

## CONSTRUCTION LOAN AGREEMENT

**THIS CONSTRUCTION LOAN AGREEMENT** (this "Loan Agreement") is made as of the 15th day of December, 2006 by and between **SB HOTEL ASSOCIATES LLC**, a Delaware limited liability company, having offices c/o The Stillman Organization, Ltd., 276 Fifth Avenue, New York, New York 10001 ("**Borrower**"), and **CORUS BANK, N.A.**, having offices at 3959 N. Lincoln Avenue, Chicago, Illinois 60613, and its successors and assigns ("**Lender**").

### RECITALS

A. Borrower is the sole owner of fee simple title to certain unimproved real property more particularly described on Exhibit A attached hereto and commonly known as 551 North Fort Lauderdale Beach Boulevard, Fort Lauderdale, Florida, and on which Borrower desires to construct the improvements shown on the Plans (as defined below) which improvements include one twenty-four story building and one adjoining six story building, together with facilities which form a part of and connect the foregoing two buildings, and which improvements will contain, among other things: (i) two hundred ninety-eight (298) residential hotel condominium units having approximately, but not less than, 240,000 net saleable, interior, air-conditioned square feet in the aggregate, (ii) two (2) ground floor and basement retail and commercial spaces having approximately 14,305 net saleable, interior, air-conditioned square feet in the aggregate, and (iii) one (1) hotel condominium unit which includes among other things, approximately four hundred ten (410) parking spaces.

B. Borrower has applied to Lender for a loan in the principal amount of up to **ONE HUNDRED THIRTY-NINE MILLION AND NO/100 DOLLARS (\$139,000,000)** (the "**Loan**").

C. Lender is willing to make the Loan to Borrower, and Borrower is willing to accept the Loan from Lender, upon and subject to the terms and conditions contained herein and in the other Loan Documents (as defined below).

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE 1

#### INCORPORATION OF RECITALS AND EXHIBITS

**Section 1.1. Incorporation of Recitals.** The foregoing Recitals are incorporated herein and expressly made a part hereof.

**Section 1.2. Incorporation of Exhibits.** All Exhibits hereto are incorporated herein and expressly made a part hereof.

## ARTICLE 2

### PARTICULAR TERMS; DEFINITIONS

**Section 2.1. Definitions.** For all purposes of this Loan Agreement, the following terms, except as otherwise expressly provided or unless the context requires otherwise, shall have the respective meanings hereinafter specified:

**Accounts and Intangibles:** All accounts, accounts receivable, deposits, deposit accounts, payments, all right to payment, all the records and books of account now or hereafter maintained by Borrower, or by any other Person for the benefit of Borrower, in connection with the operation of the Project or otherwise, including, without limitation (and to the extent not deemed real property under applicable Laws), all charges, fees, accounts and, other compensation received or owing, and rights of payment therefor due to Borrower for the sale and/or rental of the Condominium Units and other parts of the Project, whenever earned or acquired and however held, (funds obtained as such charges, fees, accounts and other compensation and payments and held in reserve, account or credit balance shall retain the character of such charges, fees, accounts or other compensation and payments); and all contract rights, rights to the payment of money including tax refund claims, insurance proceeds and tort claims, chattel paper, documents, instruments, general intangibles, securities, together with all income therefrom, increases thereunder and proceeds thereof; and all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the Real Estate or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to any of the Project and proceeds of any sale, option or contract to sell the Project or any portion thereof.

**ADA:** The Americans with Disabilities Act of 1990, 42 U.S.C. 12101, as from time to time amended, together with any and all comparable Florida Laws.

**ADA Plan:** All plans, studies and reports prepared in connection with the Project's compliance or plan for compliance with the ADA.

**Adjustment Date:** The first (1st) day of each March, June, September and December.

**Advance:** As defined in Section 3.1.

**Affiliate:** With respect to an individual, any relative of such individual (whether by consanguinity, adoption or marriage), and with respect to any Person, any other Person: (i) directly or indirectly controlling, controlled by or under direct or indirect common control with, such Person, or (ii) that directly or indirectly owns any of the voting securities or capital stock of such Person. A Person shall be deemed to control another Person, if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

**Affiliate Debt:** As defined in Section 5.1(kk).

**ALTA:** American Land Title Association.

**Application Fee:** As defined in Section 4.4.

**Approved Closing Costs:** With respect to any Approved Sale of a Condominium Unit, all reasonable and customary closing costs and adjustments actually incurred and paid by Borrower (without contribution by the Contract Purchaser) to a Person who is not a **Related Party or a Trump Party**, documented to Lender's reasonable satisfaction, including, without limitation, Permitted Commissions (but not other broker's commissions or finder's fees), reasonable and customary attorneys' fees, customary recordation charges and transfer taxes (but expressly excluding amounts Borrower is required to pay, deduct or place into escrow on account of unfinished work in a Condominium Unit or at the Project or on account of common charges or real estate taxes payable with respect to the period after the sale of the Condominium Unit). No closing costs or adjustments above described may be paid to any **Related Party or any Trump Party**.

**Approved Sale:** Either: (a) a bona fide, arms-length sale, transfer and conveyance of any Condominium Unit pursuant to a Valid Sale Contract to **any Person who is not a Related Party or a Trump Party**, or (b) the sale, transfer and conveyance of any Condominium Unit pursuant to a Related Party Contract as expressly permitted by this Loan Agreement, or (c) the sale, transfer and conveyance of the Condominium Unit which is the subject of the At-Cost Penthouse Contract pursuant to the terms of such At-Cost Penthouse Contract.

**Architect:** The primary Design Professionals, Michael Graves Architects and Oscar I. Garcia, Architect, P.A., or any other architect approved by Lender in its reasonable discretion, which architect shall not be a **Related Party or a Trump Party**, and which architect shall not be replaced without Lender's prior written consent given or withheld in Lender's reasonable discretion.

**Architect's Contract:** The contract(s) between each Architect and Borrower for the design and planning of the development, construction and equipping of the Project, as such each such contract is approved by Lender in its sole discretion.

**Architectural and Engineering Documents:** As defined in the Assignment of Agreements, Plans and Permits.

**Assignment and Subordination of Management Agreement:** That certain Assignment and Subordination of Management Agreement, dated as of the date hereof, by and among Borrower, Hotel Manager and Lender.

**Assignment of Accounts:** The Assignment of General Escrow Accounts, dated as of the date hereof, from Borrower to Lender.

**Assignment of Agreements, Plans and Permits:** The Assignment of Agreements, Plans and Permits, dated as of the date hereof, made by Borrower to Lender.

**Assignment of Condominium Documents:** The Collateral Assignment of Developer's Rights and Agreement with Respect to Condominium Documents, dated as of the date hereof, made by Borrower to Lender.

**Assignment of License Agreement:** The Collateral Assignment of License Agreement, dated as of the date hereof, made by Borrower to Lender.

**Assignment of Leases and Rents:** The Assignment of Leases and Rents, dated as of the date hereof, made by Borrower to Lender.

**Assignment of Purchase Agreements:** The Collateral Assignment of Purchase Agreements with an Irrevocable Power of Attorney, dated as of the date hereof, made by Borrower to Lender.

**At-Cost Penthouse Contract:** That certain Purchase Agreement, together with that certain Addendum to SB Fort Lauderdale Hotel & Condominium Purchase Agreement, each dated May 26, 2006 between Borrower and Ramola Motwani to purchase a penthouse Residential Hotel Condominium Unit (commonly known as Unit PH2), having approximately 4,000 net sellable square feet, for a total purchase price of \$3,500,000. In no event shall the At-Cost Penthouse Contract be considered: (a) in determining whether Borrower has satisfied the Pre-Sale Requirement or (b) to be one of the Related Party Contracts.

**Bankruptcy Code:** The United States Bankruptcy Code, 11 U.S.C. Sections 101 *et. seq.*, as amended from time to time, and all regulations promulgated thereunder and rules of practice and procedure applicable thereto.

**Bonds:** As defined in Section 7.1.

**Borrower:** SB Hotel Associates LLC, a Delaware limited liability company.

**Builder's Risk Insurance:** As defined in Exhibit N.

**Business Day:** Any day (other than a Saturday or Sunday or a day when commercial banks are required or permitted by law to close in Chicago, Illinois) on which The Wall Street Journal is published.

**By-Laws:** The condominium by-laws for the Project, prepared in accordance with the Condominium Act, and otherwise in a form approved by Lender, which have been approved by Lender as of the Closing Date.

**Carveout Guaranty:** The Carveout Guaranty, made by Guarantor in favor of Lender, dated as of the date hereof.

**Change Order:** Any amendment or modification to the Plans or to any Construction Document.

**Closing Date:** December 15, 2006.

**Closing Expenses:** As defined in Section 4.1

**Closing Fee:** As defined in Section 4.4.

**Collateral:** The Project, including the Real Estate, the Contracts, the Permits, the Fixtures, Furnishings and Equipment, the Intangibles, the Intellectual Property, the Construction Documents, the Borrower's interest in the Deposits, the Plans, the CORUS Accounts, the Rents, the Accounts and Intangibles, the "Collateral" (as defined in the Assignment of Condominium Documents), the

"Purchase Agreements" (as defined in the Assignment of Purchase Agreements), all property and interest of Borrower described in the Loan Documents in which Borrower has granted to Lender a security interest or lien, and all other property of every kind and description owned by Borrower or in which Borrower has an interest (to the extent of such interest), used or useful for the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units, together with any and all proceeds of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any of the foregoing, any value received as a consequence of the possession of any of the foregoing, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing.

**Comfort Letters:** (i) That certain Comfort Letter (Hotel Pre-Opening Agreement) dated December 15, 2006, from Trump Florida Management LLC to Lender related to the Hotel Pre-Opening Agreement and (ii) that certain Comfort Letter (License Agreement) dated December 15, 2006, from Licensor to Lender related to the License Agreement.

**Commitment Fee:** As defined in Section 4.4.

**Commitment Letter:** That certain commitment letter dated June 28, 2006 from Lender to Borrower, and accepted by Borrower on July 12, 2006.

**Completion or Completion of the Project:** The development, construction and equipping of the Project substantially in accordance with the Plans, all Laws and all Governmental Approvals and in satisfaction of each condition to the final Advance of Loan proceeds as set forth in Section 7.14, all of which must occur on or before the Completion Date.

**Completion Date:** The twenty-seventh (27<sup>th</sup>) month anniversary of the Closing Date.

**Completion Guaranty:** The Completion Guaranty, dated as of the date hereof, made by Guarantor in favor of Lender.

**Condominium Act:** The Condominium Act, Chapter 718 of the Florida Statutes, as amended, modified and replaced from time to time, and all other applicable governmental statutes, ordinances, rules and regulations related to common interest developments, as amended, modified and replaced from time to time.

**Condominium Documents:** The Declaration, the Plats, the By-Laws, the Offering Materials and all others documents and instruments related to the creation, establishment and maintenance of the Project as condominium property under the Condominium Act and other applicable Florida Laws.

**Condominium Unit:** A Residential Hotel Condominium Unit or a Retail Condominium Unit, as the context shall require.

**Construction Conditions:** The conditions set forth in Sections 7.1, 7.2 and 7.3 of this Loan Agreement.

**Construction Documents:** As defined in the Assignment of Agreements, Plans and Permits.

**Construction Escrow:** As defined in Section 7.11

**Construction Escrow Agreement:** As defined in Section 7.11

**Construction Schedule:** A projected schedule for the progress of development, construction and equipping of the Project setting forth the monthly projected Advances of the Loan throughout the construction period and a construction progress schedule reflecting, among other things, a trade-by-trade breakdown of the estimated periods of commencement and completion of the specific work to be completed on the Project, the anticipated dates of completion of and the timing of disbursements of incremental amounts of various subcategories of the Project Budget, all in such form and containing such details as Lender shall require in its reasonable discretion, and which projected schedule has been approved in writing by Lender.

**Contract Purchaser:** With respect to the sale of a Residential Hotel Condominium Unit or a Retail Condominium Unit, the party named as the buyer or purchaser under the Purchase Agreement.

**Contractor:** Any contractor party to a Construction Document, which contractor may not be an Affiliate of Borrower or Guarantor.

**Contracts:** All contracts, agreements, warranties, representations, service agreements, maintenance contracts and agreements relating to the use, occupancy, operation, management, repair and service of the Project or any part thereof, whether presently existing or entered into after the date hereof, including without limitation, all sales and brokerage agreements and any agreement with respect to the sale or sales of any Condominium Unit and all equipment leases of equipment utilized in connection with the occupancy, operation or maintenance of Project.

**Contributor:** As defined in Section 3.2.

**CORUS Accounts:** All escrow accounts, bank accounts, deposit accounts or any other accounts of any kind pursuant to which or in which the Lender holds or retains disbursed Loan proceeds, Taxes, insurance, or any other funds delivered to Lender by or on behalf of Borrower.

**Declaration:** The declaration of condominium, covenants, restrictions, easements, charges and liens, in form and substance reasonably satisfactory to Lender, which will subject the Project to a condominium form of ownership, all in conformance with applicable Laws, including without limitation, the Condominium Act.

**Default:** Any event which, if it were to continue uncured, would, with notice or lapse of time or both, constitute an Event of Default (as such term is defined in Article 14 of this Loan Agreement) and shall also mean any event or circumstance which immediately upon occurrence of the same constitutes an Event of Default.

**Default Rate:** As defined in the Note.

**Deposits:** Collectively the First Deposits and the Second Deposits.

**Design Professionals:** All architects, engineers, consultants and similar professionals associated with the design of the Project, none of which architects, engineers, consultants and similar professionals associated with the design of the Project may be a **Related Party or a Trump Party**, and which architects, engineers, consultants and similar professionals associated with the design of the Project shall not be replaced without Lender's prior written consent given or withheld in Lender's reasonable discretion.

**Distribution:** The declaration or payment of any dividend or distribution on or in respect of any shares of any class of capital stock of any Person or any distribution of cash or cash flow in respect of any partnership, membership or other ownership interest in any Person, other than dividends payable solely in shares of common stock of such Person; or the purchase, redemption, or other retirement of any shares of any class of capital stock or ownership interest of any Person or ownership interests in such Person, directly or indirectly through a subsidiary (of any tier) or otherwise; the making of any loans to any shareholder, member, constituent partner or Affiliate; the return of capital by any Person to its shareholders, members or partners as such; or any other distribution on or in respect of any shares of any class of capital stock or ownership interest of any Person or any partnership, membership or other ownership interest in any Person.

**Earnest Money Account:** As defined in Section 3.23.

**Eligible Deposits Initial Funding Date:** As defined in Section 3.23.

**Environmental Indemnity:** That certain Environmental Indemnity and Remediation Agreement made by Borrower and Guarantor, jointly and severally, in favor of Lender.

**Environmental Laws:** Any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water or noise pollution or contamination and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. Section 6091 *et. seq.*; the Comprehensive Environmental Response, Compensation Liability Act of 1980, 42 U.S.C. Section 9601 *et. seq.*, as amended ("CERCLA"), and as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et. seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et. seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et. seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et. seq.*, the Federal Oil Pollution Act of 1990, 33 U.S.C. Section 2701, *et. seq.*, the River and Harbors Act of 1899, 33 U.S.C. Section 401 *et. seq.*, and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

**Environmental Proceedings:** As defined in Section 5.1(g).

**Environmental Reports:** Phase I Environmental Site Assessment prepared by Evans Environmental & Geosciences, dated as of October, 2003.

**Equity Investment:** As defined in Section 3.2.

**Escrow Agent:** As defined in Section 3.23.

**Escrow Agent Control Agreement:** That certain Escrow Agent Control Agreement dated as of the date hereof, between Borrower, Lender and Escrow Agent.

**Escrowed Deposits:** As defined in Section 3.23.

**Event of Default:** As defined in Section 14.1.

**Excess Equity Investment:** As defined in Section 3.2.

**Extension:** As defined in Section 3.10(b).

**Extension Fee:** As defined in Section 3.10(b).

**Extension Notice:** As defined in Section 3.10(b).

**Extension Term:** As defined in Section 3.10(b).

**Exit Fee:** As defined in Section 3.11.

**Finish Standards:** The detailed description and quality of the amenities, features and all fixtures and personal property that will be included in the standard price of an individual Residential Hotel Condominium Unit as constructed and developed in accordance with the Plans and shall be included in and form a part of the Plans and the detailed description and quality level of materials used for the façade and Residential Hotel Condominium Unit shall pertain to items that include, but are expressly not limited to: floor coverings, wall coverings, electrical systems, lighting plans, bathroom and kitchen fixtures and countertops, cabinetry, appliances, and of all fixtures, furnishings and personal property. The Finish Standards shall be subject to the written approval of Lender in Lender's reasonable discretion, and which approval will be predicated on, among other things, the quality level of such proposed finish standards being consistent with other condominium developments in the Project's price range and marketplace. Once the Finish Standards are approved by Lender, no material changes to the Finish Standards will be allowed without the prior written approval by Lender in Lender's reasonable discretion.

**First Deposits:** As defined in Section 3.23.

**First Disbursement Date:** The date on which the Construction Conditions are satisfied by Borrower or waived in writing by Lender and Borrower has submitted its first Request for Advance, which date shall occur no later than November 1, 2006.

**Fixtures, Furnishings and Equipment:** All furniture, furnishings, fixtures, appliances, machinery, equipment, signs, artwork, office furnishings and equipment, and all specialized equipment for all health and recreational facilities, all partitions, screens, awnings, shades, blinds, floor coverings, all utility systems and equipment, and all water, heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevator, escalator, air conditioning and communication plants



or systems with appurtenant fixtures, security systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials; all electronic data processing, telecommunications or computer equipment, electronic monitoring, sanitation, waste removal equipment, and all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of, parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; and all other items of tangible personal property now or hereafter located on the Land or in the Improvements and used or usable in connection with the construction, use, occupancy, operation and maintenance of all or any part of the Land, the Improvements, or any of them.

**Force Majeure:** A delay in the development, construction or equipping of the project caused by or attributable to fire, earthquake, flood, wind, landslide, tsunami or other acts of God, unusual weather conditions, strikes, lockouts or labor disputes, acts of public enemy, riots, insurrection, war, governmental regulation of the sale of transportation materials, supplies, or other governmental action, accidents, breakage or repairs which are not within the control of Borrower, Guarantors or any Member and not attributable to the bad faith of Borrower, Guarantor or any Member, excluding the lack of funds to perform the obligations hereunder, provided (i) the Loan, at all times remains In Balance, or if same is not In Balance, Borrower and/or Guarantors have complied with Section 7.13 of this Loan Agreement, (ii) Borrower notifies Lender within ten (10) days of the occurrence of the event which has or will result in Force Majeure and the length of the anticipated delay, but in no event shall said relief exceed sixty (60) days in the aggregate, (iii) such delay shall not cause or result in a default or violation by Borrower under any contracts, agreements, licenses or Permits affecting the Project or the development, construction or equipping thereof, or under any applicable Laws, and (iv) such delay shall not cause or result in a default or violation by Borrower under any Valid Sale Contract or result in the unenforceability thereof.

