson**

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify **Pravin Patel, Joshna Patel**, and **Jayprakash D. Patel** who signed for foregoing instrument individually and with full authority acknowledged before me on this day that, being informed of the contents of said instrument, he/she, executed the same voluntarily on the day the same bears date.

Given under my hand and seal on **April 3, 2008**.

NOTARY PUBLIC
My Commission expires: 2/18/2010

THIS INSTRUMENT PREPARED IN THE LAW
OFFICE OF JOHNSON, CALDWELL & MCCOY
Suite 201 117 North Lanier Avenue
Lanett, Alabama 36863

Exhibit A

Lot 14B, according to the Amended Map of a resurvey of Lot 14 of Cahaba Park South, as recorded in Map Book 10, page 15, in the Probate Office of Shelby Co., Alabama.

EXHIBIT "A-1"

UCC-1 FINANCING STATEMENT (HOTEL LOAN)

This Exhibit A-1 is attached to, and is a part of, the Mortgage and Security Agreement and Financing Statement. Certain capitalized terms used in this Exhibit A-1 are defined in this Exhibit A-1, in some cases after such terms are first used. Item [4] of the Financing Statement is supplemented as follows.

1. Description Of Collateral. This Security Agreement and Financing Statement covers all of Debtor's right, title and interest in, to, and under the following property of Debtor, whether now owned or hereafter acquired, now existing or hereafter arising and whenever located (the "Collateral");

1.1 Certain Defined Items of Collateral. All Accounts, Deposit Accounts, Commercial Tort Claims, Contracts, Documents, Equipment, General Intangibles, Payment Intangibles, Hotel Revenues, Improvements, Instruments, Inventory, Leases, Money, Permits, Proceeds, and Rents, all as defined below;

1.2 Franchise Agreements. Any hotel franchise agreements executed by Borrower or Tenant relating to the operation of the Hotel.

1.2 Other Property and Rights. Any and all other property of Debtor of any kind, nature, type, or character whatsoever, except to the extent that Debtor is legally prohibited from pledging or granting a security interest in such property; and

1.3 Proceeds. Money and rights to payment arising from the operation of the Mortgages Property and all Proceeds, together with all additions to, substitutions for, extensions to, replacements of or accessions to, or products of, any of the items recited as aforesaid.

2. Definitions. As used in this Security Agreement and Financing Statement , the following terms shall have the following meanings:

2.1 "Accounts" means accounts (as defined in the UCC) arising out of or in connection with the operation of the Mortgaged Property (including the Hotel and Hotel Revenues) and all other accounts (including bank accounts, reserve accounts, and reserve accounts for replacement of fixtures, furnishings and equipment), including any such accounts described in any Management Agreement and all accounts receivable, inventory accounts, contract right, chattel paper, notes, acceptances, insurance policies, Instruments, Documents or other rights to payment and all forms of obligations owing at any time to Debtor thereunder, and all liens, security interests, guaranties, remedies, privileges and other rights pertaining thereto, and all rights and remedies of any kind forming the subject matter of any of the foregoing. Without limiting the generality of the foregoing, the term "Accounts" shall include Debtor's entire interest in:

2.1.1 Income. All income, rents, issues, profits, revenues, deposits and other benefits from the Mortgaged Property;

2.1.2 Rents, Receivables. All receivables and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Debtor or any operator or manager of the Mortgaged Property (including Manager) or space located at the Mortgage Property or the Hotel or acquired from others (including Hotel Revenues and revenues from rental or space, halls, stores, and offices, and deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, proceeds from the wholesale and retail sales of merchandise, service charges, and vending machine sales);

2.1.3 Money, Instruments, Etc. All sums of Money, and all instruments, documents and securities held in any accounts in connection therewith, or any demand, time, savings or other account maintained with any bank or certificate of deposit issued by any bank with the proceeds of such account;

2.1.4 Reserves, Deposits, Etc. All reserves, deferred payments, deposits, refunds, receivables and payment of any kind relating to the construction, operation, alteration, marketing or promotion of the Hotel or any Improvements or held by any third party pursuant to a Contract; and,

2.1.5 Books and Records. All records and books of account now or hereafter maintained (whether on paper or in electronic or other form) by or on behalf of Debtor or Manager in connection with the operation of the Mortgaged Property or in connection with any items of Collateral.