**Funding Termination Date:** The date which is ninety (90) days after the issuance of the permanent certificate of occupancy for the Project (including the Hotel Unit and the other portions of the Project, if any, owned by Borrower and all Condominium Units conveyed by Borrower) or, if Lender exercises its right to accelerate the payment in full of the Obligations, then such earlier date on which the payment of the Obligations is accelerated.

**GAAP:** Generally accepted accounting principles, consistently applied.

**General Contract:** That certain guaranteed maximum price contract for the construction of the Project in accordance with the Plans which has been approved in writing by Lender and which shall, among other things: (a) be in an amount not to exceed \$113,637,281, (b) provide for no more than seven percent (7%) of the total amount thereof (excluding general conditions, Contractor's fees and Contractor's contingency) as an Allowance (as that term is defined in the AIA A201-1997 "General Conditions of the Contract for Construction"), all of which Allowances shall be approved as reasonable by Lender in its sole discretion, (c) provide that any contractor's fee specified therein be disbursed only on a pro-rata basis according to the percentage of construction trade items (excluding general conditions, Contractor's fees and the Contractor's contingency) completed, (d) provide that the Project must be Substantially Completed by the twenty-sixth (26<sup>th</sup>) month anniversary of the date on which the General Contract was fully executed, and (e) provide that the General Contractor will incur penalties of \$2,500/ per day for any delay of the Substantial Completion of the Project fifteen (15) Business Days beyond the "Substantial Completion date" (as defined in the General Contract).

**General Contractor:** Stiles Corporation, a Florida corporation d.b.a. Stiles Construction Co. **The General Contractor may not be a Related Party or a Trump Party.** Once, approved, the General Contractor may not be replaced without Lender's prior written consent.

**GMP Requirement:** Borrower and General Contractor shall have entered into the General Contract on or before the First Disbursement Date.

**Governmental Approvals:** As defined in Section 5.1(m).

**Governmental Authority:** Any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court or administrative tribunal.

**Gross Sale Proceeds:** The gross proceeds of any sale or other transfer of any Condominium Unit, it being nonetheless understood that (a) no sale of a Condominium Unit may be made, except on an all-cash basis, unless Lender in its sole discretion otherwise agrees in writing, (b) no Condominium Unit may be sold for less than its applicable Minimum Price, unless Lender in its sole discretion otherwise agrees in writing and (c) no sale or other transfer of any Condominium Unit may be accomplished other than as an Approved Sale.

**Guarantor:** Roy Stillman, together with his estate.

**Hazardous Material:** Any (a) crude oil, petroleum or any fraction thereof, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which cause the Project or any part thereof to be in violation of any Environmental Laws; (b) friable or potentially friable asbestos or asbestos-containing material (as those terms are defined in any Environmental Laws now in effect or hereafter enacted or amended), urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", or "toxic substances" or words of similar import under any applicable local, state or federal law now in effect or hereafter enacted or amended or under regulations now or hereafter promulgated pursuant thereto, including, but not limited to, any Environmental Law, CERCLA, particularly as amended by SARA; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et. seq.; 40 C.F.R. Sections 261.20-261.24, inclusive; and the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.); (d) other chemical, material or substance, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority or is likely to pose a material hazard to the health and safety of the occupants of the Project or the owners and/or occupants of property adjacent to or surrounding the Project, or any other Person coming upon the Project or adjacent property, including without limiting the generality of the foregoing, mold, mildew and other moisture-related organic substances; and (e) other chemical, materials or substance which is likely to pose a material hazard to the environment or the removal of which is required pursuant to applicable Laws or the use, production, storage, handling, transfer, refinement, manufacturing, maintenance, ownership, presence, treatment, processing, transport, generation, removal, remediation, manufacture, discharge, release or disposal of which is restricted, prohibited, regulated or penalized by any Environmental Laws (including, without limitation, the Occupational

Safety and Health Act and 29 C.F.R. Part 1910 subpart z) (but excluding materials of a kind and in such quantities as are commonly used in the maintenance of the Project and in any case, in compliance with applicable Environmental Laws)

**Hotel Management Agreement:** That certain Hotel Management Agreement dated as July 26, 2006, between Borrower and Hotel Manager.

**Hotel Manager:** Trump Florida Hotel Management LLC, a Delaware limited liability company.

**Hotel Unit:** The so-called "Hotel Unit" within the Project, as more particularly set forth in the Condominium Documents and the Plans.

**HUD:** The Department of Housing and Urban Development.

**Improvements:** All buildings, structures and other improvements and all fixtures, personalty and appurtenances now or hereafter located on the Land, including without limitation, the condominium project to be constructed on the Land including, without limitation,

(a) twenty-four (24) story condominium hotel building and adjoining six (6) story condominium hotel building consisting of:

(i) two hundred ninety eight (298) residential hotel condominium units having approximately 240,000 net, saleable, interior, air-conditioned square feet in the aggregate (as measured from the interior of the glass in the exterior walls, the middle of demising walls between such residential hotel condominium units, and to the public side of any common area walls, and excluding balconies, hallways, common areas, and the structural walls and areas of exit stairs, elevator shafts and common mechanical shafts),

(ii) two (2) commercial/retail condominium units having approximately 14,305 net, saleable, interior, air-conditioned square feet in the aggregate, and

(iii) one (1) Hotel Unit which includes, among other things, a four level attached valet garage containing approximately four hundred ten (410) parking spaces, together with

(b) all related infrastructure and facilities, as more fully set forth in the Plans and the Condominium Documents.

**In Balance:** As defined in Section 7.13.

**Inconsequential Variances:** As defined in Section 10.3.

**Indemnified Parties:** As defined in Section 10.19.

**Initial Loan Term:** As defined in Section 3.10(a).

**Insurance Requirements:** With respect to the Project, all requirements of each and every insurer covering any of the risks against which the Project is to be insured pursuant to Section 8.1.

**Intellectual Property:** All of Borrower's rights, if any, to any patents and copyrights, trade names, trademarks and service marks, including all state registrations or applications for registration pertaining thereto and all common law rights pertaining thereto and all goodwill of the Borrower's business symbolized by, associated with or appurtenant to any of such trade names, trademarks, and service marks, including, without limitation, the trade names, trademarks and service marks that are set forth on Exhibit H hereto.

**Interest Rate:** As defined in the Note.

**Internal Revenue Code:** The United States Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder from time to time.

**Interstate Land Sales Full Disclosure Act:** The Interstate Land Sales Full Disclosure Act codified at 15 C.F.R. § 1701 *et seq.*

**Investor:** As defined in Section 13.3.

**Land:** Fee simple interest in the land located in the City of Fort Lauderdale, Broward County, Florida and legally described in Exhibit A hereto, together with all easements, air rights, servitudes, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainder, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Borrower of, in and to the same.

**Late Charge:** As defined in Section 3.15.

**Law(s):** Collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, which have been duly authorized and are currently in effect and/or hereinafter enacted, including judicial opinions or precedential authority in the applicable jurisdiction, and including, without limitation, all Environmental Laws, all rules and regulations relating to life, safety and the ADA, and including all further modifications, amendments, supplements or revisions thereof.

**Leases:** Any lease, use, occupancy or concession agreement with respect to all or any part of the Project.

**Lender:** CORUS Bank, N.A., its participants, successors and assigns.

**Lender's Construction Consultant:** Any such consultant as Lender may elect, at Lender's sole discretion.

**Lender's Construction Consultant Fees:** All reasonable fees, expenses and disbursements of Lender's Construction Consultant.

**Lender's Estimate of Remaining Construction Costs:** As defined in Section 7.13.

**License Agreement:** That certain License Agreement dated as of June 30, 2004, between Donald J. Trump and Borrower (as successor by assignment to Bayrock Merrimac LLLP), as amended by that certain First Amendment to License Agreement dated as of October 22, 2004 between Donald J. Trump and Borrower (as successor by assignment to Bayrock Merrimac LLLP), as amended by that certain Second Amendment to License Agreement dated as of June 26, 2006 between Donald J. Trump and Borrower.

**Licensors:** Donald J. Trump.

**Loan:** As defined in Section 3.1.

**Loan Documents:** This Loan Agreement, the Note, the Mortgage, the Completion Guaranty, the Carveout Guaranty, the Assignment of Leases and Rents, the Environmental Indemnity, the Assignment of Agreements, Plans and Permits, the, the Comfort Letters, Subordination and Intercreditor Agreement, Assignment of Condominium Documents, the Escrow Agent Control Agreement, the Assignment of Purchase Agreements, the Assignment and Subordination of Brokerage Agreement, the Certification Regarding Condominium Unit Sales and Leases, the Assignment of Accounts, the Pledge of Accounts Agreement, the Pledge of Profits Interest, the Assignment and Subordination of Management Agreement, the UCC Financing Statements and any and all other document evidencing, pertaining to, governing and/or securing the Loan.

**Loan Expenses:** As defined in Section 4.1.

**Loan Exposure:** The sum of the outstanding principal balance of the Loan and any unfunded proceeds of the Loan.

**Loan Exposure Per Remaining Collateral Square Footage:** The Loan Exposure divided by the Remaining Collateral Square Footage.

**Loan Maturity:** The time at which Borrower is required to pay the Loan in full, whether by acceleration, or by expiration of the Loan Term.

**Loan Term:** The Initial Loan Term and, if Borrower shall have exercised the Extension in accordance with the requirements of Section 3.10(b), the Extension Term.

**Major Subcontractor:** Any Person who has or will have entered into one or more subcontracts with the General Contractor for work done or to be done with respect to the Project, the aggregate amount of which subcontract or subcontracts equals or exceeds the sum of \$500,000.

**Material Adverse Effect:** A materially adverse effect on: (i) the construction, use, occupancy, operation, or maintenance of the Project or (ii) the establishment or marketability of the Project as a condominium hotel as described in this Loan Agreement or (iii) the financial condition of Borrower, Guarantor or the Project.

**Minimum Earnest Money Investment:** As defined in Section 3.23(e).

**Minimum Equity Investment:** As defined in Section 3.2.

**Minimum Price:** With respect to each Condominium Unit in the Project, the minimum sale price set forth in the Minimum Price List for such Condominium Unit, which minimum sale price shall not be changed without Lender's prior written consent.

**Minimum Price List:** The detailed breakdown of each Residential Hotel Condominium Unit and Retail Condominium Unit by size, type, location and price as set forth on Exhibit I of this Loan Agreement.

**Modification:** As defined in Section 7.7(a).

**Mortgage:** The Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing made by Borrower to Lender.

**Net Sales Proceeds:** The Gross Sale Proceeds from any sale of a Condominium Unit in the Project *less* the Approved Closing Costs for the sale of such Condominium Unit and *less* the Second Deposits made with respect to such Condominium Unit which were actually used by Borrower toward the payment of Project Costs set forth in the Project Budget.

**NOI:** For each month, the monthly gross income generated by the Project less a prorated management fee (not to exceed 3% of annual gross revenues generated by the operation of the Project), actual monthly operating expenses incurred for the Project (provided, however, that actual monthly operating expenses **do not include expenses related to any Related Party, Trump Party** or the Subordinate Lender, except as otherwise provided in the Project Budget definition), and reasonable prorated tax and insurance reserves for the Project.

**Note:** The Promissory Note, dated of even date herewith, made by Borrower and payable to the order of Lender in the original principal amount of the Loan.

**Obligations:** All obligations of Borrower to Lender under or in connection with this Loan Agreement, the Note, the Loan Documents or any related instrument or document, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due, and including, without limitation, all fees, expenses, costs, the Exit Fee, and other amounts due and payable under or pursuant to any or all of the Loan Documents.

**Offering Materials:** The condominium offering plan and any other disclosure materials (including the prospectus) required by applicable Laws, including without limitation, the Condominium Act, to be made available to each prospective Contract Purchaser of a Condominium Unit.

**Organizational Documents:** As defined in Section 5.1(ee).

**Outside Sources:** A source or sources of funds other than: (i) the proceeds of the Loan, (ii) Rent or other revenues or funds generated by or in respect of the Project, including, without limitation, insurance proceeds and condemnation awards, (iii) proceeds of indebtedness secured by any of the Collateral or any interest therein, or the Project or any interest in Borrower or the

Collateral, including without limitation, the Project, (iv) unsecured indebtedness not permitted by Section 10.17 hereof, and (v) the proceeds of the Subordinate Loan.

**Owner's Hard Costs Contingency:** As defined in Section 7.7(b).

**Permits:** All building permits, certificates of occupancy and other assignable governmental permits, licenses and authorizations, including, without limitation, all state, county and local occupancy certificates, and other licenses, in any way applicable to the Project or any part thereof or to the development, construction, ownership, use, occupancy, operation, maintenance, or marketing and sale of the Project, the Condominium Units and the Hotel Unit.

**Permitted Commission:** In the case of an Approved Sale, a sales or brokerage commission paid in connection with the consummation of an Approved Sale, which commission shall not exceed the lesser of the then prevailing market rate or seven percent (7%) of the Gross Sale Proceeds (or not to exceed nine percent (9%) for international brokers), but only if such commission or fee is actually paid to a Person who is not a Related Party or a Trump Party and only if such commission or fee is due and owing pursuant to an arms-length listing or brokerage agreement reasonably approved by Lender.

**Permitted Exceptions:** Those matters listed in Exhibit C hereto to which the interest of Borrower in the Project may be subject as of the Closing Date and thereafter and any such other title exceptions or objections, if any, as Lender may approve in advance in writing.

**Permitted Gym Equipment Leases:** Any leases for gym equipment to be used in a fitness center in the Project, which leases have been approved in advance in writing by Lender in Lender's reasonable discretion

**Person:** Any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether territorial, national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

**Plans:** As defined in the Assignment of Agreements, Plans and Permits, which, as of the Closing Date, have been approved by Lender.

**Plat:** The condominium survey plot plan of the Land on which the Improvements are to be located and including any portion of the Land included within the common elements and limited common elements, as set forth in the Declaration, consistent with the Plans and made in accordance with the provisions of the Condominium Act, and otherwise in a form reasonably approved by Lender.

**Pledge of Accounts Agreement:** That certain Pledge of Accounts Agreement dated as of the date hereof between Borrower and Lender.

**Pledge of Profits Interest:** That certain Pledge of Profits Interest dated as of the date hereof between Borrower and Lender.



**Pre-Sale Requirement:** Not later than the First Disbursement Date, Borrower and the applicable Contract Purchasers shall have fully executed and entered into:

(a) Valid Sale Contracts (which are neither Related Party Contracts or the At-Cost Penthouse Contract) for at least one hundred sixty-six (166) Residential Hotel Condominium Units comprising no less than 118,900 net sellable square feet and at an average selling price of no less than \$1,050 per net sellable square foot (which selling price shall not include any amount allocated to Upgrades); and

(b) Related Party Contracts for at least ten (10) Residential Hotel Condominium Units comprising no less than 8,600 net sellable square feet and at an average selling price of no less than \$1,050 per net sellable square foot (which selling price shall not include any amount allocated to Upgrades).

**Project:** The Land, Improvements and all on-site and off-site improvements related thereto to be completed in accordance with the Plans, including, without limitation, all utility services and fixtures and equipment required for access to and operation of a condominium regime, and all walkways and connections between any of the foregoing, and all Fixtures, Furnishings and Equipment therefore, all of which is more particularly described in the Plans.

**Project Budget:** That certain detailed full cost budget attached hereto as Exhibit J for the acquisition, construction, development, equipping and Completion of the Project (and including, without limitation, the establishment of the Project as a condominium regime form of ownership pursuant to the Condominium Documents) in accordance with the Plans, which has, as of the Closing Date been approved by Lender. **In no event shall the Project Budget contain any line items payable to any Related Party, any Trump Party** or to Subordinate Lender, with the exception of: (a) the \$2,000,000 Developer Fee line item, which line item shall be payable to an Affiliate of Guarantor at a rate of \$69,000 per month until paid in full; (b) the \$250,000 Motwani Fees line item, which line item shall be payable to Borrower on terms and conditions negotiated between Borrower and Motwani; (c) **the \$1,250,000 Trump Fee line** item; (d) the \$527,500 CBRE Fee line item; and (e) the \$404,000 CBRE Closing Fee line item. References to the "**Project Budget**" herein shall be deemed to include all of the trade line items contained in all of the Construction Contracts.

**Project Costs:** All hard costs and soft costs incurred or to be incurred in the acquisition, construction, operation, financing, development and marketing of the Project, in strict compliance with the Project Budget.

**Property Report:** A property report submitted under the provisions of the Interstate Land Sales Full Disclosure Act.

**Protective Advances:** Any disbursements and advances pursuant to any of the Loan Documents (which disbursements and advances shall be deemed to be part of the Loan made hereunder) which Lender deems necessary in its reasonable discretion to preserve or protect the Collateral or any portion thereof or to enhance the likelihood or maximize the amount of repayment of the advances of the Loan and other Obligations.

**Punch List Items:** All items set forth in a detailed written list prepared by the Architect and approved by Lender's Construction Consultant and Lender indicating items which remain to be



completed, constructed, corrected or renovated and the estimated costs for the completion, construction, correction and renovation for each item, which estimated costs shall be prepared by Borrower and approved by Lender in its sole discretion, and which estimated costs shall not in any event exceed \$3,000,000 in the aggregate.

**Purchase Agreements:** A written agreement between Borrower and any Person for the sale of a Residential Hotel Condominium Unit or a Retail Condominium Unit.

**Qualified Project Costs:** As defined in Section 3.23.

**Real Estate:** The Land and the Improvements.

**Real Estate Taxes Reserve:** As defined in Section 10.8(a).

**Related Party or Related Parties:** Borrower, any Member or any Guarantor or any Affiliate of either Borrower, any Member or any Guarantor, or any Person who owns, directly or indirectly any interest in Borrower, any Member or any Guarantor.

**Related Party Contracts:** Those certain Purchase Agreements for Residential Hotel Condominium Units, of which there shall be no more than fifty (50), in the Project which satisfy all of the requirements of a Valid Sale Contract other than the requirement that the Contract Purchaser not be a Person who is either Borrower, any Member or Guarantor or any Affiliate of either Borrower, any Member or Guarantor. In addition, if the Contract Purchaser is Guarantor or is related to or an Affiliate of Guarantor, the closing of the sale of the subject Residential Hotel Condominium Unit, shall not occur until the Project has been Completed in a lien free manner.

**Release Price:** With respect to the sale of a Residential Hotel Condominium Unit or a Retail Condominium Unit, the greater of:

(a) 100% of Net Sales Proceeds plus 100% of the Upgrade Profit on such Condominium Unit, or

(b) 93% of Gross Sale Proceeds on such Condominium Unit and less any Second Deposits made with respect to such Condominium Unit actually used by Borrower toward the payment of Project Costs set forth in the Project Budget plus 100% of the Upgrade Profit on such Condominium Unit.

Notwithstanding the foregoing to the contrary, once Lender's Loan Exposure Per Remaining Collateral Square Footage is less than \$200, and (i) if no Event of Default exists under the Loan Documents and (ii) if no Event of Default exists under the Subordinate Loan Documents (as such term is defined under the Subordinate Loan Documents), the Release Price for a Residential Hotel Condominium Unit or a Retail Condominium Unit shall be an amount equal to the product of \$400 times the net saleable square feet in the applicable Residential Hotel Condominium Unit or Retail Condominium Unit to be released.

**Remaining Collateral Square Footage:** The aggregate net saleable interior square feet of all Residential Hotel Condominium Units and all Retail Condominium Units in the Project with respect to which a Title Transfer Closing has not occurred (which square footage shall be measured

from the interior of the glass in the exterior walls, the middle of demising walls between Condominium Units, and to the public side of any common area walls, and shall exclude balconies, hallways, common areas, and the structural walls and areas of exit stairs, elevator shafts and common mechanical shafts).

**Rents:** All avails, rents, issues, cash collateral and profits arising from or accruing at anytime hereafter by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Project or any portion thereof, including, and to the extent not deemed personal property under applicable Laws, all revenues now or hereafter accruing to the benefit of Borrower, it being understood that Borrower is prohibited by the provisions of this Loan Agreement from leasing all or any part of the Project without Lender's prior written consent in Lender's reasonable discretion.

**Request for Advance:** A statement prepared and signed by Borrower in a form approved by Lender, setting forth the amount of the proceeds of the Loan requested by Borrower under this Loan Agreement, which shall constitute an affirmation by Borrower that the representations and warranties in this Loan Agreement and in the other Loan Documents remain true and correct in all material respects as of the date thereof and will be so on the date of disbursement of the requested advance.

**Residential Hotel Condominium Unit:** A residential hotel condominium unit within the Project, as more particularly set forth in the Condominium Documents and the Plans.

**Retail Condominium Unit:** A retail/commercial condominium unit within the Project, as more particularly set forth in the Condominium Documents and the Plans.

**Scheduled Debt Service:** For any period for which debt service on the Loan is to be determined, the payments of interest, or interest plus principal, as the case may be, required to be paid during such period pursuant to the terms and provisions of this Loan Agreement and the Note.

**Second Deposits:** As defined in Section 3.23.

**Statement of Record:** A statement of record submitted under the provisions of the Interstate Land Sales Full Disclosure Act.

**Subcontract:** Any contract between a Contractor or the General Contractor and a Subcontractor relating to the development, construction or equipping of the Project or any portion thereof.

**Subcontractor:** Any subcontractor party to a Subcontract.

**Subordinate Lender:** SP Fort Lauderdale Lender, LLC, a Delaware limited liability company.

**Subordinate Loan:** That certain subordinate loan from the Subordinate Lender in the original principal amount (excluding reserves for the payment of interest or fees) equal to or greater than \$43,173,328 made pursuant to the Subordinate Loan Documents, which Subordinate Loan is: (a) secured by, among other things, a collateral assignment of the constituent Membership interest(s)

in Borrower, and a junior mortgage on the Real Estate, and (b) subordinate to the Obligations as more fully described in the Subordination and Intercreditor Agreement.

**Subordinate Loan Agreement:** That certain Subordinate Loan Agreement of even date herewith between Subordinate Lender and Borrower.

**Subordinate Loan Documents:** The documents or instruments, which evidence, secure or otherwise relate to the Subordinate Loan, whether executed or delivered on or about the Closing Date or executed and delivered during the term of the Subordinate Loan in accordance with the Subordinate Loan Agreement.

**Subordination and Intercreditor Agreement:** That certain Subordination and Intercreditor Agreement, dated as of the Closing Date, by and between, Subordinate Lender and Lender, and acknowledged by Borrower as described therein.

**Substantial Completion or Substantially Completed:** The stage at which the development, construction and equipping of the Project has occurred in accordance with the Plans, all Laws and all Governmental Approvals, such that a temporary certificate of occupancy for the Project has been issued and the Project can be used for its intended purposes) and each condition to the final Advance of Loan proceeds as set forth in Section 7.14 has occurred, with the exception of completion of the Punch List Items.

**Survey:** As defined in Section 5.1(j).

**Tax Deposits:** As defined in Section 10.8(a).

**Taxes:** All use, ad valorem, or property taxes, arising from or relating to the ownership, use, operation, construction or maintenance of the Project, including without limitation, all real estate taxes, general and special assessments, business improvement district charges, water and sewer rents, rates, charges, impositions and liens, together with any interest and any penalties, additions to tax or additional amounts in lieu of such taxes imposed by any Governmental Authority.

**Title Insurer:** The issuer of the Title Policy required by Section 6.1(b)(i), which issuer shall be Lawyer's Title Insurance Corporation.

**Title Policy:** As defined in Section 6.1(b)(i).

**Title Transfer Closing:** As defined in Section 9.5.

**Total Budget Savings:** As defined in Section 3.1(a).

**Trump Agreements:** As defined in Section 5.1 (uu).

**Trump Party:** Donald J. Trump, an individual; Trump Florida Hotel Management LLC; Trump Florida Management LLC; Trump Lauderdale Development LLC; and Trump Lauderdale Development No. 2 LLC.

**UCC Financing Statements:** The UCC-1 Financing Statements executed by Borrower, as debtor, in favor of Lender, as secured party, to be filed in: (a) the public records of Broward County, Florida, (c) the Secretary of State of the State of Florida, and (d) in such other jurisdictions as Lender may determine, as the case may be, in connection with the personal property described in the Mortgage and the other Loan Documents.

**Unspent Eligible Deposits:** As defined in Section 3.23.

**Upgrade Deposits:** As defined in Section 3.22.

**Upgrade Profit:** The positive difference between the amount charged by either Borrower to a contract purchaser of a Residential Hotel Condominium Unit or a Retail Condominium Unit for Upgrades and the actual cost to such Borrower of such Upgrades.

**Upgrades:** Any additional or extra work or change in or to the so-called "base" or standard construction and, if applicable, furnishing of the applicable Residential Hotel Condominium Unit or Retail Condominium Unit, as the case may be, including, without limitation, changes to fixtures, equipment, hardware or other base construction standard of Borrower with respect to the applicable Condominium Unit.

**Upgrade Threshold:** As defined in Section 3.22.

**Valid Sale Contract:** A Purchase Agreement for the bona fide, arms-length, sale, transfer or conveyance of any Condominium Unit comprising a portion of the Project, and which meets all of the following conditions:

(a) The Purchase Agreement is made substantially in the form of Purchase Agreement attached hereto as Exhibit B, which has been approved by Lender as of the Closing Date (the "**Approved Purchase Agreement**");

(b) The Purchase Agreement is with a Person who is not a Related Party;

(c) Among other things, the Approved Purchase Agreement shall comply with the provisions of §718.202 of the Florida Statutes and other provisions of Florida Laws in order to permit Borrower to use that portion of the Deposits made by the purchaser in excess of ten percent (10%) of the purchase price for paying costs set forth in the Project Budget to the extent such costs are permitted by Florida Law to be used to pay such costs set forth in the Project Budget;

(d) The gross purchase price (excluding any amounts allocated for parking spaces and any Upgrades) for each Residential Hotel Condominium Unit shall be greater than or equal to 85% of the Minimum Price for that applicable Residential Hotel Condominium Unit as detailed on the Minimum Price List, it being understood, nevertheless, that the Valid Sale Contracts and Related Party Contracts which are used by Borrower to satisfy the Pre-Sale Requirement shall each separately have an average selling price of not less than \$1,050 per net sellable square foot;

(e) The Purchase Agreement must provide for an earnest money deposit of not less than twenty percent (20%) of the purchase price, payable as set forth in Section 3.23(a), and the aggregate amount of such earnest money deposit shall have been deposited with Escrow Agent;

(f) No more than two (2) Residential Hotel Condominium Units may be sold to a single Person or such Person's Affiliates, with the express exception that: (i) three (3) Persons who are not Related Parties shall be allowed to purchase up to three (3) Residential Hotel Condominium Units each and (ii) any Related Party will be permitted to purchase up to four (4) Residential Hotel Condominium Units each;

(g) The Purchase Agreement stipulates that, in the event that the Contract Purchaser fails to perform, Borrower is entitled to the full amount of such earnest money deposit and specifically states that the Contract Purchaser has no lien rights with respect to the Project or any part thereof, and that all of Contract Purchaser's rights under the Purchase Agreement are subordinate to the Mortgage and all other liens and security interests made or granted to Lender with respect to the Project and every part thereof;

(h) If the Purchase Agreement contains any provisions requiring Borrower to construct or provide any Upgrades, the Purchase Agreement must also contain provisions for the payment by the Contract Purchaser of the Upgrade Deposit at the time of the signing of the Purchase Agreement;

(i) No Purchase Agreement shall contain any contingencies other than the completion of the Condominium Unit and as otherwise expressly stated in the Approved Purchase Agreement; provided, however that, Borrower may enter into Purchase Agreements which are subject to a commercially reasonable mortgage contingency provided that any such Purchase Agreement will not be deemed a Valid Sale Contract until the expiration or satisfaction of such mortgage contingency;

(j) The outside closing date under the Purchase Agreement is no earlier than June 30, 2009; and

(k) If the Project is not exempt from the Interstate Land Sales Full Disclosure Act, no Purchase Agreement shall be considered a Valid Sale Contract unless Lender shall have received an executed acknowledgement by each Contract Purchaser stipulating that prior to the date of the Purchase Agreement acceptance such Contract Purchaser received a copy of the Property Report, which has been accepted for filing by HUD. The Purchase Agreement may not be dated earlier than thirty (30) days prior to the effective date on which HUD accepted the Statement of Record. In addition, Lender shall have approved the specific terms of the form Purchase Agreement, which shall contain provisions required by the Interstate Land Sales Full Disclosure Act, including:

(i) A statement that the Contract Purchaser may revoke the Purchase Agreement for a period of seven (7) days from the date of signing, or if applicable Laws provide for a longer period, the longer period shall be stated;

(ii) A statement that if the Contract Purchaser has not received the Property Report prior to executing the Purchase Agreement, the Purchase Agreement shall be revocable for two (2) years from the date the Purchase Agreement was signed by such Contract Purchaser;

(iii) A provision which states that if the Contract Purchaser defaults under the terms of the Purchase Agreement, the Contract Purchaser shall receive written notice of the default, and shall have a period of twenty (20) days from the date of the notice to cure the default; and

(iv) Damages payable to the seller (Borrower) under the Purchase Agreement must conform to the limitation of the Interstate Land Sales Full Disclosure Act, which generally limits damages to the greater of fifteen percent (15%) liquidated damages or actual damages.

**Section 2.2. Singular and Plural.** Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa.

### ARTICLE 3

#### LOAN FACILITY

**Section 3.1. Advances; Certain Covenants Related To Advances.**

(a) Subject to the terms and conditions of this Loan Agreement, including without limitation, receipt of evidence reasonably satisfactory to Lender that the Minimum Equity Investment and the Minimum Earnest Money Investment have been paid in full by Borrower as provided in Section 3.2 and Section 3.23(e) respectively, and subject to the satisfaction of all other requirements of this Loan Agreement (unless waived in writing by Lender), including without limitation all of the funding conditions and limitations described in Article 7 of this Loan Agreement and the loan balancing requirements of Section 7.13 hereof, Lender agrees to make a series of advances (each an "Advance" and collectively, the "Advances"), in an aggregate principal amount of up to ONE HUNDRED THIRTY-NINE MILLION AND NO/100 DOLLARS (\$139,000,000) (the "Loan"). The Loan will be used to fund the payment of certain soft costs and hard costs of construction of the Project as set forth in the Project Budget. Amounts borrowed and repaid or prepaid may not be re-borrowed. Borrower acknowledges and agrees that if the total costs for Completion of the Project in accordance with the Plans shall be less than the total Project Budget approved by Lender, then the positive difference between the total Project Budget approved by Lender and the actual total costs for the Completion of the Project in accordance with the Plans shall be referred to herein as the "Total Budget Savings," and the principal amount of the Loan available for disbursement hereunder and under the Note automatically shall be reduced by an amount equal to the Total Budget Savings.

(b) Borrower will pay a \$1,000 processing fee for each Advance of the Loan Proceeds.

(c) The final Request for Advance of the Loan for amounts payable under the Project Budget shall be made, if at all, on or before the date which is seven (7) Business Days prior to the Funding Termination Date. Borrower acknowledges that if Borrower fails to request the applicable final Advance of the Loan proceeds on or before the applicable date set forth above or fails to satisfy the conditions precedent thereto on or before the applicable date set forth above, Borrower shall waive its rights to disbursement thereof.

**Section 3.2. Borrower's Equity; Subordinate Loan; and Minimum Earnest Money Investment.**

(a) Prior to any Advance of any Loan proceeds, and as conditions precedent to any such Advance:

(i) Borrower shall be required to have contributed and invested in the Project in cash the aggregate amount of \$3,100,000 which shall be comprised of Borrower's own funds and not the proceeds of any loan (the "**Minimum Equity Investment**"), and shall have been used to pay for Project Costs set forth in the Project Budget,

(ii) Subordinate Lender shall have funded the Subordinate Loan which Subordinate Loan proceeds shall have been used to pay for Project Costs set forth in the Project Budget; and

(iii) Borrower shall be required to have contributed and invested in the Project the Minimum Earnest Money Investment.

(b) In order to qualify as the Minimum Equity Investment, Borrower shall have received the Minimum Equity Investment as a contribution of capital made by the Members of Borrower and not as a loan of any kind to Borrower by the Members or by any other Person. Any contributor of equity to Borrower shall be subordinate to all of the Obligations of Borrower to Lender and to general unsecured creditors of Borrower. The foregoing Minimum Equity Contribution shall be in addition to, and not in limitation of, Borrower's obligation to keep the Loan In Balance and make Deficiency Deposits if required, as provided under and in accordance with Article 7 of this Loan Agreement.

(c) The Minimum Equity Investment shall be subject to the review, verification and approval of Lender in its sole discretion, and to that end, Borrower shall deliver such written substantiation and evidence as Lender shall request in order to document, support and verify all costs and expenses and other sums paid by Borrower which Borrower claims to comprise its Minimum Equity Investment. It is understood that Lender shall not be required to disburse any proceeds of the Loan which shall be used to reimburse Borrower for the Minimum Equity Investment unless Lender has determined that Borrower has invested amounts in excess of its Minimum Equity Investment. In the event that Borrower or any other Person invests more than its Minimum Equity Investment (excluding Deficiency Deposits), the Loan amount shall be permanently reduced by such excess deposit, unless Borrower delivers to Lender a written request for a refund of such excess within sixty (60) days of such excess investment, but in no event shall such a request be required sooner than thirty (30) days after the Closing Date.

**Section 3.3. Note.** The Advances made by Lender pursuant to Section 3.1(a) shall be evidenced by the Note, representing the obligation of Borrower to pay the unpaid principal amount of the Advances under the Loan made by Lender, with interest thereon at the Interest Rate and/or the Default Rate, as the case may be.

**Section 3.4. Interest Rate; Interest Rate Adjustment.** Interest on the Loan shall accrue and be due and payable by Borrower at the Interest Rate set forth in the Note and such Interest Rate shall be adjusted as set forth in the Note until such time as the Obligations are paid in full.

**Section 3.5. Default Rate.** After the Loan Maturity (by acceleration, the expiration of the Loan Term or otherwise), and during the existence of an Event of Default, the outstanding balance of the Loan and all amounts due hereunder or under any other Loan Documents, including, without limitation, any late fees, prepayment fees, advances made by Lender pursuant to the Loan Documents, and any other fees, charges or amounts that are not paid when due shall accrue interest thereon at the Default Rate from the date the same were due and not paid until the date the same are paid in full. The Default Rate shall be adjusted on each Adjustment Date to reflect any change in the Interest Rate made on such Adjustment Date. During the existence of an Event of Default, the Default Rate shall be applicable to any fees, costs, or expenses incurred by Lender or any Advances, including any Protective Advances, made by Lender in accordance with the provisions of the Loan Documents or as provided by applicable Laws. Nothing contained in this Section 3.5 or in this Loan Agreement or in any other Loan Document shall grant or be deemed or construed to grant Borrower the right to cure any Event of Default.

**Section 3.6. Computations of Interest.** All computations of interest shall be made by Lender on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Each determination in good faith by Lender of the Interest Rate shall be conclusive and binding for all purposes, absent manifest error.

**Section 3.7. Payment of Interest and Principal.** Interest and principal of the Loan shall be paid as provided in the Note.

**Section 3.8. Voluntary Prepayment.** The Loan may be prepaid to the extent, and upon the terms, provided in the Note.

**Section 3.9. Procedure for Payment.** (a) All payments required to be made pursuant to the Note shall be made during regular business hours either by wire transfer of United States Dollars, by cashier's check, standard check (subject to collection) or in currency of the United States of America which at the time of payment is legal tender for the payment of public or private debts to Lender at:

By Regular Mail:

Corus Bank N.A.  
P.O. Box 102865  
Atlanta, GA 30368-2865

By Overnight Courier:

Corus Bank N.A. - #102865  
Lockbox Mail Department



Georgia Operations Center  
100 South Crest Drive  
Stockbridge, GA 30281

By Wire Transfers and ACH:

SUNTRUST BANK, ATLANTA  
ABA 061000104  
TO CREDIT ACCOUNTS 1000008140328  
ACCOUNT NAME: CORUS BANK N.A.  
FOR FURTHER CREDIT TO: Corus Bank  
Loan # 67100

(b) If any payment of principal or interest shall be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and, in the case of a principal payment, such extension of time shall be included in computing interest in connection with such payment. Any payment of principal and interest received after three o'clock p.m. C.S.T. (or C.D.S.T. as the case may be) shall be deemed to have been received by Lender on the next succeeding Business Day and shall bear interest accordingly. Any payment tendered other than in coin or currency of the United States as aforesaid shall be accepted by Lender subject to collection, and interest shall accrue until the Business Day on which good funds are available for immediate use by Lender on or before three o'clock p.m. C.S.T. (or C.D.S.T. as the case may be).