2.2 "Contracts" means all contracts with property manager, surveyors, real estate advisor and consultants, real estate brokers, and other like agents and professionals that relate to any of the Mortgages Property or any improvements constructed or to be constructed or altered on the Mortgaged Property; and leases, installment purchase agreements, or other documents or arrangements that permit Debtor to use any Equipment; all agreements or contracts to which Debtor is a party or that are assigned to Debtor by Manager; the Purchase agreements; all agreements or contracts in connection with the construction, operation, management, marketing or promotion of the Mortgaged Property or the Hotel (including agreements for the sale, lease, or exchange of goods or other property and/or the performance of services, in each case whether now in existence or hereafter arising or acquired); all agreements relating to reservations systems, hotel group, name franchise, licensing, chain affiliation, telephone or utility service (including the use of "800", or "888," "877", or other telephone numbers exclusive to the Hotel); all contracts and agreements relating to the construction, maintenance, operation, occupancy, repair, servicing, provisioning, advertising, promotion, sale, alteration, development, use, or financing of the Mortgaged Property, the Hotel, or any portion thereof, or for the purchase of materials for any of the foregoing purposes; contracts for the performance of work, or the providing of furnishings, fixtures, goods, services, material or equipment, for or relating to the construction, development, equipping or fixturizing of the Improvements, including any and all construction management agreements, architectural agreements, construction consulting agreement(s), general contract(s) and subcontracts; all warranties and guaranties relating to the Mortgaged Property of the Hotel, including any warranties or guaranties provided by any contractor, subcontractor, designer, architect, or other party with respect to the Mortgaged Property of the Hotel; all contracts and agreements of Debtor relating to plans, specifications, studies, data, drawings and models relating to the Mortgaged Property or any development, improvement or alteration thereof; all contracts by which Debtor (including for the benefit of Debtor's guests) obtains the right to use any golf course or other recreational facilities, nearby real property, or other real property of any kind for any purpose (including parking, recreation, or otherwise for the benefit of the Hotel); all amendments, modifications, and supplements relating to any of the foregoing form time to time; and all contract rights, claims, and interests of any kind held by Debtor arising under any of the foregoing or otherwise against or with respect to any third party whatsoever.

2.3 "Documents" means all documents as defined in the UCC or other receipts covering, evidencing, or representing property of any kind now owned or hereafter acquired by Debtor.