**Section 3.10. Loan Term.**

(a) Unless Borrower shall exercise its option to extend in accordance with the provisions of Section 3.10(b) below, the term of the Loan (the "**Initial Loan Term**"), shall be for a period of thirty (30) months, commencing on the Closing Date and expiring on July 1, 2009, unless the Loan is terminated earlier pursuant to the terms of the Loan Agreement or the other Loan Documents.

(b) Borrower shall have right and option to extend the Initial Loan Term for an additional period of six (6) calendar months (the "**Extension Term**"), subject to Borrower's timely satisfaction (in each instance) of and Borrower's receipt of Lender's written acknowledgement of Borrower's satisfaction of all the following conditions:

- (i) The Substantial Completion of the Project has occurred; and
- (ii) A temporary or permanent certificate of occupancy has been issued for the Project by the appropriate Governmental Authority having jurisdiction; and
- (iii) Borrower shall have delivered written notice (the "**Extension Notice**") to Lender of Borrower's election to extend the Initial Loan Term for an additional six (6) months, and Lender shall have received the Extension Notice no later than thirty (30) days prior to the expiration of the Initial Loan Term; and
- (iv) Loan Maturity has not occurred and no Event of Default has occurred and is continuing; and

(v) Borrower shall have delivered to Lender with the Extension Notice, an extension fee (the "**Extension Fee**") equal to one half percent (0.50%) of the sum of: (a) the outstanding principal balance of the aggregate amount of the Loan, and (b) all proceeds of the Loan which have not then been disbursed by Lender; and

(vi) Loan Exposure Per Remaining Collateral Square Footage is less than \$200.

(c) In the event that Borrower shall fail to timely exercise its option under this Section 3.10, or shall otherwise fail to satisfy the conditions precedent thereto as described above, the right to exercise such option (and any further option to extend) shall be void and of no further force and effect. Further, with respect to the Extension Term:

(i) If Borrower does not request the Extension Term, or

(ii) If Borrower does request such Extension Term, but Borrower either:  
(A) has not satisfied one or more of the conditions to such Extension Term as set forth in a written notice from Lender to Borrower sent by Lender or (B) fails to timely pay the Extension Fee as required by Section 3(b)(v) above,

then unless the Obligations, including without limitation, all accrued interest, all principal, all late fees, the Exit Fee, and all other sums and amounts due and owing to Lender under the provisions of this Note, the Loan Agreement and any and all other Loan Documents, are paid in full not later than expiration of the Initial Loan Term (unless the Loan has been accelerated at an earlier date) the full Extension Fee shall be due and payable in addition to all of the Obligations, including without limitation, all accrued interest, all principal, all late fees, the Exit Fee, and all other sums and amounts due and owing to Lender under the provisions of the Loan Agreement, this Note and any and all other Loan Documents and the Initial Loan Term shall be extended for a period of thirty (30) days. If the Initial Loan Term is extended for the thirty (30) day period described above, the Mortgage shall not be released until the Extension Fee and all of the Obligations, including without limitation all accrued interest, all principal, all late fees, the Exit Fee, and all other sums and amounts due and owing to Lender under the provisions of the Loan Agreement, this Note and any and all other Loan Documents have been paid in full. Upon the occurrence of an Event of Default during the automatic thirty (30) day extension of the Initial Loan Term, Lender shall have the right to accelerate the Loan by giving written notice of such acceleration to Borrower, and upon such acceleration, Borrower shall be obligated to immediately pay the Extension Fee and all of the Obligations, including without limitation all accrued interest, all principal, all late fees, the Exit Fee, and all other sums and amounts due and owing to Lender under the provisions of the Loan Agreement, this Note and any and all other Loan Documents, and such thirty (30) day extension of the Initial Loan Term shall cease and terminate upon the giving of the written notice of acceleration by Lender.

As used herein, the term "**Loan Maturity**" or "**Maturity Date**" shall mean the time at which Borrower is required to pay the Loans in full, whether by acceleration, by expiration of the Initial Loan Term or, if the same shall apply, the Extension Term, as the case may be, or otherwise, as provided herein.

**Section 3.11. Exit Fee.** Borrower shall pay to Lender an exit fee in the aggregate amount of \$2,780,000 (the "Exit Fee"). The Exit Fee shall be paid in installments of \$20,000 at each closing of the sale of a Condominium Unit (at the same time that the Release Price is paid to Lender) until the total Exit Fee is paid in full; provided, however, that if the Exit Fee has not been paid in full prior to the earlier of: (i) the date on which the Loan is paid in full (which shall be deemed to include Borrower's cancellation or termination of the Loan after the Closing Date, but prior to any funding); or (ii) the Loan Maturity, the portion of the Exit Fee which has not been paid as of such date, shall be due and payable immediately. Lender shall not release its lien unless, in addition to all other Obligations, the Exit Fee has been paid in full.

**Section 3.12. Taxes; Withholding, Etc.** If any treaty, law or any governmental rule, regulation, policy, guideline or directive, or any interpretation thereof, or compliance of Lender with such,

(a) subjects Lender to any tax, duty, charge or withholding on or from payments due from Borrower (excluding United States, state, local and city taxation of the net income of Lender or any taxes imposed by the State of Illinois or the City of Chicago), or changes the basis of taxation of payments to Lender in respect of the Loan or other amounts due Lender hereunder (other than a mere increase in the rates of taxation) or any taxation imposed by the State of Illinois or the City of Chicago;

(b) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against the non-physical assets of, deposits with or for the account of, or credit extended by, Lender under this Loan Agreement; provided, however, Borrower is not obligated to pay any amounts to Lender which result from Lender's participation with foreign lending or banking institutions not subject to tax treaties;

(c) imposes any other condition directly related to the Loan transaction or the process or manner of making or funding the Loan under this Loan Agreement or obtaining the sources of funds for such Loan, the result of which is to increase the cost to Lender of making, funding or maintaining loans or reduces any amount receivable by Lender in connection with U.S. Dollar loans, or requires Lender to make any payment calculated by reference to the amount of loans held or interest received by it; or

(d) affects the amount of capital required or expected to be maintained by Lender or any corporation controlling Lender and Lender determines the amount of such capital required is increased by or based upon the existence of this Loan Agreement;

then, within thirty (30) days of written demand by Lender, Borrower shall pay Lender that portion of such increased expense incurred or reduction in an amount received which Lender determines is attributable to making, funding and maintaining the Loan and this Loan Agreement.

**Section 3.13. Acceleration of Maturity.** If an Event of Default exists hereunder or under the Note or the other Loan Documents, the unpaid principal amount of the Loan with interest and all other sums secured by the Mortgage shall become immediately due and payable at the option of Lender. In the event of such acceleration, Borrower shall discharge its Obligations to Lender by

paying all sums due under the Note, the Mortgage and the other Loan Documents, together with interest at the Default Rate accruing from and after the date that such acceleration is declared. Lender's failure to exercise its option to accelerate the Loan as aforesaid upon the occurrence of an Event of Default shall not constitute a waiver of Lender's right to exercise such option at any later time with respect to such Event of Default (unless such Event of Default has been cured) or with respect to any other subsequently occurring Event of Default.

**Section 3.14. Costs of Collection.** If, following the Closing Date, Lender: (a) employs counsel which Lender reasonably believes is necessary for advice or other representation (i) to represent Lender in any litigation, contest, dispute, suit, or proceeding or to commence, defend, or intervene or to take any other action in or with respect to any litigation, contest, dispute or proceeding (whether instituted by Lender, Borrower or any other person) in any way or respect relating to the Note, any other Loan Document, any collateral securing the Note or the Obligations, or (ii) to enforce any rights of Lender against Borrower; (b) takes any action to protect, collect, sell, liquidate, or otherwise dispose of any Collateral; and/or (c) upon the occurrence of an Event of Default, attempts to or enforces any of Lender's rights and remedies against Borrower or Guarantor, then in such event, the reasonable legal fees, out of pocket costs and expenses actually incurred by Lender in any manner or way with respect to the foregoing shall be part of the indebtedness evidenced by the Note, payable by Borrower to Lender upon demand. Without limiting the generality of the foregoing, such legal fees, costs and expenses, shall include reasonable fees, costs and expenses of attorneys, accountants and consultants; court costs and expenses; court reporter fees, costs and expenses; long distance telephone charges, telegram and telecopier charges; and expenses for travel, lodging and food. For purposes of this paragraph, the term "attorneys" includes attorneys who are employees of Lender acting as counsel for Lender, and the terms "fees, out of pocket costs and expenses" shall include, without limitation, the legal fees charged by Lender for its in-house counsel provided such fees are within the range of fees charged by attorneys of similar experience at medium to large sized law firms located in the City of Chicago, Illinois.

**Section 3.15. Late Charges.** If any installment of interest or principal or any other payment due under the Note or the other Loan Documents (with the exception of payment in full of the Obligations at Loan Maturity) is not received by Lender prior to the fifteenth (15th) day after the date that the installment or payment is due, Borrower shall pay to Lender a late charge equal to ten percent (10%) of the installment of interest or principal or any other payment due under the Note or the other Loan Documents, as the case may be (a "Late Charge"); provided, however, in no event shall Borrower be required to pay a Late Charge greater than the maximum amount permitted under applicable Law. Such Late Charge shall be in addition to, and not in lieu of, any other remedy Lender may have and is in addition to any reasonable fees and charges of Lender and any reasonable fees and charges of any attorneys which Lender is entitled to employ upon any default by Borrower hereunder or under any other Loan Document, whether authorized by this Loan Agreement, any other Loan Document or by Law.

**Section 3.16. Loan Documents.** In consideration of Lender's entry into this Loan Agreement and Lender's agreement to fund the Loan, Borrower agrees that, in addition to the Note, and in order to secure the due and prompt payment and performance of all of the Obligations, Borrower shall execute and deliver, or cause to be executed and delivered by Guarantor, as applicable, each of the following documents or instruments, all in scope, form, substance and legal sufficiency acceptable to Lender:

(a) a valid and subsisting first priority Mortgage, securing the Obligations, including the indebtedness evidenced by the Note, subject only to the Permitted Exceptions;

(b) first priority UCC Financing Statements, security agreement(s), collateral assignment(s) and such financing statements and other documents and instruments as Lender deems desirable to perfect in Lender first priority security interests in all of the Collateral which is not Real Estate;

(c) the Assignment of Leases and Rents;

(d) the Assignment of Agreements, Plans and Permits;

(e) the Carveout Guaranty;

(f) the Completion Guaranty;

(g) the Environmental Indemnity;

(h) the Assignment of Accounts;

(i) the Pledge of Accounts Agreement;

(j) the Pledge of Profits Interest;

(k) the Assignment of Condominium Documents;

(l) the Assignment of Purchase Agreements;

(m) an anti-coercion letter;

(n) the Assignment and Subordination of Management Agreement;

(o) the Assignment and Subordination of Brokerage Agreement;

(p) the Escrow Agent Control Agreement;

(q) the Assignment of License Agreement;

(r) the Certification Regarding Condominium Unit Sales and Leases;

(s) the Comfort Letters;

(t) the Subordination and Intercreditor Agreement; and

(u) such other documents as Lender or Lender's counsel may reasonably require.

**Section 3.17. Interest Reserve.**

(a) A portion of the Loan in the amount of \$12,800,000 (the "Interest Reserve") has been allocated to fund, absent the occurrence and continuance of an Event of Default, accrued interest on the Loan during the Loan Term and shall be available to fund such accrued interest: (i) so long as the Interest Reserve has not been exhausted and (ii) to the extent that there is no NOI available to fund accrued interest as provided in Section 3.17(b). Provided that no Event of Default shall have occurred and be continuing, Lender is hereby authorized to and shall disburse to itself interest payments due under the Loan on the date said payments are due and each such disbursement shall be deemed to be an Advance of the Loan hereunder.

(b) Notwithstanding the foregoing, in the event the Project, in any month, obtains positive NOI, the monthly NOI shall be applied to the payment of interest prior to the use of any funds provided for in the Interest Reserve. In the event that after the application of NOI to accrued interest, there remains additional NOI, then NOI shall be used to pay principal of the Loan.

(c) Nothing contained in this Section 3.17 shall relieve Borrower of the absolute, unconditional, joint and several obligation to pay accrued interest on the Loan as provided herein and in the Note and the other Loan Documents. If the funds under the Interest Reserve are insufficient or are otherwise unavailable for disbursement (as the result of the existence of a Default or an Event of Default) and there is no NOI available to fund accrued interest as provided in Section 3.17(b), then Borrower shall pay or cause to be paid, from Outside Sources, directly to Lender the accrued interest then due and payable to Lender.

**Section 3.18. Place of Advance.** All Advances of the Loan shall be made at Lender's office in Chicago, Illinois.

**Section 3.19. Delivery of Requests for Advances.** All Requests for Advances and all required supporting documentation shall be submitted by Borrower simultaneously with any Request for Advance made by Borrower under this Loan Agreement and must be received by Lender no less than seven (7) Business Days prior to the date of the requested Advance. Advances of the proceeds of the Loan shall be made no more frequently than once in each calendar month. In the event that Borrower has satisfied all conditions to an Advance of Loan proceeds, Lender shall make all commercially reasonable efforts to fund the Advance requested within seven (7) Business Days of receipt of the Request for Advance.

**Section 3.20. Expenses and Advances Secured by Loan Documents.** Lender may, at Lender's sole option, at any time and from time to time make Protective Advances. The execution of this Loan Agreement by Borrower constitutes an irrevocable direction to make the Protective Advances in such manner and no further authorization from Borrower shall be necessary to warrant such Protective Advances and all such Protective Advances shall satisfy pro tanto the obligations of Lender hereunder and shall be secured by the security title granted by the Mortgage as fully as if made to Borrower, regardless of the disposition of any such Protective Advance.

**Section 3.21. Other Limitations and Requirements.** The making of any Advance by Lender shall not be deemed an acceptance or approval by Lender (for the benefit of Borrower or any third party) of the work done or actions taken in regard to the Project.

**Section 3.22. Upgrades.** Borrower may perform Upgrades with respect to any Residential Hotel Condominium Unit without any prior approval from Lender provided that any such Upgrades to such Residential Hotel Condominium Unit are in an amount less than or equal to \$100,000 (the "**Upgrade Threshold**"). Any Upgrade in excess of the Upgrade Threshold shall require Lender's prior written approval not to be unreasonably withheld. Upgrade deposits of one hundred percent (100%) of the charge to a Condominium Unit purchaser for the requested Upgrades (the "**Upgrade Deposits**") shall be deposited in an account with Escrow Agent. Borrower shall assign to Lender all of Borrower's right, title and interest in and to all Upgrade Deposits pursuant to a deposit account control agreement reasonably acceptable to Lender, and Borrower shall cause Escrow Agent to acknowledge such deposit account control agreement and to act in accordance therewith. Prior to any disbursement of the Upgrade Deposits for an Upgrade costs, Lender may require documentation and inspections commensurate with Requests for Advance of Loan disbursements. Upgrade costs to Borrower shall not exceed eighty percent (80%) of the Upgrade charges to the Condominium Unit purchaser. The cost of any Upgrades shall be funded solely from Upgrade Deposits and not from any of the proceeds of the Loan.

**Section 3.23. Earnest Money Deposits.** The following provisions shall apply to all earnest money deposits made by the Contract Purchasers under all Valid Sale Contracts:

(a) All Valid Sale Contracts and all Related Party Contracts for the purchase of Residential Hotel Condominium Units in the Project shall require an earnest money deposit of not less than 20% of the Gross Sale Proceeds set forth in such Valid Sale Contract or such Related Party Contract. The earnest money payable under a Valid Sale Contract shall be paid as follows: (i) ten percent (10%) of the Gross Sale Proceeds set forth in the Valid Sale Contract or the Related Party Contract, as the case may be, to be fully paid upon the signing of such Valid Sale Contract or such Related Party Contract, as the case may be (the "**First Deposits**"), and (ii) ten percent (10%) of the Gross Sale Proceeds set forth in the Valid Sale Contract or the Related Party Contract, as the case may be, to be fully paid upon the signing of such Valid Sale Contract or such Related Party Contract, as the case may be, to be fully paid not later than sixty (60) days after the date on which the Valid Sale Contract or the Related Party Contract, as the case may be, has been fully executed (the "**Second Deposits**").

(b) The First Deposits and Second Deposits and, if payable under the applicable Valid Sale Contract or the applicable Related Party Contract, any additional earnest money deposits (not including deposits for Upgrades) shall be referred to collectively herein as the "**Escrowed Deposits.**"

(c) All Escrowed Deposits will be held by an escrow agent satisfactory to Lender who or which is qualified under Florida Laws to hold earnest money deposits in connection with the sale of condominium units to be constructed (the "**Escrow Agent**"). Lender and Borrower have agreed that Chicago Title Insurance Company will act as said Escrow Agent and that, if permitted by applicable Florida Laws, Escrow Agent will open and maintain with CORUS Bank, N.A., or a depository bank acceptable to Lender, the account in which Escrow Agent shall hold such Escrowed Deposits (the "**Earnest Money Account**"). All of Borrower's right, title and interest in such Escrowed Deposits shall be assigned to Lender as additional collateral for the Loan pursuant to the Assignment of Purchase Agreements and the Escrow Agent Control Agreement.

(d) The Escrowed Deposits shall be spent only after the closing of the Loan and after construction of the Project has begun (the "**Eligible Deposits Initial Funding Date**") and subject to §718.202 of the Florida Statutes. The Escrowed Deposits shall be used for the actual construction and development costs of the Project incurred after the Eligible Deposits Initial Funding Date, provided, however, that no part of the Escrowed Deposits shall be used for salaries, commissions or expenses of salespersons or for advertising purposes or for any other purpose not permitted by applicable Florida Laws.

(e) Except as expressly set forth in Section 3.23(f) below, no Loan proceeds shall be advanced to or for the benefit of Borrower or the Project unless and until \$14,500,000 of the Second Deposits has been invested by Borrower to pay for Qualified Project Costs (the "**Minimum Earnest Money Investment**"). Notwithstanding the foregoing, Borrower shall use all of the Second Deposits for hard costs of construction. The Loan shall be reduced dollar for dollar for all Second Deposits received by Lender in excess of the Minimum Earnest Money Investment.