2.4 "Equipment" means all "equipment" as defined in the UCC, now or hereafter owned by Debtor or in which Debtor has or shall acquire an interest (leasehold or otherwise), now or hereafter located on, attached to or contained in or used or usable in connection with the Mortgaged Property (including in connection with the marketing and promotion of the Hotel), together with all building materials, construction materials, personal property constituting furniture, fittings, appliances, apparatus, leasehold improvements, machinery, devices, interior improvements, appurtenances, equipment, plant, furnishings, fixtures, computers, electronic data processing equipment, television, telephones, telephone switchboards, telecommunications equipment and other fixed assets now owned or hereafter acquired by Debtor and now or hereafter used (whether by Debtor or by Manager) in the operation of the business conducted at the Mortgaged Property, and all attachments, components, parts (including spare parts) and accessories, whether installed thereon or affixed thereto, and whenever located, now or hereafter owned by Debtor and used or intended to be used in connection with, or in connection with the operation of, the Mortgaged Property or the buildings, structures, or other improvements now or hereafter located at the Mortgaged Property, or in connection with nay construction being conducted or that may be conducted on the Mortgaged Property, or for the Hotel, all regardless of whether the same are located on the Mortgaged Property or are located elsewhere (including in warehouses or other storage facilities or in the possession of or on the premises of a bailee, vendor, or manufacturer) for purposes of manufacture, storage, use, fabrication, or transportation. For purposes of the preceding sentence, "other fixed assets: shall include any and all "furniture, furnishings, and equipment," as such term is commonly understood in the hotel industry, of the Hotel, including any and all; fixtures, furnishings, equipment, furniture, and other items of tangible personal property now or thereafter located in, on at the Mortgaged Property or in the Hotel or used in connection with the use, occupancy, operation, promotion, marketing, repair, or maintenance of all or any part of the Mortgaged Property, other than stocks of food and other supplies held for consumption in normal operation; appliances; machinery; equipment; athletic equipment (including weight machines, stair machines, stationary bicycles, dumbbells, free weights, treadmills, and all other exercise equipment of whatever form); bicycles; carts; signs; artwork (including paintings, prints, graphics, sculpture, and other artwork of any kind); office furnishings and equipment; guest room furniture and furnishings; and specialized equipment kitchens, laundries, bars, restaurants, public rooms, and health and recreational facilities; linens; dishware; two-way radios; telephones; switchboards; switching equipment and machines; satellite dishes; partitions, screens, awnings, shades, blinds, and floor coverings; hall and lobby equipment; heating, lighting, plumbing, ventilation, refrigerating, and incinerating equipment; elevators; escalators; air conditioning and communications machines, 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; all computer, data processing and related equipment, including peripherals, diskettes, manuals, hand-held data entry units, and network wiring, cabling, peripherals, and equipment; antennas; 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; ducts; building supplies wherever located; tools; all vehicles used or useful in operation of the Hotel; all marketing materials, videotapes, promotional materials, brochures, and presentations used or useful in marketing and promotion of the Hotel; and all other personal property of any kind whatsoever not otherwise referred to in this definition of "Collateral."

2.5 "General Intangibles" means all general intangibles as defined in the UCC. General Intangibles include:

2.5.1 Generally. All obligations or indebtedness owing to Debtor from whatever source arising (other than Accounts, Contracts, Instruments, Inventory, Money, Permits, Rents, and Trademarks);

2.5.2 Unearned Premiums; Proceeds. All unearned premiums accrued or to accrue under all insurance policies for the Mortgaged Property obtained by Debtor, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including proceeds of insurance, condemnation awards, and all rights of Debtor to refunds of Impositions);

2.5.3 Licenses; Royalties. All royalties, franchise, and license fees, and any rights to refunds thereof;

2.5.4 Intellectual Property. All Trademark's, rights in intellectual property, goodwill, trade names, service marks, trade secret, copyrights, permits and licenses, together with the registrations therefore and the goodwill appurtenant thereto (but to the extent that any of the foregoing is licensed from an unaffiliated third party, the General Intangibles shall include only Debtor's rights as licenses thereof);

2.5.5 Refunds. All rights or claims in respect of refunds for Impositions or other sums paid;

2.5.6 Other Third-Party Claims. Any and all claims, rights and remedies of Debtor against any other party with respect to any component of the Collateral or any portion thereof, including all claims, rights and remedies of Debtor under any Account, Contract, Document, Hotel Revenues, Instruments, Leases, or other components of the Collateral, together with all damages and rights of any kind to enforce the foregoing against any other party thereto, including any covenants, indemnities, warranties and representations under any of the foregoing, together with any and all rights and claims (including the right to vote or make elections on account of such rights or claims) arising in any bankruptcy or insolvency proceeding on account of any of the foregoing;

2.5.7 Claims Against Seller. Any claims of Debtor against any party from whom Debtor acquired the Mortgaged Property or any portion thereof, and against any prior owner of the Mortgaged Property or any portion thereof, whether or not such claims arise pursuant to a Purchase Agreement;

2.5.8 Water Stock. All water stock and similar rights relating to the Mortgaged Property;

2.5.9 Plans and Specifications. All plans and specification prepared for construction of improvements on, or other development of, the Mortgage Property (including all amendments, modification, supplements, general conditions and addenda thereof or thereto) and all studies, data, drawings and models related thereto;

2.5.10 Project Documents. All maps, reports, surveys and studies of or relating to any of the Mortgaged Property, or any improvements constructed or to be constructed or altered on the Mortgaged Property, now or hereafter in the possession of Debtor or of any agent or professional engaged by or otherwise acting for Debtor;

2.5.11 Computer Software and Licenses: All computer software programs and computer licenses agreements; and,

2.5.12 Other Intangibles. All other intangible property and rights of any kind or type whatsoever relating to the Mortgaged Property or the Hotel or the development or operation of either, or used in connection with either.

2.6 "Governmental Authority" means any state, federal, local, municipal or other governmental authority, agency, or licensing authority of any kind whatsoever, including any so-called "business improvement district" or similar entity or organization. "Governmental Authority" shall also include any franchisor, licensor, insurance carrier, or other third party having the right or authority, by Contract or otherwise, to impose standards for the Hotel or to collect charges or assessments on account of the operation, revenue, or promotion of the Hotel.

2.7 "Hotel" means the hotel located on and constituting a part of the Mortgaged Property (including all Improvements constituting part of such hotel).

2.8 "Hotel Revenues" means all fess, charges, accounts, and/or other payments for the use or occupancy or rooms and other public facilities in the Hotel, together with the right to receive such fees, charges, accounts, or other payments, and including fees, charges, accounts, and/or other payments arising from the following: (a) sale of food and beverages at the Hotel, whether in a restaurant, through "room service" dining, or through banquets, catering facilities, and services; (b) sales of food and beverages from mini-bar facilities in guest rooms; (c) laundry, vending machine and telecommunications receipts, whether billed to a Hotel guest or collected in cash; (d) use, rental, occupancy or licensing of hotel rooms, hotel suites, conference rooms, meeting rooms, ballrooms, and other rooms and facilities; (e) operation of health club, personal care, and other facilities located in, on or at the Hotel; (f) incidental charges to Hotel guests or other users or customers; (g) any other charges of any kind, for the direct or indirect benefit of Manager or Debtor, that appear on any bill or statement rendered to any Hotel guest or other user or customer of the Hotel or are otherwise collected from or paid by any such person; (h) any payments of any kind from credit card companies, travel agents, or reservation systems or services relating to the Hotel; and, (i) charges for the parking of cars (whether "self-parking or "valet parking") at or near the Hotel.

2.9 "Impositions" means any or all real estate taxes, assessments, water and sewer charges, insurance premiums, and other charges collected or assessed by any Governmental Authority with respect to the Mortgaged Property, all as paid or payable with respect to the Mortgaged Property from time to time.

2.10 "Improvements" means all buildings, structures, fixtures, and improvements of every nature whatsoever situated in, on, or at the Mortgaged Property (including all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings, and storm sashes, and cleaning apparatus that are or shall be attached to the Mortgage Property or said structures or improvements) and including any additions, enlargements, extensions, modifications, repairs or replacements thereto. To the extent that any of the foregoing are owned by tenants of the Mortgaged Property, the "Improvements" shall mean only Debtor's right, title or interest in or with respect to the foregoing (such as Debtor's lien rights, as landlord, and any ownership or other rights that may arise in connection therewith or as a result thereof).

2.11 "Instruments" means (i) all "instruments" as defined in the UCC, "chattel paper" as defined in the UCC, or letters or credit, evidencing, representing, arising from or existing in respect of, relating to, securing or otherwise supporting the payment of, any of the Collateral (including promissory notes, drafts, bills or exchange and trade acceptances) and chattel paper obtained by Debtor in connection with the Mortgaged Property (including al ledger sheets, computer files, diskettes, records and printouts, data bases, programs, software, books of account and files of Debtor relating thereto) and (ii) notes or other obligations of indebtedness owing to Debtor from whatever source arising.