(f) Borrower acknowledges that the failure to comply with the provisions of §718.202 of the Florida Statutes may result in liability to the Contract Purchaser under the Condominium Act. As a result of the foregoing, Borrower agrees that Borrower shall be required to comply strictly and in all respects with all Florida Laws applicable to a developer's use of the Escrowed Deposits, including, without limiting the generality of the foregoing, §718.202 of the Florida Statutes. Borrower further acknowledges and agrees, and hereby represents and warrants to Lender, that under applicable Florida Laws, including, without limiting the generality of the foregoing, §718.202 of the Florida Statutes, Borrower is permitted to use the Escrowed Deposits as a source of funds to pay certain costs contained in the Project Budget (the "**Qualified Project Costs**"). Borrower shall be required to expend (subject to §718.202 of the Florida Statutes and other applicable Florida Laws) the Escrowed Deposits as a source of funds to be used to pay for Qualified Project Costs and may in the event that Borrower has not incurred Qualified Project Costs in an amount sufficient to use all of the Escrowed Deposits before Borrower incurs costs set forth in the Project Budget which are not Qualified Project Cost and for which Borrower desires to make a Request for Advance of the Loan proceeds, then the amount of the Escrowed Deposits not theretofore expended on Qualified Project Costs (the "**Unspent Eligible Deposits**"), shall be held by Lender as additional collateral for the Loan to the extent of Borrower's rights therein, and such Unspent Eligible Deposits shall be advanced by Lender to Borrower as and when Borrower submits a Request for Advance to Lender to pay Qualified Project Costs. At Lender's request, Borrower shall provide with each Request for Advance of the Unspent Eligible Deposits evidence satisfactory to Lender that the costs for which such Request for Advance of the Unspent Eligible Deposits is being made are Qualified Project Costs; provided, however, that Lender shall have no liability to any Person, including Borrower or Guarantor, to monitor or otherwise verify Borrower's lawful use of the Escrowed Deposits. No Loan proceeds shall be advanced to Borrower for Qualified Project Costs if there remains any Unspent Eligible Deposits, it being understood that Unspent Eligible Deposits shall be used to fund incurred Qualified Project Costs prior to the use of any Loan proceeds for such purposes.



(g) Upon forfeit of any earnest money deposits and/or Upgrade Deposits to Borrower which Borrower is entitled to retain in accordance with applicable Law, such earnest money deposits and Upgrade Deposits shall be applied to the Obligations.

#### ARTICLE 4

#### LOAN EXPENSES AND ADVANCES; SECURITY OF MORTGAGE FOR SAME

**Section 4.1. Loan Expenses.** Borrower agrees to pay when due all reasonable expenses of the Loan (the "**Loan Expenses**"), whether incurred before or after the Closing Date, including all recording charges, title insurance charges, escrow charges, transfer taxes, if any, mortgage taxes, if any, costs of surveys, costs for certified copies of instruments, the reasonable fees and expenses of Lender's attorneys (including without limitation, its in-house counsel in accordance with the provision set forth below in this Section 4.1) and all other actual out-of-pocket costs and expenses incurred by Lender, including appraisal fees (for appraisals undertaken by or on behalf of the Lender before and after the Closing Date), environmental report fees, structural report fees, insurance consultant fees, investigators' fees, credit searches, inspection fees incurred by Lender during the renovation of the Project, and costs and expenses incurred by Lender in connection with the determination of whether Borrower has performed the obligations undertaken by Borrower under this Loan Agreement or has satisfied any conditions precedent to the obligations of Lender under this Loan Agreement. All of the foregoing expenses that are incurred in connection with the closing of the Loan and the satisfaction of all conditions precedent thereto may be hereinafter referred to collectively as the "**Closing Expenses**". All Loan Expenses and Closing Expenses shall be the Borrower's obligation regardless of whether the Loan is disbursed in whole or in part. With respect to travel expenses, commercial airfare and other related travel expenses for each officer or analyst of Lender who inspects the Project as part of Lender's due diligence will be charged to Borrower. The amount charged for the airfare will be the lesser of: (a) the actual cost incurred or (b) \$1,200 per individual. All Closing Expenses shall be paid by Borrower prior to or on the Closing Date and Lender is authorized to deduct the same from the Loan as disbursed. If the actual amount of Closing Expenses are not ascertainable as of the Closing Date, then Lender may charge the same to the 'Soft Cost Contingency' or other applicable line item of the Project Budget, and Borrower shall pay promptly upon written demand any excess monies due to Lender. For purposes of this paragraph, the term "attorneys" includes attorneys who are employees of Lender acting as counsel for Lender, and the terms "fees and expenses of Lender's attorneys" shall include, without limitation, the legal fees charged by Lender for its in-house counsel provided such fees are within the range of fees charged by attorneys of similar experience at medium to large sized law firms located in the City of Chicago, Illinois.

**Section 4.2. Time of Payment of Fees.** On the Closing Date Borrower shall pay all Closing Expenses then due and payable at the closing and, with respect to other Loan Expenses, upon and on demand at such subsequent times as Lender may determine in its sole discretion. Lender may require the payment of such fees and expenses as a condition to any Advance. Borrower hereby authorizes Lender to make an Advance to itself to pay all Loan Expenses and Closing Expenses on or after the date on which such expenses shall be due and payable.

**Section 4.3. Expenses and Advances Secured by Loan Documents.** Any and all advances, payments, amounts expended or made by Lender under this Loan Agreement from time to time for attorneys' fees (based upon services rendered at hourly rates) and expenses, if any, and all other Loan Expenses, including, without limitation, all Lender's Construction Consultant Fees, as and when advanced or incurred by Lender, shall be paid by Borrower and shall constitute additional indebtedness evidenced by the Note and secured by the Mortgage and the other Loan Documents to the same extent and effect as if the terms and provisions of this Loan Agreement were set forth therein, whether or not the aggregate of such indebtedness shall exceed the aggregate face amount of the Note.

**Section 4.4. Lender Fees.** In consideration of Lender's making the Loan to Borrower (and in addition to other amounts payable under this Loan Agreement and the other Loan Documents, including, without limitation, the Exit Fee), Borrower shall pay to Lender a fee in an aggregate amount equal to \$1,390,000 of which: (a) \$100,000 (the "**Application Fee**") was paid upon Borrower's acceptance of the Loan Application Letter (and Lender hereby acknowledges receipt thereof), (b) \$400,000 (the "**Commitment Fee**") was paid upon Borrower's acceptance of the Commitment Letter and (c) \$890,000 (the "**Closing Fee**") shall be due and payable on the Closing Date.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

**Section 5.1. Representations and Warranties of Borrower.** To induce Lender to make the Loan and perform its obligations under the Loan Documents, Borrower hereby represents and warrants to Lender as follows:

(a) Borrower has good, marketable and indefeasible fee simple title to the Real Estate, free and clear of all liens, charges and encumbrances, except for the Permitted Exceptions;

(b) Borrower is the sole owner of, and has good title to, all of the Collateral that constitutes personal property free and clear of all liens, charges and encumbrances, other than the Permitted Exceptions;

(c) Borrower is (i) a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) duly qualified as a foreign limited liability company to conduct its business in State of Florida, and (iii) has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by this Loan Agreement. The execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions as required by Borrower's Organizational Documents and by applicable Laws;

(d) This Loan Agreement, the Note, the Mortgage, the other Loan Documents and any other documents and instruments required to be executed and delivered by Borrower in connection with the Loan, when executed and delivered, will constitute the duly authorized,

valid and legally binding obligations of the party required to execute the same and will be enforceable strictly in accordance with their respective terms, subject only to bankruptcy, insolvency, moratorium, reorganization and other similar Laws affecting creditors' rights generally;

(e) The execution, delivery and performance of the Loan Documents and any other documents or instruments to be executed and delivered by Borrower pursuant to this Loan Agreement or in connection with the Loan, and the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units will not: (i) violate any Laws, or (ii) conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, mortgage, deed of trust, corporate charter or bylaws, articles of organization, operating agreement, partnership agreement, instrument, document, agreement or contract of any kind to which Borrower is a party or by which Borrower may be bound. To the best of Borrower's knowledge after diligent inquiry, Borrower is not in default (without regard to any applicable grace or cure periods) under any Contracts or other contract or agreement to which it is a party, the effect of which default will adversely affect the performance by Borrower of its obligations pursuant to and as contemplated by the terms and provisions of this Loan Agreement and the other Loan Documents and Borrower has received no notice of any default under any such Contracts or other contract or agreements.

(f) No litigation or proceedings are pending, or, to the actual knowledge of Borrower, are threatened, against Borrower or Guarantor. Without limitation of the foregoing, there are no pending or, to the actual knowledge of Borrower, threatened proceedings or actions to revoke, attack, invalidate, rescind, or modify the zoning of the Project or any part thereof, or any building or other permits heretofore issued with respect thereto, including the Permits, or asserting that such zoning or permits do not permit the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units;

(g) There are no pending civil (including actions by private parties), criminal, or administrative proceedings against Borrower or, to Borrower's knowledge, affecting the Project relating to environmental, health or safety matters ("**Environmental Proceedings**"), and no Environmental Proceedings are being threatened, nor do any facts or circumstances exist which may give rise to any future Environmental Proceedings;

(h) To the actual knowledge of Borrower and subject to the information expressly set forth in the Environmental Reports, the Project and all uses thereof existing as of the date of this Loan Agreement are in compliance with all Environmental Laws, and neither Borrower nor Guarantor has received any notice of any violation issued pursuant to any Environmental Law with respect to the Project or any use or condition thereof. To the actual knowledge of Borrower, except as specifically described in the Environmental Reports, there are no Hazardous Materials on, in, or under, or stored at the Project, and Borrower has not used, handled, generated, produced, manufactured, treated, stored, transported, released, discharged or disposed of any Hazardous Materials on, under or from the Project except in

compliance with all Environmental Laws. To the actual knowledge of Borrower, except as specifically described in the Environmental Reports, no releasing, spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping or disposing into the environment of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Material) has occurred on, beneath or from the Project or in the surface or ground water associated with the Project. All Permits, required to be held by Borrower or issued to Borrower pursuant to any Environmental Law for the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units, have been obtained or will be obtained, as and when required by Environmental Law, and are presently maintained in full force and effect, and the Project and the operations conducted by Borrower at the Project, are in compliance with such Permits. The Project is in compliance with such Permits. To the actual knowledge of Borrower, except as specifically described in the Environmental Reports, the Project is not subject to any use restrictions arising out of any Environmental Law. There are no writs, injunctions, decrees, orders or judgments against Borrower or any lawsuit, claim, proceeding, citation, directive, summons or investigation pending or, to the Borrower's actual knowledge, threatened against Borrower pursuant to any Environmental Law relating to (i) the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units, (ii) any alleged violation of any Environmental Law by Borrower or any current or former owner or tenant of any portion of the Project, or (iii) a release of any Hazardous Material under, in or from any portion of the Project. To the actual knowledge of Borrower, there are no above-ground or underground storage tanks located on the Project. There are no written reports, surveys or environmental assessments of the Project or any part thereof in the possession or control of Borrower concerning the environmental condition of the Project or the presence of Hazardous Materials on or under the Project or in the ambient air at the Project, complete copies of which have not been delivered to Lender;

(i) (i) No condemnation of any portion of the Project, or relocation or condemnation of any roadways abutting the Project has commenced or is, to Borrower's knowledge, threatened by any Governmental Authority, and (ii) no denial of access to the Project from any point of access to the Project, has commenced or, to the best of Borrower's knowledge, is contemplated by any Governmental Authority;

(j) To Borrower's knowledge, the survey of the Real Estate, dated December 14, 2005, last revised and certified on July 28, 2006 and prepared by Pillar Consultants, Inc. (the "Survey"), is true, accurate and complete in all material respects as of the date hereof, including with respect to: (i) the outline of the Land, and the outline of all buildings, structures and other improvements thereon, if any, and all paving, driveways and fences, if any, in place, (ii) the square footage of the Land, (iii) the existence of all buildings, improvements, foundations and other structures on the Land, if any, (iv) encroachments by improvements located on adjoining property onto the Land or of buildings, improvements, foundations or other structures on the Land, if any, onto adjoining property, (v) means of ingress and egress to and from the Land, (vi) the flood area designation of the Real Estate shown on the official maps of the Secretary of Housing and Urban Development, (vii) the

identification of any portion of the Real Estate which lies within a federally designated wetlands protection area as determined by the maps of the Army Corps of Engineers, (viii) the identification, location, size and use of all easements affecting the Real Estate, and (ix) all other matters shown, indicated or noted thereon;

(k) All financial statements, reports or other financial information of any kind or description of Borrower and Guarantor, as the case may be, heretofore and hereafter delivered to Lender are true and correct in all material respects, have been prepared in accordance with sound accounting principles consistently applied, and fairly present the representative financial conditions of the subject thereof as of the respective dates thereof. To Borrower's knowledge, there has been no Material Adverse Effect since the financial statements delivered to Lender were prepared, and no additional borrowings have been made by Borrower or Guarantor since the date thereof other than the borrowing contemplated under this Loan Agreement, the Subordinate Loan or otherwise expressly approved in writing by Lender;

(l) No information, certification, report or financial information submitted to Lender by or on behalf of Borrower or Guarantor pursuant to this Loan Agreement or otherwise in connection with the Loan or Borrower's request or application therefor contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the information not misleading in any material respect;

(m) The Project does not now, and following Completion will not, violate (i) to Borrower's knowledge, any existing Laws applicable thereto, including, without limitation, the ADA, in any material respect, (ii) any of the Permits, including any building or occupancy permits, any restrictions or conditions of record, or any of the Contracts, or (iii) to the actual knowledge of Borrower, the requirements of each and every insurer covering any of the risks against which the Project is or is to be insured pursuant to Article 8 hereof. Neither the zoning, nor any other right to own, construct, use, occupy, operate and maintain the Project, to establish the Project as a condominium hotel regime or to market and sell the Condominium Units is to any extent dependent upon or related to any real estate other than the Real Estate. Without limiting the generality of the foregoing, all consents, licenses, certificates and permits and all other authorizations or approvals, including without limitation, temporary and/or permanent certificate(s) of occupancy, and also, including the requirements of each and every insurer covering any of the risks against which the Project is to be insured pursuant to Article 8 hereof (collectively, "**Governmental Approvals**") required to perform and achieve Completion of the Project in accordance with the Plans, and to own, construct, use, occupy, operate and maintain the Project, to convert the Project to a condominium regime and to market and sell the Condominium Units, have been, or will timely be, obtained (as the case may be); and all Laws relating to the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium hotel regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units have been, or will timely be, complied with (as the case may be);

(n) All utility services necessary for the Completion of the Project, to construct, use, occupy, operate and maintain the Project, to convert the Project to a condominium

regime and to market and sell the Condominium Units are presently available to the Land through dedicated public rights-of-way or through perpetual private easements with respect to which the Loan Documents create a valid, binding and enforceable first lien or first security title. To Borrower's knowledge, no such utility services are subject to any moratorium, or would, to the best of Borrower's knowledge, be subject to any presently threatened moratorium, imposed by any Governmental Authority having jurisdiction;

(o) The rights-of-way for all roads necessary for the full utilization of the Project for its intended purposes as required by this Loan Agreement, the other Loan Documents or any covenant, condition, restriction, easement or other matter affecting Borrower or the Land have been (or upon Completion of the Project, will be) dedicated to public use and accepted by the appropriate Governmental Authority, or are covered by private easements. All curb cuts and traffic signals which are shown on the Plans (or are necessary although not so shown) are (or upon Completion of the Project, will be) existing and operating or permits therefor have been obtained;

(p) No brokerage commission or similar compensation is due to any Person in connection with: (i) Borrower's acquisition of the Land, or (ii) the loan transaction contemplated by this Loan Agreement other than the brokerage fee in the amount of \$250,000 as shown on the Project Budget, which Borrower shall pay in full on the Closing Date. Borrower shall indemnify Lender from any liability, claims or losses, including attorneys' fees (based upon services rendered at hourly rates) incurred by Lender and arising by reason of any claim for such brokerage commissions. The foregoing indemnification provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists;

(q) The Land as developed, constructed and equipped in accordance with the Plans, will not, encroach upon any building line, setback line, side yard line, or any recorded or visible easement (or other easement of which Borrower has knowledge of with respect to the applicable Land);

(r) The Improvements and the site conditions are such that Laws relating to the filling, dredging, excavation or other usage of lands classified as wetlands or lands which are subject to periodic flooding or have thereon standing or moving bodies of water are not applicable to the Project or the use thereof as a condominium hotel. The Project is located in Flood Zones designated as AO and X;

(s) The Plans have not been amended without Lender's express written consent to the extent such consent is required hereunder or otherwise in accordance with the terms and provisions of this Loan Agreement, except to the extent that any changes to the Plans are permitted by the provisions of Section 10.3 hereof;

(t) The Real Estate is taxed separately without regard to any other property and, for all purposes, may be mortgaged, conveyed and otherwise dealt with as an independent parcel;

(u) The Loan is not being made for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation T, U or X issued by the Board of Governors of the Federal Reserve System, as at any time amended, and the Borrower agrees to execute all instruments necessary to comply with all the requirements of Regulation U of the Federal Reserve System, as at any time amended;

(v) Borrower does not have a defined benefit pension plan under the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder from time to time;

(w) Except as described on Exhibit L, there are no union contracts, labor agreements or employment agreements relating to any employees of Borrower currently working at the Project;

(x) To Borrower's knowledge, no Default or Event of Default by Borrower exists under this Loan Agreement or any of the other Loan Documents, and no event has occurred and is continuing which with notice or the passage of time or both would constitute a Default or Event of Default under any of the Loan Documents;

(y) Borrower and Guarantor each has filed or caused to be filed all federal, state and local tax returns required to be filed by it, has remitted all trust fund taxes, and has paid all taxes shown to be due and payable by it on said returns or on any assessments made against it or the Project, except those which are being contested in good faith by appropriate proceedings and for which reasonable reserves as may be required by sound accounting principles consistently applied are being maintained on its books;

(z) After giving effect to the execution and delivery of the Loan Documents and the making of any Advance, Borrower will not be "insolvent," within the meaning of such term as defined in Section 101 of Bankruptcy Code, or be unable to pay its debts generally as such debts become due, or have an unreasonably small capitalization;

(aa) Neither Borrower nor Guarantor has received any notice from any insurance company of any defects or inadequacies in the Project that would adversely affect the insurability of the Project or materially increase the cost of insuring the Project beyond that which is customarily charged for similar property in the vicinity of the Project used for a similar purposes;

(bb) Borrower has operated the Project as a condominium hotel under the name of "Trump International Hotel & Tower Fort Lauderdale" and Borrower has not conducted or otherwise done business with respect to the Project under any other trade name;

(cc) Borrower's principal place of business and chief executive office is as stated in the preamble and Section 16.3 hereof;

(dd) Borrower is not a "foreign person" within the meaning of Sections 1445 or 7701 of the Internal Revenue Code;

(ee) Borrower has furnished to Lender true, correct and complete copies of all documents, instruments and other papers constituting the entire organizational documents of Borrower and any and all amendments thereto, including, without limitation, Borrower's articles of organization, limited liability company agreement and/or operating agreement, as the case may be (the "**Organizational Documents**"), and such Organizational Documents are in full force and effect and have not been modified, amended or terminated (except as otherwise expressly permitted under this Loan Agreement or as otherwise approved in writing by Lender) and there exists no violation of the Organizational Documents, or circumstances which given notice or the passage of time or both would constitute a violation of the Organizational Documents;

(ff) Except as described in Exhibit D, there are no Leases or other use, occupancy or concession agreements with respect to the Project or any part thereof;

(gg) Exhibit E contains a true, complete and accurate list of all Contracts (other than the General Contract) which have been entered into by Borrower on or before the date hereof, including all amendments, modifications and supplements thereto, and, (i) Borrower has not received notice of any defaults by Borrower thereunder or by any other party thereto, nor, to Borrower's knowledge, do any circumstances exist which, with the passage of time or the giving of notice or both, would constitute a default thereunder by either Borrower or, to Borrower's knowledge, any other party thereto, (ii) there have been no amendments, supplements, modifications or other changes thereto except as described on such Exhibit E or otherwise as approved by Lender to the extent such approval is required hereunder; (iii) except as set forth on Exhibit E, no other contract, agreement or arrangements of any kind exist with respect to the ownership, use, occupancy, operation, maintenance, repair or servicing of the Project or any part thereof, and (iv) except as specifically set forth on Exhibit E, all of the Contracts may be terminated on no more than ninety (90) days' notice without termination penalty or other cost;

(hh) Exhibit F contains a true, complete and accurate list of all Permits obtained as of the date hereof, including all amendments, modifications and supplements thereto, and (i) the Permits are in full force and effect, (ii) there have been no amendments, supplements, modifications or other changes thereto except as described on such Exhibit F and except as renewed in the future, (iii) Borrower has not received any notice of a revocation, termination or violation of any License or Permit and (iv) except as set forth in Exhibit E, all of the Permits are assignable and transferable;

(ii) Borrower is a single-purpose entity whose sole asset is the Project and whose sole business and purpose is to own, construct, use, occupy, operate and maintain the Project, to establish the Project as a condominium hotel and to market and sell the Condominium Units, as more fully set forth in the Organizational Documents;

(jj) The proceeds of Loan will be used only for the purposes described and approved in this Loan Agreement;

(kk) Except as specifically described on Exhibit M attached hereto (the "**Affiliate Debt**"), Borrower is not indebted to any Affiliate, nor has Borrower assumed or guaranteed



any indebtedness of any Affiliate. As of the Closing Date, and throughout the Loan Term, all Affiliate Debt shall be subject and subordinate in all respects to the Loan and the Obligations, and Borrower hereby covenants and agrees to cause each holder of Affiliate Debt to execute and deliver to Lender at the closing a subordination agreement in scope, form, substance and legal sufficiency satisfactory to Lender;

(ll) Guarantor has not and will not establish a trust or other estate planning vehicle in which its assets are held;

(mm) The Design Professionals are not and will not be Related Parties prior to or during the Loan Term;

(nn) The General Contractor is not and will not be a Related Party prior to or during the Loan Term;

(oo) No amounts set forth in the Project Budget are payable to Borrower or any other Related Party except as expressly stated in this Loan Agreement;

(pp) Borrower further warrants that except as set forth in Exhibit P, neither Borrower, nor to the actual knowledge of Borrower any Member nor Guarantor, nor any other direct or indirect equity owner of Borrower, or any Member: (i) has ever been the subject of any criminal proceedings, other than minor traffic violations, (ii) has ever been the owner, whether directly or indirectly, of a parcel which was the subject of foreclosure proceedings (whether judicial or non judicial), (iii) has ever been a party directly or indirectly, to a deed in lieu of foreclosure, and (iv) is currently a party to any pending litigation or administrative proceedings, or subject to any judicial or non judicial orders or consent agreements;

(qq) Neither Borrower, nor any Member, nor Guarantor is a Person with whom Lender is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not engaged in any dealings or transactions with such Persons;

(rr) Neither Borrower nor Guarantor has made any improper disclosures or representations to any Person, including any Contract Purchaser, regarding (i) such Person's ability to establish a permanent residence at such Condominium Unit or qualify such Condominium Unit as a principal residence for homestead exemption purposes or (ii) future appreciation, future profit, tax advantages, investment potential or any other financial advance associated with the purchase of a Condominium Unit; and

(ss) Borrower has delivered to Lender prior to the Closing Date true, correct and complete copy of the License Agreement, as amended, and no side letters, amendments or oral agreements exist with respect to the License Agreement. Borrower has not received any notices of default under the License Agreement and Borrower is not aware of any default by

Borrower or event which with notice or the passage of time or both would constitute a default by Borrower under the License Agreement.

(tt) Borrower has delivered to Lender prior to the Closing Date true, correct and complete copies of all contracts, agreements, side letters, etc. between Borrower, Guarantor or any Member of Borrower and any Trump Party (the "Trump Agreements").

**Section 5.2. Effect of Request for Advance.** Each Request for Advance shall constitute an affirmation that Borrower's representations and warranties set forth in this Article 5 and elsewhere in this Loan Agreement remain true and correct as of the date thereof in all material respects unless otherwise specified in detail in such Request for Advance, and, unless Lender is notified in writing (with specificity) to the contrary prior to the disbursement of the requested Advance or any portion thereof, shall constitute an affirmation that the same remain true and correct in all material respects on the date of such disbursement.

## ARTICLE 6

### CONDITIONS PRECEDENT TO CLOSING AND PRE-CONSTRUCTION CONDITIONS ADVANCES

**Section 6.1. Conditions Precedent to Closing and Pre-Construction Conditions Advances.** Borrower agrees that Borrower will perform and satisfy all of the following conditions precedent, and Borrower agrees that Lender's obligation to close the Loan is conditioned upon Borrower's performance or satisfaction of all these conditions precedent:

(a) No Event of Default shall have occurred and be existing under this Loan Agreement (including, without limitation, with respect to the representations and warranties contained herein) or any of the Loan Documents, and Borrower shall have timely complied with and performed all of Borrower's covenants, agreements and obligations under this Loan Agreement which by their terms are required to have been complied with and performed by Borrower;

(b) Borrower shall have furnished to Lender the following, all in form and substance reasonably satisfactory to Lender:

(i) a paid Loan Title Insurance Policy (ALTA Form B-1992) in the face amount of the Loan issued by the Title Insurer (the "**Title Policy**"), establishing that the Title Insurer insures the security title granted by the Mortgage to be a prior and paramount grant of security title of Borrower's fee simple interest in the Real Estate, subject only to the Permitted Exceptions. The Title Policy shall contain (A) an ALTA 9 endorsement (or if same is not available in Florida, the Florida equivalent), (B) a survey endorsement specifically insuring Lender that the Survey described in Section 6.1(b)(ii) below is accurate and accurately depicts the same Real Estate covered by the Title Policy and (C) any other endorsements Lender may reasonably require. Such policy shall provide extended coverage over (1) standard exceptions, (2) matters which would be shown by an inspection or an accurate survey of the Project, (3) rights of parties in possession, (4) easements not of record, and (5) real

estate taxes and assessments, both general and special, other than unpaid but not yet due installments of real estate taxes and assessments;

(ii) a plat of survey of the Project, made by a Florida registered or certified land surveyor satisfactory to the Lender, in triplicate, showing the outline of the Land, all other structures and improvements thereon, if any, and all paving, driveways and fences, if any, in place. Said survey shall be currently dated (or redated) and shall contain a proper certificate by the surveyor, which certificate shall include the legal description of the Land and shall be made in favor of Borrower, Title Insurer and Lender. The survey shall be made according to the current "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by the American Land Title Association and the National Society of Professional Surveyors and shall meet the accuracy requirements for an Urban Survey and shall also show (A) the legal description and square footage of the Land, (B) dimensions and locations of all buildings, structures and other improvements thereon, if any, and all paving, driveways and fences, if any, in place, (C) locations of all visible or recorded easements (and recording numbers, to the extent recorded), setback lines, rights of way, water courses, drains, sewers, utility lines, public and private roads (including the names and widths thereof and recording numbers for the dedications thereof), (D) if the Project comprises more than one parcel, interior lines and other data sufficient to insure contiguity; (E) encroachments by improvements located on adjoining property onto the Land or of buildings, improvements, foundations or other structures on the Land, if any, onto adjoining property, (F) means of ingress and egress to and from the Land, (G) the flood area designation of the Real Estate shown on the official maps of the Secretary of Housing and Urban Development, (H) the identification of any portion of the Real Estate which lies within a federally designated wetlands protection area as determined by the maps of the Army Corps of Engineers, and (I) and such additional information as may be required by Lender or the Title Insurer in order to permit Title Insurer to issue the Title Policy without any standard or general exception for survey matters;

(iii) all policies of insurance required by Lender in accordance with Section 8.1 of this Loan Agreement or certified copies or binders thereof or certificates thereof satisfactory to Lender in its reasonable judgment, together with all required endorsements and proof that the premiums therefor have been paid;

(iv) letters from appropriate utility companies or governmental agencies or other evidence satisfactory to Lender that the Project will have adequate water, gas and electrical supply, storm and sanitary sewerage facilities, any other required public utilities, fire and police protection and means of access between the Project and public rights-of-way. Borrower also shall have furnished to Lender evidence satisfactory to Lender that no such supplies or facilities will be delayed or impeded by virtue of any requirements under any Laws, that all such facilities comply with any and all applicable Laws, ordinance, regulations, restrictive covenants and requirements of Governmental Authorities (including, without limitation, zoning Laws and environmental regulations) and that in the event of any damage or destruction of all or a portion of the Project caused by fire or other casualty, such

Laws will permit the restoration or repair of and that the source of supply for each of the foregoing utilities is from the public right of way adjacent to the Project. If any of such facilities are located on land beyond the Project, other than land which has been dedicated to the public or to the utility which is to furnish the service, Borrower shall have forwarded to Lender evidence satisfactory to Lender of the existence of permanent easement rights therefor benefiting the Project which easement rights shall be covered by the security title granted by the Mortgage and which easement shall be insured under the Title Policy;

(v) Borrower has provided Lender with all organizational documents reasonably required by Lender, including, without limitation, and as applicable, an organizational chart, Borrower's articles of organization, certificate(s) of good standing from both its State of organization and the State of Florida, Borrower's operating agreement and all other similar documents or agreements governing Borrower's management and the rights, duties and privileges of its equity owners;

(vi) One or more legal opinions of independent counsel to Borrower and the Guarantor (including a legal opinion issued by zoning counsel), dated as of the Closing Date, containing such opinions as Lender shall reasonably request, and otherwise acceptable to Lender, and containing only such qualifications and assumptions as Lender and its counsel may reasonably approve;

(vii) a certified copy of Borrower's Organizational Documents, together with evidence satisfactory to Lender that Borrower has qualified to conduct its business in the State of Florida;

(viii) evidence reasonably satisfactory to Lender that the persons executing this Loan Agreement and the other Loan Documents on behalf of Borrower, have been duly authorized by all appropriate action to execute and deliver this Loan Agreement and the Loan Documents on behalf of the Borrower;

(ix) evidence reasonably satisfactory to Lender that the Project is benefited by such easements or other rights as may be necessary for the vehicular and pedestrian ingress and egress, the installation and maintenance of utilities, parking and other site improvements, and the operation of the Project;

(x) evidence reasonably satisfactory to Lender that the Project is in compliance with all applicable Laws;

(xi) current searches (which will be updated from time to time, but no more frequently than annually unless Borrower shall be in Default hereunder, at Borrower's expense upon the request of Lender) of all Uniform Commercial Code financing statements filed with the: (A) Secretary of State of the state of formation or organization of Borrower or Guarantor, as the case may be, (B) the Secretary of State of the State of Florida, and (C) the Public Records of Broward County, Florida, against Borrower and Guarantor, as debtor, showing that no Uniform Commercial Code financing statements are filed or recorded against Borrower or Guarantor in

which the collateral is described as any or all of the Collateral, except for subordinate financing statements in favor of the Subordinate Lender;

(xii) true, correct and complete copies of all Leases, if any;

(xiii) judgment and state and federal tax lien search reports on Borrower and Guarantor;

(xiv) current financial statements of Borrower and Guarantor reflecting no material adverse change in their respective financial conditions;

(xv) the standard form of Valid Sale Contract approved in writing by Lender;

(xvi) the Minimum Price List in writing approved by Lender in its sole discretion;

(xvii) two (2) photocopies of all Permits and all other Governmental Approvals required to construct all of the Improvements, together with written evidence satisfactory to Lender in its sole discretion that Borrower has obtained all discretionary Governmental Approvals which are necessary in order to permit Borrower to sell the Condominium Units as condominiums under applicable Laws;

(xviii) a true, correct and complete copy of the Notice of Commencement;

(xix) all documents and other assurances required by Lender to evidence and secure the Loan and otherwise required in connection with the Loan pursuant to this Loan Agreement;

(c) Borrower shall have taken all action and done all things which may be necessary (as reasonably determined by Lender and its counsel) to ensure that the Loan, the security title granted by the Mortgage and the security interests and liens created by the other Loan Documents, are, as of the Closing Date, senior and superior in all respects to the rights and claims (including without limitation any lien rights or claims) of any General Contractor, Subcontractor, materialman, supplier or other person or entity who has performed or supplied, is performing or supplying, or will perform or supply in the future any work or materials on or with respect to the Project;

(d) The Project shall not have suffered any casualty or be subject to any existing or threatened condemnation or taking by eminent domain proceedings or otherwise;

(e) There shall be no pending or threatened litigation against the Borrower or Guarantor or the Project;

(f) There shall have been full compliance by Borrower with all of the terms and conditions of the Commitment Letter;

(g) Borrower shall have furnished to Lender evidence reasonably satisfactory to Lender that the Project is in compliance with all Environmental Laws, and that there are no conditions existing currently or likely to exist during the Loan Term that require or are likely to require clean-up, removal or other remedial action pursuant to any of the Environmental Laws;

(h) Borrower shall have filed with HUD a Statement of Record which has been accepted by HUD and reviewed and approved by Lender;

(i) Borrower shall have complied with the requirements of the Florida State Division of Mobile Homes, Land Sales and Condominiums and provided evidence satisfactory to Lender of such compliance;

(j) Lender shall have received a zoning report from Zoning Information Services, Inc., which zoning report evidences that the Land is zoned to permit the construction and development of the Project;

(k) Lender has received a true, correct and complete copy of the Hotel Management Agreement and all amendments and modifications thereto, and Lender has approved the Hotel Management Agreement in Lender's reasonable discretion.

(l) Lender has received a true, correct and complete copy of the License Agreement and all amendments and modifications thereto, and Lender has approved of such License Agreement in Lender's sole discretion.

## ARTICLE 7

### CONSTRUCTION; CONSTRUCTION BUDGET; ADDITIONAL ADVANCES

**Section 7.1. Conditions Precedent to First Advance of Loan Proceeds.** Not later than seven (7) Business Days prior to the First Disbursement Date, Borrower shall cause each of the following conditions to have been satisfied:

(a) The Plans, including, without limitation, the detailed Finish Standards, for the development, construction, equipping and Completion of the Project shall have been completed and approved in writing by Lender in Lender's sole discretion, and duplicate complete copies thereof shall have been delivered to Lender;

(b) A written certificate executed by the Architect stating, among other things, that the Plans conform with applicable Laws, and otherwise in form and substance satisfactory to Lender in its reasonable discretion;

(c) Evidence that no amendments and/or modifications have been made to the Project Budget and that no amounts set forth in the Project Budget are payable to any Related Party, any Trump Party or to Subordinate Lender, with the exception of: (a) the \$2,000,000 Developer Fee line item, which line item shall be payable to an Affiliate of Guarantor at a rate of \$69,000 per month until paid in full; (b) the \$250,000 Motwani Fees line item, which line item shall be payable to an Affiliate of Borrower on terms and conditions negotiated between

Borrower and Motwani; (c) the \$1,250,000 Trump Fee line item; (d) the \$527,500 CBRE Fee line item; and (e) the \$404,000 CBRE Closing Fee line item.