2.12 "Inventory" means all inventory as defined in the UCC owned by Debtor including all inventory arising out of or used in connection with, directly or indirectly, the ownership, management, use, possession, occupancy, or operation of the Mortgaged Property, including all documents representing the same. The term "Inventory" shall include:

2.12.1 Goods and Materials. All goods, merchandise, raw materials, food, beverages (both nonalcoholic and, subject to applicable law, alcoholic), cleaning supplies, soap and personal care items, towels, linens, work in process and other personal property, wherever located, now or hereafter owned or held by Debtor for manufacture, processing, the providing of services or sale, use or consumption in the operation of the Mortgaged Property of the Hotel (including fuel, supplies, and similar items and all substances commingled therewith or added thereto);

2.12.2 Inventories, China, Etc. All other items that would be entered on a balance sheet under the line items for "Inventories" or "China, glassware, silver, linen and uniforms" under the Uniform System of Accounts as employed in the hotel industry; and,

2.12.3 Inventory-Related Claims. All rights and claims of Debtor against anyone who may store or acquire any Inventory for the account of Debtor, or from whom Debtor may purchase any Inventory.

2.13 "Leases" means all leases, subleases, lettings, occupancy agreements, tenancies and licenses by Debtor as (sub)landlord or the Mortgaged Property or any part thereof now or hereafter entered into, and all amendments, extensions, renewals, and guarantees thereof, and all security therefore (including security deposits and letters of credit).

2.14 "Mortgaged Property" means all that certain real property more particularly described in Exhibit A of this Financing Statement, together with all Improvements and other structures located on such real property.

2.15 "Money" means all moneys, cash, rights to deposit or savings accounts or other items of legal tender obtained from or for use in connection with the operation of the Mortgaged Property, including any refunds of Impositions.

2.16 "Permits" means all licenses, permits, variances and certificates used in connection with the ownership, operation, construction, renovation, rehabilitation, alteration, development, public assemble, use or occupancy of or other activities on the Mortgaged Property (including liquor licenses, business licenses, state health department licenses, two-way radio licenses, licenses to conduct business and all such other permits, licenses and rights, obtained from any Governmental Authority or private person concerning the foregoing.

2.17 "Proceeds" shall have the meaning given in the UCC and, in any event, shall include all proceeds, product, rents, profits or receipts, in whatever form and however payable, arising from the Collateral. The term "Proceeds" shall include (or also include, as applicable) Debtor's entire interest in:

2.17.1 Cash, Instruments, Etc. Cash, Instruments and other property received, receivable or otherwise distributed in respect of or in exchange for any or all of the Collateral or the Mortgaged Property;

2.17.2 Realization Events. The collection, sale, lease, sublease, concession, exchange, assignment, licensing or other disposition of, or realization upon, any item or portion of the Collateral or the Mortgage Property (including all claims of Debtor against third parties for loss of, damage to, destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance in respect of, any Collateral or the Mortgaged Property now existing or hereafter arising);

2.17.3 Insurance, Etc. Any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Debtor from time to time with respect to any of the Collateral or the Mortgage Property, including insurance against business interruption, rental interruption, or other loss of income;

2.17.4 Condemnation. Any and all payment made or due and payable to Debtor from time to time tin connection with the requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral or the Mortgaged Property by any Governmental Authority (or any person acting under color of Governmental Authority), including any award, including interest thereon, in eminent domain proceedings for a taking (including any transfer made in lieu of the exercise of said rights) or for loss of value of or to the Mortgaged Property of the Improvements or for a change in the grade of any street or other public way; and

2.17.5 Other Amounts. Any and all other amounts from time to time paid or payable under or in connection with nay of the Collateral of the Mortgaged Property.