(d) The Construction Schedule for the development, construction, equipping and Completion of the Project shall have been completed and approved by Lender in Lender's reasonable discretion;

(e) Lender shall have approved the General Contractor in Lender's sole discretion after reviewing such information regarding such General Contractor as Lender shall determine, including, without limitation, the General Contractor's experience, financial strength and personnel assigned to work on the Project;

(f) Borrower shall have delivered to Lender complete copies of the following documents, each in a form approved by Lender in its reasonable discretion: (i) each contract with a Design Professional, including, the Architect's Contract; (ii) all other then existing Construction Documents, if any; and (iii) all then existing Subcontracts, if any;

(g) Borrower shall have delivered to Lender a collateral assignment of each of the Construction Documents to which Borrower is a party related to the development, construction and equipping of the Project which were not included in the collateral assignment delivered to Lender on the Closing Date, in the form of the collateral assignment delivered on the Closing Date, together with all consents thereto by the counterparty, if any, to such Construction Documents;

(h) Borrower shall have delivered to Lender a statement from Borrower setting forth a description of all contracts let by Borrower;

(i) Borrower shall have delivered to Lender initial sworn statements of Borrower and if applicable, the General Contractor and Major Subcontractors to whom payments have already been made, in form reasonably satisfactory to Lender, and approved by Borrower and Architect, covering all work done and to be done, together with waivers of lien and subordinations of lien covering all work and materials for which payments have been made by Borrower prior to the first Advance of Loan proceeds;

(j) Borrower or the General Contractor shall have obtained Builder's Risk Insurance covering the development, construction and equipping of the Project through the Completion as required by the provisions of Section 8.1 and shall have delivered a certificate of such insurance to Lender;

(k) Borrower shall have furnished to Lender evidence reasonably satisfactory to Lender that the General Contractor and each Major Subcontractor performing any work on the Project maintains adequate workmen's compensation insurance, employer's liability insurance and comprehensive liability insurance (including contractual liability), and that each policy for the same shall name Lender as an additional insured, with the insurance limits set forth in Exhibit N hereunder;

(l) Lender has received and approved in its sole discretion the form of Rental Agreement, and has received evidence satisfactory to Lender that Trump has approved of the form of Rental Agreement;

(m) Lender has received and approved in its sole discretion the form of Hotel Management Agreement and has received the fully executed Assignment and Subordination of Management Agreement;

(n) Lender has received evidence satisfactory to Lender that Borrower has contributed the Minimum Equity Investment set forth in Section 3.2;

(o) Lender has received evidence satisfactory to Lender that the original principal amount of the Subordinate Loan (not less than \$37,000,000) has been fully advanced to fund Project Costs set forth in the Project Budget;

(p) No occurrence, event or circumstance resulting from the acts of Borrower shall have occurred which may adversely affect the construction of the Project, the establishment of the condominium hotel regime or the marketing and sale of the Condominium Units;

(q) The Project shall not have been injured or damaged by fire or other casualty;

(r) There shall be no condemnation or eminent domain proceedings pending or for which Borrower has received notice;

(s) No Event of Default shall have occurred and be continuing hereunder;

(t) Lender shall have received evidence reasonably satisfactory to Lender that there is no pending or threatened litigation against Borrower or Guarantor (except as otherwise expressly disclosed on Exhibit P), or involving or in respect of the Project;

(u) Neither Borrower nor Lender shall have received notice that the Project is not in compliance with all applicable Laws, including without limitation, all Environmental Laws;

(v) Lender shall have received evidence satisfactory to Lender that Borrower has contributed the Minimum Earnest Money Investment;

(w) Borrower has satisfied the Presale Requirement;

(x) Borrower has satisfied the GMP Requirement; and

(y) The General Contractor has provided to Lender a performance bond and a labor and material payment bond (collectively the "**Bonds**") in an amount equal to 100% of the total sum of the General Contract. Lender shall be named a dual/multiple obligee on all Bonds. The Bonds must be issued by bonding companies who are licensed in the State of Florida and who are rated in the latest A.M. Best rating guide as A:IX or better. The Bonds must be written within the limitations of the most current U.S. Department of Treasury's listing of Approved



Sureties (Department Circular #570). In addition to the foregoing, General Contractor shall obtain "Subguard" insurance with terms, limits and endorsements (including a Final Interest Endorsement) acceptable to Lender in its sole and absolute discretion.

**Section 7.2. Intentionally Omitted.**

**Section 7.3. Documents to Be Furnished for Each Request for Advances.** (a) It shall be a condition precedent to each Advance that Borrower shall furnish or cause to be furnished to Lender in sufficient time for review by Lender (but in no event less than seven (7) Business Days prior to such Advance), such documentation as Lender shall request in Lender's reasonable discretion (in the forms requested by Lender and examples of which are attached hereto as Exhibit O), including, without limitation:

(a) a written certificate of any pending or threatened litigation known to the each of the Borrower, or its counsel, against Borrower, Guarantor or the Project.

(b) a sworn owner's statement detailing the names and addresses of all suppliers, vendors, consultants and Contractors with whom Borrower has contracted, amounts of Construction Contracts, amounts paid to date, and amounts of current payment and balances due, broken down in a consistent manner with the Project Budget;

(c) a contractor's statement from each Contractor detailing the names and addresses of all suppliers, subcontractors and its own forces contracted to perform work including amounts of contracts, amounts paid to date, Change Orders, Modifications, amounts of current payment, retainage, and balances due;

(d) lien waivers from the Design Professionals, consultants, vendors, contractors, subcontractors and material suppliers substantiating each line item of the draw request (or at Lender's reasonable discretion, conditional lien waivers for the current draw to be followed by final lien waivers no later than the subsequent draw request);

(e) each Contractor's application and certification for payment executed by Borrower's Architect;

(f) proposed Modifications for the Project, in accordance with Section 7.7;

(g) All documentation as may be required by the Title Insurer and which may be necessary to enable the Title Insurer to issue, dated the date of such disbursement, a so-called construction loan "date-down" endorsement and a title continuation report covering the requested disbursement satisfying the requirements set forth in Section 7.4(c) hereof;

(h) If any material dispute arises between or among Borrower, the General Contractor, or any other Contractor, Subcontractor and/or material supplier, or if any extra or Change Order is being negotiated by Borrower, a written summary of the nature of such dispute, or the status of such negotiations, as the case may be; and

(i) With respect to the Request for Advance immediately following completion of the foundation footprint of the Improvements, an updated survey showing the location of the Improvements' foundation thereon.

**Section 7.4. Conditions to Disbursements of Each Advance.** Borrower shall be entitled to receive further successive additional Advances of the proceeds of the Loan in accordance with provisions of this Article 7 of this Loan Agreement within seven (7) Business Days after each successive compliance with all applicable conditions precedent thereto, but Advances of the Loan under this Loan Agreement shall be made only on a Business Day and provided that at the time of and prior to each such disbursement:

(a) no Default or Event of Default shall have occurred and be continuing hereunder or under any of the other Loan Documents;

(b) the Loan is "in balance" as provided in Section 7.13 of this Loan Agreement;

(c) Borrower shall have furnished or caused to be furnished to Lender a construction loan "date-down" endorsement to the Title Policy issued to Lender covering the date of disbursement (with mechanics lien coverage if such coverage is given by the issuers of title insurance under applicable Laws) and showing the Mortgage as a first, prior and paramount grant of security title to the Project subject only to the Permitted Exceptions;

(d) The Project shall not have been injured or damaged by fire or other casualty;

(e) There shall be no condemnation or eminent domain proceedings pending against the Project or for which Borrower has received notice;

(f) No occurrence, event or circumstance resulting from the acts of Borrower shall have occurred which may adversely affect the construction of the Project, the establishment of the condominium hotel regime or the marketing and sale of the Condominium Units;

(g) No additional borrowings have been made by Borrower other than the borrowing contemplated hereby or otherwise expressly approved in writing by Lender; and

(h) The warranties, representations and covenants of Borrower in the Loan Documents shall be true and correct in all material respects on and as of the date of the Advance with the same effect as if made on such date.

**Section 7.5. Lender's Verification of Subcontracts.** From time to time during the period of the development, construction and equipping of the Project, Lender may forward to the General Contractor, all Subcontractors, material suppliers, Design Professionals, engineers and other parties listed on the sworn statement, a contract verification to ascertain the correctness of the amount of the contract for the General Contractor, and each Subcontractor, material supplier, Design Professional, engineer and any other party as contained on the statement. In the event of any discrepancy between the amounts as shown by the executed copies of the contracts, the sworn statement, and the verification of contract forms, Lender shall have the right to require that such discrepancies be eliminated to Lender's satisfaction.

**Section 7.6. Intentionally Omitted.**

**Section 7.7. Limitation of Disbursements by Category; Modifications; Reallocations.**

Notwithstanding the terms set forth in Borrower's Request for Advance, Lender shall not be obligated to disburse any amount for any category of costs set forth as a line item of the Project Budget which is greater than the amount set forth for such category in the applicable line item of the Project Budget (as any such line item may be increased or decreased in accordance with the reallocation provisions set forth below). No Modifications shall be made without Lender's express written consent except to the extent such consent is not required by the provisions of this Section 7.7. In addition, there shall be no reallocations between line items (all references to line items shall refer to the line items which are contained in the Project Budget) except in accordance with the following provisions:

**(a) General Contract**

(i) Under no circumstances shall Borrower agree to Modifications which materially diminish the quality, functionality, or marketability of the Project as described in the Plans, or which in the aggregate cause the Loan to fail to be "In Balance" after the reallocation of any available Owner's Hard Cost Contingency or line item savings (based on executed contracts). As used herein, the term "Modification" is (1) a written amendment to any Construction Contract (including, without limitation, the General Contract) signed by both parties to such Construction Contract, (2) a Change Order, (3) a Construction Change Directive (as that term is defined in the AIA A201-1997 "General Conditions of the Contract for Construction") or (4) a written order for a minor change in the Work (as that term is defined in the AIA A201-1997 "General Conditions of the Contract for Construction") issued by the Architect."

(ii) Subject to the preceding paragraph, Borrower may approve Modifications or execute Subcontracts which cause the aggregate total of all line item changes resulting from any single Modification in the General Contract to be increased or decreased by an amount equal to or less than \$500,000 without Lender's prior written consent. Lender shall be advised of Borrower's approval of such Modifications no later than the immediately succeeding Request for Advance following Borrower's agreement to the applicable Modification.

(iii) Pending Modifications or Subcontracts which cause the aggregate total of all line item changes resulting from any single Modification in the General Contract to be increased or decreased more than \$1,000,000 shall not be approved by the Borrower without Lender's prior written consent, and such consent is not to be unreasonably withheld provided the Loan is In Balance.

(iv) Borrower shall promptly notify Lender of any anticipated changes in the General Contract or the Project Budget, which if approved, would result in a net increase in the total amount of the Project Budget. Any agreement which causes a net increase in the Project Budget shall require Lender's prior written consent. Final savings in hard cost line items of the Project Budget, which accrue prior to

Completion of the Project may be allocated to the Owner's Hard Cost Contingency, except to the extent a portion of such savings are paid to the General Contractor pursuant to the terms of the General Contract.

(b) The term "**Owner's Hard Cost Contingency**" shall mean the line item identified as the "Owner's Hard Cost Contingency" in the Project Budget. The Owner's Hard Cost Contingency may be used on a prorata basis according to the percentage of construction trade items (which shall equal the amount of the General Contract less general conditions, the Contractor's fee and any contingency contained in the Construction Contract) completed. The Owner's Hard Cost Contingency shall not include any contingency which is part of the General Contract.

(c) Soft Costs/Interest Reserve in the Project Budget:

(i) There shall be no reallocations from the Interest Reserve line item or to the Developer Fee line item as shown in the Project Budget. Reallocations to the Interest Reserve line item in amount up to \$2,000,000 will be allowed, but only if there are final documented dollar for dollar savings in other hard or soft cost line items as determined by Lender in its reasonable discretion.

(ii) If the total and final expenditures for any soft cost line item are less than the amount in the Project Budget, then such savings may be reallocated to the line item labeled as the "**Soft Cost Contingency**" in the Project Budget (the "**Soft Cost Contingency**").

(iii) The Soft Cost Contingency may be reallocated to pay other Soft Costs with Lender's prior written approval determined in Lender's reasonable discretion.

**Section 7.8. Retainages.** At the time of each Advance of the Loan for hard cost line items as set forth in the Project Budget (including the Contractor's fee line items but not including the Contractor's general conditions, insurance and bond costs), retainage in the amount of ten (10%) of the amount of the Borrower's Request for Advance shall be withheld from each disbursement of the Loan proceeds for such hard cost line items until all of the work covered by a hard cost line item is greater than fifty percent (50%) complete. Upon proof that all work covered by a Project Budget hard cost line item is one hundred percent (100%) completed as certified by the Architect and as confirmed by Lender, the retainage applicable to such completed Project Budget hard cost line item shall be fully disbursed. (For example, if a line item is for \$100,000 and Borrower submits ten acceptable \$10,000 draw requests pertaining to said line item, Lender shall disburse \$9,000 for each of the first five requests, and \$10,000 for the last five requests.) Any Contractor's fee specified in a Construction Contract shall be disbursed on a pro-rata basis according to the percentage of construction trade items (excluding general conditions, Contractor's fees and the Contractor's contingency) completed.

**Section 7.9. Payments Directly to Contractors and Subcontractors.** If an Event of Default exists, Lender, in its sole discretion, through an Advance of Loan proceeds, may make payments due for the cost of the development, construction and equipping of the Project directly to any Contractor or Subcontractor.

**Section 7.10. Lender's Right to Employ Lender's Construction Consultant.** Lender shall have the right to employ Lender's Construction Consultant to review the Plans and the Project Budget, to assure that the development, construction and equipping of the Project in accordance with the Plans is proceeding in accordance therewith, and to inspect the Project and the progress of the same. All reasonable fees and expenses of Lender's Construction Consultant shall be borne by Borrower as Loan Expenses. The inspections of the Project and the progress of the development, construction and equipping of the Project by Lender or by Lender's Construction Consultant, and the review and approval of the Plans by Lender and Lender's Construction Consultant are solely for the benefit of Lender, and Lender's approval thereof or the approval thereof by Lender's Construction Consultant shall not be deemed in any respect to be a representation or warranty, expressed or implied, that the Project is or will be structurally sound, have a value of any particular magnitude or otherwise satisfy a particular standard and in no event shall the opinion of Lender's Construction Consultant be binding on Lender.

**Section 7.11. Construction Escrow.** At Lender's election, Advances of the Loan proceeds shall be made by and through a construction escrow with the Title Insurer (the "**Construction Escrow**") pursuant to the provisions of a construction escrow agreement in form and substance satisfactory to Lender in its reasonable discretion (the "**Construction Escrow Agreement**"). Borrower agrees to join as a party to such escrow, to comply with the requirements set forth therein (which shall be in addition to and not in substitution for the requirements contained in this Loan Agreement) and to pay all fees and expenses of the escrowee charged in connection with the performance of its duties under such Construction Escrow Agreement.

**Section 7.12. Disbursements for Stored Materials.**

(a) Disbursements for materials stored offsite or delivered to the site but not yet incorporated into the Project ("**Stored Materials**") shall be subject to Lender's having received satisfactory evidence that the following are true:

(i) The Stored Materials are finished components, ready for installation, and appropriate for purchase during the current stage of construction;

(ii) The Stored Materials are stored either (i) at the Project site, (ii) in a bonded public warehouse or (iii) any other facility or location acceptable to Lender in its reasonable discretion, and such Stored Materials are protected in a manner reasonably acceptable to Lender against theft or damage;

(iii) Ownership of the Stored Materials has vested in Borrower free of all security interests except the liens evidenced by the Loan Documents and no other Person has asserted that it has any rights to or interest in the Stored Materials;

(iv) Borrower has caused the General Contractor and any other Person that (i) is not a warehouseman (as such term is defined in Section 7-102 of the Uniform Commercial Code) and (ii) possesses, holds or controls access to any Stored Materials, to execute and deliver to Lender a bailment letter in the form of Exhibit K;

(v) Borrower has caused any warehouseman (as such term is defined in Section 7-102 of the Uniform Commercial Code) that possesses, holds or controls

access to any Stored Materials to execute and deliver to Lender (i) a bailment letter in the form of Exhibit K and (ii) a nonnegotiable warehouse receipt covering the Stored Materials in its possession or under its control in a form sufficient to enable Lender to have a perfected security interest in the Stored Materials pursuant to the requirements set forth in Section 9-312(d)(1) of the Uniform Commercial Code;

(vi) If requested by Lender, Borrower has provided Lender with the results of Uniform Commercial Code searches (from all appropriate Uniform Commercial Code offices) on the General Contractor or any other bailee of Stored Materials showing no liens or other security interests affecting such Stored Materials;

(vii) Without limiting any of the foregoing provisions of this Section 7.12, Lender has a perfected, first-priority security interest in the Stored Materials;

(viii) The Stored Materials are covered by insurance as required by Article 8; and

(ix) The materialmen have delivered lien waivers and invoices for the full amount of the Stored Materials.

(b) The foregoing provisions are not intended to apply to disbursements of proceeds of the Loan which are made for the purpose of making customary deposits which are required by certain vendors with respect to purchase orders of construction materials, so long as the same have been approved by Lender, which approval shall not be unreasonably withheld; provided, however, that if and when any materials are paid for in full by Borrower the provisions of this Section 7.12 above shall apply.

### **Section 7.13. Sufficiency of the Loan.**

(a) The Loan is required to be In Balance at all times. The Loan shall be "In Balance" only when the Available Sources of Funds equal or exceed Lender's Estimate of Remaining Construction Costs, all as determined by Lender from time to time in its reasonable discretion in accordance with the provisions of this Article 7. The determination by Lender at any time that the Loan is In Balance shall not preclude Lender from determining at a later time that the Loan is not In Balance. Lender shall not be obligated to make any disbursements unless the Loan is In Balance.

(b) Borrower agrees that if Lender determines in its reasonable discretion that the Loan is not In Balance, regardless of how such condition may have been caused, Borrower shall within ten (10) days after written request by Lender (and in any event prior to any further disbursement of the Loan) deposit the deficiency with Lender (individually, a "Deficiency Deposit" and collectively, the "Deficiency Deposits"). All Deficiency Deposits shall be exhausted before any further disbursements of the Loan shall be made. Disbursement of Deficiency Deposits shall be subject to the same conditions precedent and the same requirements that apply to an Advance of the Loan proceeds pursuant to this Loan Agreement. If a Deficiency Deposit is not to be immediately expended, Lender shall deposit the Deficiency Deposit in a non-interest-bearing account. Borrower pledges to Lender each Deficiency Deposit as security for the Loan.

(c) The "Available Sources of Funds" shall mean that portion of the Loan proceeds which has not yet been advanced to Borrower, *plus* all Escrowed Deposits required to be made pursuant to Valid Sale Contracts (subject to the requirements and limitations of Section 3.23, and in accordance with applicable Laws, for the payment of Qualified Project Costs) and *less* the remaining balance of the Owner's Hard Cost Contingency not theretofore reallocated to other line items in the Project Budget pursuant to the provisions of Section 7.7. The following specific adjustments shall be made to the Available Sources of Funds for this transaction: (a) Upgrade Deposits may be counted as an Available Source of Funds but only up to the amount of costs of upgrades included in Lender's Estimate of Remaining Construction Costs, and (b) amounts on deposit with Lender in tax escrow accounts and in other reserve accounts established to pay costs of construction of the Project may be counted as an Available Source of Funds but only to the extent the costs for which such accounts were established are included in Lender's Estimate of Remaining Construction Costs.

(d) "Lender's Estimate of Remaining Construction Costs" shall mean the amount which Lender estimates in its reasonable discretion is necessary to pay for all costs of the Project which have not yet been paid, including, without limitation, the following: (i) design, engineering and architectural costs; (ii) marketing and sales costs; (iii) the amount required to pay interest on the Loan through the Maturity Date; (iv) all expenses payable or reimbursable to Lender under the terms of this Loan Agreement; (v) all real estate taxes, insurance premiums and operating costs of the Project; (vi) all home owner association dues, if any, which Lender estimates Borrower will be responsible for through Loan Maturity; and (vii) all other amounts of any type or nature incurred or expected to be incurred in connection with the construction, Completion, marketing and sale of the Project or in order for Borrower to comply with the Loan Documents or the requirements of Governmental Authorities, as determined in Lender's reasonable discretion.