2.18 "Purchase Agreement" means any agreement(s) or contract(s) by which Debtor acquired the Mortgaged Property (or any Collateral) or any portion(s) thereof from any third party, as such agreement(s) or contract(s) may be amended from time to time, together with all right of Debtor as purchaser under any such agreement, including all rights and remedies of Debtor as purchaser under any such agreement, all damages or right to receive damages on account of any breach of such an agreement, and all rights of any kind to enforce any such agreement against any other party thereto, including any covenants, indemnities, warranties and representations under any such agreement;

2.19 "Rents" means all income, rents, issues, profits, revenues (including all oil and gas or other mineral royalties and bonuses), deposits (other than security deposits until applied to a tenant's or licensee's obligations, whereupon they shall constitute Rents) and other benefits from the Mortgaged Property. The "Rents" shall include all receivables and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Debtor (including from the rental of any office space, retail space, warehouse and manufacturing space or other space, halls, and offices, and deposits securing reservations of such space, exhibit or sales space of ever kind, license, lease, sublease and concession fees and rentals and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment and occupancy of the Mortgaged Property), together with all Hotel Revenues. Rents further include any and all payments payable to or for the benefit of Debtor or Manager under any of the Leases. The "Rents" shall further include any and all rights and claims (including the right to vote or make elections on account of such rights or claims) arising in any bankruptcy or insolvency proceeding on account of any unpaid Rents.

2.20 "Trademark" means any and all trademark licenses, trademarks, rights in intellectual property, trade names, service marks and copyrights relating to the Mortgaged Property (or any portion thereof or the license to use intellectual property such as computer software owned or licenses by Debtor or other proprietary business information relating to Debtor's policies, procedures, manuals and trade secrets, together with all corporate names, company names, business names, trade styles, service marks, logos and other source of business affiliation identifiers, all names under or by which the Mortgaged Property or any present or future Improvements (or any portion of either) may at any time be operated or know, all rights to carry on business under any such names, or any variant thereof, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection with the foregoing, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, and State thereof or any other country or any political subdivision thereof, all goodwill associated with any or all of the foregoing, and any renewals or extensions of any of the foregoing.

2.21 "UCC" means the Uniform Commercial Code as in effect in the State where the Mortgaged Property is located.

3. Interpretation and Scope.

3.1 Incremental Property. To the extent, if any, that the foregoing definition of Collateral includes any property or rights of any kind, nature, type, or character that is broader or more extensive (the "Incremental Property") than the description of property or description of secured Party's collateral as set forth in any pledge, security agreement or other document granting a security interest entered into by Debtor in favor of Secured Party elects otherwise in writing as to any document(s) and/or any Incremental Property) each such pledge, security agreement or other document was intended to (and is hereby amended to) include and list all Incremental Property, so that Secured Party's security interest shall also apply to (and is hereby extended by Debtor to cover) all Incremental Property.

3.2 All Assets and Property of Debtor. Debtor acknowledges that all assets, property and contract rights held or owned by Debtor of any kind(s) whatsoever are all intended to be subject to Secured Party's security interest, except to the extent prohibited by law. No assets, property, or assets of Debtor are intended not to be subject to Secured Party's security interest, (except where the grant of such security interest would constitute a violation of law). The fact that this Financing Statement identifies certain Collateral does not negate or limit the more general application for the preceding two sentences.

3.3 Liquor Licenses. Notwithstanding anything to the contrary in the foregoing definition of Collateral, the "Collateral" shall include liquor licenses and alcoholic beverages only to the extent that, under applicable law and regulations, Debtor is legally permitted to assign or pledge Debtor's interest in liquor licenses and alcoholic beverages to Secured Party.

3.4 Interpretation, Generally. In this Exhibit A-1, the word "include" and its variants shall be interpreted as if followed by the words "without limitation", and any headings or captions are not intended to limit, qualify or interpret the text.