(e) In determining Lender's Estimate of Remaining Construction Costs, Lender shall be entitled to take into account all conditions, facts and circumstances related to the Project or the Loan then existing, and all other considerations which Lender, in its reasonable discretion, determines are relevant to, or reasonable likely to have an impact upon, any of the amounts included in Lender's Estimate of Remaining Construction Costs. By way of example and not limitation, Lender shall have the right, in making Lender's Estimate of Remaining Construction Costs, to consider in such manner and to such extent as Lender determines is appropriate in its reasonable discretion: (i) all existing and proposed modifications to the Plans (whether or not Lender has the right to approve the same), whether the same are proposed by Borrower or by a contractor, (ii) all existing construction contracts and purchase orders or, in those instances where construction contracts or purchase orders have not yet been let, written bids from responsible contractors, tradesmen and material suppliers acceptable to Lender in its reasonable discretion, or Lender's estimate of such costs, (iii) all Modification and Change Orders and pending or anticipated Modifications and Change Orders (whether or not Lender has the right to approve the same), (iv) all claims by any contractors or suppliers for increased or additional amounts, including all claims by the General Contractor for increases in the amount payable under General Contract, (v) all disputes between Borrower and any supplier or contractor (including the General Contractor), (vi) whether any savings in a line item in the Project Budget have been demonstrated to Lender's satisfaction to be final and permanent and whether any proposed

reallocation of such savings to pay other line items in the Project Budget satisfies the limitations and restrictions in Section 7.7 of this Loan Agreement, and (vii) the effect of actual or anticipated delays, whether or not permitted by the terms of this Loan Agreement.

**Section 7.14. Final Disbursement of Loan.** Lender shall make the final disbursement from the Loan (subject to the provisions of Section 7.13 above) for costs of the development, construction and equipping of the Project provided that all of the following conditions have been complied with and satisfied on or before the Completion Date. Borrower covenants to satisfy the following conditions on or before the Completion Date:

(a) The development, construction and equipping of the Project has been substantially completed in accordance with the Plans and all costs and expenses thereof have been paid in full other than the costs and expenses for which the final disbursement of the Loan is being requested;

(b) Borrower has furnished Lender with final lien waivers, subordination of liens and sworn statements as to the Project from the General Contractor, all Subcontractors and material suppliers who have provided materials, labor or both with respect to the construction of the Improvements and/or the Project, which lien waivers may be subject to payment in the amount of the final requested draw for such General Contractor, Subcontractors and material suppliers;

(c) Borrower shall have furnished to Lender proof that the Project, as constructed, is in compliance in all material respects with all applicable Laws of all applicable Governmental Authorities, including, but not limited to, zoning regulations and building restrictions, environmental requirements, occupational safety and health requirements and similar Laws, ordinances and regulations;

(d) If then prepared and finalized, Borrower shall have delivered to Lender the final as-built Plans showing all changes, if any, from the Plans approved by Lender;

(e) Borrower shall have furnished Lender with copies of: (i) a final and unconditional certificate of occupancy or a temporary certificate of occupancy for the Project from the applicable Governmental Authority having jurisdiction thereof; and (ii) such other certificates, approvals, Permits of each Governmental Authority required (or customarily procured) concerning the then existing construction, use, occupancy and operation of the Project;

(f) There shall be no governmental actions, proceedings or investigations pending or overtly threatened against or filed by Borrower which would: (i) have a Material Adverse Effect or (ii) adversely impair Lender's security for full and timely performance of all obligations hereunder;

(g) The Project shall be undamaged by fire or other cause and there shall be no condemnation or eminent domain proceedings pending or threatened against the Project;

(h) Borrower shall have furnished to Lender a certificate from Borrower, currently dated, certifying that: (i) no notices from any Governmental Authority of any



claimed violations of ordinances arising from the construction or operation of the Project which have not been cured were served upon Borrower or, to the best of Borrower's knowledge, the General Contractor or any Subcontractor or their respective agents or representatives and (ii) Borrower is not aware of any circumstances which could give rise to the issuance of any such notice of claimed violation;

(i) Borrower shall have furnished to Lender a certificate from the Architect covering the Completion Date stating that (i) the Project has been completed in substantial accordance with the Plans, and (ii) the Project as so completed complies with all applicable Laws, Permits, and all applicable Governmental Approvals;

(j) Lender shall have received a certificate from Lender's Construction Consultant, in form and substance reasonably satisfactory to Lender, that Completion of the Project has been accomplished in substantial accordance with the Plans;

(k) All Fixtures, Furnishings and Equipment, and all other property contemplated under the Project Budget and the Plans to be incorporated into or installed in the Project shall have been incorporated or installed free and clear of all liens and security interests other than the Permitted Exceptions;

(l) Borrower shall have furnished to Lender a final so-called "Date-Down" endorsement (or Florida equivalent) in the full amount of the Loan and the Title Policy shall otherwise conform with the requirements of Section 6.1(b)(i);

(m) Borrower shall have furnished Lender with current searches of all Uniform Commercial Code financing statements filed with the Secretary of State of Florida and the Clerk of the Circuit Court of County of Broward, Florida, against Borrower and Guarantor, as debtor, showing that no Uniform Commercial Code financing statements are filed or recorded against Borrower or Guarantor (other than with respect to the Subordinate Loan) in which the collateral is described as any or all of the Collateral, including any Fixtures, Furnishings and Equipment or other personal property located on the Project or used in connection with the Project; and

(n) All other requirements of this Loan Agreement for disbursement of Loan proceeds shall have been satisfied.

**Section 7.15. Notices.** Promptly following the giving or receipt by Borrower of any notice given to or received from the General Contractor or any Subcontractor or materialman with respect to the Project, if such notice concerns any default or failure to perform by any party, or relates to any matter requiring Lender's approval under this Loan Agreement, Borrower shall forward to Lender a complete copy of any such notice.

**Section 7.16. As-Built Survey.** Borrower shall deliver to Lender not later than thirty (30) days after the Completion Date, a final as-built version of the Survey satisfactory to Lender in its reasonable discretion, and showing the location thereon of the Project and all other improvements located on the Land, and otherwise in a form complying with the "Minimum Standard Detail Requirements for ALTA/ACSM (Urban) Land Title Surveys."

## ARTICLE 8

### INSURANCE

**Section 8.1. Insurance.** Borrower shall obtain or cause to be obtained, as the case may be, and shall maintain at all times during the Loan Term, the insurance described on Exhibit N attached hereto.

## ARTICLE 9

### CREATION, SALE AND RELEASE OF CONDOMINIUM UNITS

**Section 9.1. Establishing Condominium Regime.** Borrower has caused or will cause to be prepared (x) the Declaration, (y) the Plats, and (z) By-Laws, and all other documents and instruments required to convert the Land and the Improvements to a condominium regime under the Laws of Florida and to prepare the offering of the Condominium Units to the public in conformance with the requirements of applicable Laws, including without limitation, the Condominium Act. All of the Condominium Documents are subject to the approval of Lender in its reasonable discretion and once approved by Lender, the Declaration and the other Condominium Documents shall not be revised or amended without Lender's prior approval in its reasonable discretion. Borrower shall collaterally assign to Lender as security for the Obligations: (i) Borrower's interest as developer/sponsor under the Declaration and other Condominium Documents and (ii) all Valid Sale Contracts, all Related Party Contracts and the At-Cost Penthouse Contract. Not later than ten (10) days prior to the Title Transfer Closing of the sale of the first Condominium Unit (or on such earlier date as may be required by applicable Laws), Borrower shall submit for recording: (x) the Declaration, (y) the Plats, and (z) By-Laws, and all other documents and instruments required by applicable Laws in the Public Records of Broward County, Florida. Borrower hereby covenants to include in the Offering Materials all disclosures regarding the Project required by applicable Laws. Borrower shall comply with the requirements of the Interstate Land Sales Full Disclosure Act.

**Section 9.2. Sales Contracts.** With the exception of the Related Party Contracts and the At-Cost Penthouse Contract, all Purchase Agreements or contracts for the sale of the Condominium Units shall be Valid Sale Contracts. There shall be no amendment to or modification of any such Valid Sale Contract, Related Party Contract or At-Cost Penthouse Contract without Lender's prior written approval. Other than the fact that the Related Party Contracts are made between Borrower and a Related Party, each Related Party Contract shall conform to the requirements necessary to constitute a Valid Sale Contract. The At-Cost Penthouse Contract shall be in the form provided to Lender on the Closing Date. Borrower shall promptly deliver to Lender upon execution thereof by or on behalf of Borrower and the Contract Purchaser, a true, correct and complete copy of each Valid Sale Contract, each Related Party Contract and the At-Cost Penthouse Contract. Borrower shall provide Lender with copies of all marketing/brokerage agreements for the Project. The terms of such agreements must be acceptable to the Lender in its reasonable discretion.

**Section 9.3. Sales of Condominium Units.** Prior to or upon the transfer of title of any Condominium Units, Borrower shall, in addition to and not in limitation of any other requirements set forth herein, and the requirements of applicable Laws, satisfy each of the following conditions:

(a) Borrower shall have provided Lender with not less than three (3) Business Days' prior written notice of the intended Title Transfer Closing, which written notice shall be accompanied by (i) a copy of the applicable Valid Sale Contract, (ii) a copy of the draft closing statement for the proposed transfer, and (iii) the partial release to be executed by Lender in order to release its security title under the Mortgage in the applicable Condominium Units to be sold and containing a description of the Condominium Units to be released, which partial release shall be prepared by Borrower at Borrower's expense, but subject to Lender's approval in its reasonable discretion;

(b) Borrower shall have provided to Lender and Lender shall have approved all Offering Materials and all documents and instruments by which Condominium Units will be transferred to purchasers, including, without limitation, the Declaration pursuant to which the Land and the Improvements were converted to a condominium regime; the By-Laws and other governing instruments pursuant to which the association of owners of such Condominium Units shall be created and governed; and the forms of the Valid Sale Contract and deed by which the Condominium Units shall be conveyed to the contract purchasers;

(c) Borrower shall have filed and recorded the Declaration in accordance with the provisions of Section 9.1, and contemporaneously therewith, Lender shall have executed a document or documents, prepared by Borrower at Borrower's expense, but subject to Lender's approval in its reasonable discretion, consenting to the recordation of the Declaration against the Real Estate and, if requested, subordinating the security title granted by the Mortgage, the Assignment of Lease and Rents and the UCC Financing Statements to the Declaration and the condominium By-Laws and Plats filed in connection with the Declaration;

(d) Borrower shall have obtained a temporary or permanent certificate of occupancy covering the Condominium Unit proposed to be transferred, if required by applicable Laws; and

(e) No Event of Default shall have occurred and be continuing under the Loan Documents.

**Section 9.4. Intentionally Deleted.**

**Section 9.5. Release of Condominium Units.** Upon a sale and transfer of the fee simple interest in a Condominium Unit pursuant to a Valid Sale Contract, a Related Party Contract or the At-Cost Penthouse Contract (a "**Title Transfer Closing**"), and so long as the Pre-Sale Requirements shall have been satisfied, Lender shall release the applicable Condominium Unit, from the lien of the Mortgage so long as Lender shall have received upon the Title Transfer Closing an amount equal to the Release Price.

**Section 9.6. Application of Release Price.** (a) Immediately upon the closing of any sale of a Condominium Unit, Borrower shall cause the closing or escrow agent for the applicable closing of the sale of a Condominium Unit to remit to Lender the Release Price and Lender shall release such Condominium Unit from the lien and security interest of the Mortgage.

(b) Provided no Event of Default shall have occurred and be continuing hereunder or under any other Loan Document, the Release Price payments received by Lender pursuant to Section 9.5(a) shall be applied or paid on the date such funds are immediately available to Lender, as follows:

(i) First to the payment of the Exit Fee as provided in Section 3.11;

(ii) Then, to repayment of the principal amount of the Loan until such principal shall have been fully paid;

(iii) Then, to pay any other Obligations, as Lender shall determine.

(c) Upon the occurrence of an Event of Default, and in addition to all other rights, powers and remedies of Lender hereunder or under any other Loan Document, Lender may, at its option, apply all amounts paid to Lender under this Loan Agreement, the Note or any other Loan Document in such order and manner as Lender may elect in its sole discretion.

**Section 9.7. Escrow of Release Prices.** (a) In the event that at any time during the Initial Loan Term or the Extension Term (as applicable): (i) the Obligations are reduced to zero and (ii) any portion of the Loan remains unfunded, the Release Price shall continue to be remitted to Lender but such amounts shall be placed in an interest-bearing account (with interest at Lender's "ultimate money market" interest rate) established with Lender (the "**Release Escrow**") as additional security for the Loan, and the proceeds therein shall be applied to reduce the Obligations as subsequent Advances of the Loan are disbursed. In the event that at any time the Lender's unfunded commitment is terminated for any reason and all of the Obligations have been irrevocably paid in full, the proceeds held in the Release Escrow shall be released to Borrower.

**Section 9.8. Prohibition on Sale or Refinance.** Neither the Project nor any component thereof (including any appurtenant unit thereof), nor any interest therein, may be transferred, conveyed, sold or refinanced, except in accordance with the express provisions of this Loan Agreement and no subordinate financing (other than the Subordinate Loan and any Permitted Gym Equipment Leases) or replacement financing of the Project may be effected unless Lender in its sole discretion consents thereto in writing.

## ARTICLE 10

### BORROWER'S ADDITIONAL COVENANTS

Borrower further covenants and agrees, from the date of this Loan Agreement until such time as the Obligations have been paid in full, as follows:

**Section 10.1. Construction.** The development, construction and equipping of the Project: (i) has commenced as of the Closing Date, (ii) will proceed with diligence and continuity in accordance with the Construction Schedule, (iii) subject to Force Majeure, will be completed by the Completion Date, (iv) will be completed in a good and workmanlike manner with materials of high quality substantially in accordance with the Plans, free of defects, and free from liens or security interest other than those of Lender, and (v) will be completed in accordance with all applicable Laws, the requirements of all Governmental Authorities and the requirements of the applicable

Board of Fire Underwriters. The Project will be furnished and equipped with Fixtures, Furnishings and Equipment of high quality and in accordance with the Plans and the requirements set forth in the Project Budget.

**Section 10.2. Construction Documents.** Borrower will not (i) default under the terms of the General Contract, (ii) default under the terms of any other Construction Documents which would have a Material Adverse Effect, (iii) waive any of the material obligations of any party under the Construction Documents, (iv) do any act which would relieve any party from its obligations under its applicable Construction Document, or (v) make any amendments to any Construction Document which would require Lender's consent as a Modification or which would require Lender's consent under Section 7.7 hereof, without the prior written consent of Lender.

**Section 10.3. Changes in Plans.** No changes will be made in the Plans without the prior written approval of Lender; provided, however, that Borrower shall have the right to make changes in the Plans without Lender's reasonable approval: (i) which are inconsequential deviations from the Plans in the nature of "field changes" that are not customarily the subject of formal change orders in the commercial real estate development industry, and which do not impair the value of the Project (such deviations being referred to herein as "**Inconsequential Variances**") or (ii) Modifications permitted by the terms of Section 7.7 of this Loan Agreement, provided that such change does not materially diminish the overall use, appearance, functionality and quality of the Project.

**Section 10.4. Inspection by Lender.** Borrower will cooperate (and will cause its agents and independent contractors to cooperate) with Lender in arranging the inspections of the Project or any part thereof or any of the other Collateral by Lender and its agents and representatives, including, without limitations, Lender's Construction Consultant, at such times during normal working hours as Lender shall determine in its reasonable discretion.

**Section 10.5. Mechanics' Liens Contest Thereof; Other Liens.** Borrower will not suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Project or the Land, and will promptly discharge the same if any claims for lien or any proceedings for the enforcement thereof are filed or commenced; provided, however, that Borrower shall have the right to contest in good faith and with due diligence the validity of any such lien or claim upon furnishing to Lender a bond covering such contested mechanics' lien in form, scope and substance satisfactory to Lender (and from a bonding company approved by Lender in its reasonable discretion) or by furnishing the Title Insurer such security or indemnity as it may require to induce the Title Insurer to issue an endorsement to the Title Policy insuring against all such claims, liens or proceedings. Except as expressly permitted by this Loan Agreement or the other Loan Documents, Borrower shall not cause, create, suffer or otherwise permit to exist, any lien, security interest, or other encumbrance against the Project, the Land or any other Collateral.

**Section 10.6. Settlement of Mechanics' Lien Claims.** If Borrower shall fail promptly to discharge any mechanics' lien claim filed or otherwise asserted or to contest any such claims and give security or indemnity in the manner provided in Section 10.5 hereof, or, having commenced to contest the same, and having given such security or indemnity, shall thereafter fail to prosecute such contest in good faith or with due diligence, or fail to maintain such indemnity or security so required by the Title Insurer for its full amount, or, upon adverse conclusion of any such contest, shall fail to cause any judgment or decree to be satisfied and lien to be promptly released, then, and in any such

event, Lender may at its election (but shall not be required to), with prior written notice to Borrower (i) procure the release and discharge of any such claim and any judgment or decree thereon, without inquiring into or investigating the amount, validity or enforceability of such lien or claim and (ii) effect any settlement or compromise of the same, or may furnish such security or indemnity to the Title Insurer, and any amounts so expended by Lender, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute advances under the Note.

**Section 10.7. Renewal of Insurance.** Borrower shall timely pay premiums on all insurance policies required under this Loan Agreement or under any other Loan Document from time to time; and when and as additional insurance is required from time to time during the Loan Term and when and as any policies of insurance may expire, (i) prior to the expiration of any such policies furnish to Lender evidence of their renewal and (ii) not later thirty (30) days following the renewal of such policies furnish to Lender, additional and renewal insurance policies (or certified copies thereof) issued by companies, and with coverage and amounts, reasonably satisfactory to Lender. Notwithstanding this Section 10.7 in the event of Borrower's Default under this Section 10.7 or Article 8 hereof, or if an Event of Default shall occur under this Loan Agreement or under any of the Loan Documents, Lender shall have the right (but not the obligation) to place and maintain insurance required to be placed and maintained by Borrower hereunder and treat the amounts expended therefor as additional indebtedness hereunder and under the Note.

**Section 10.8. Payment of Taxes.** (a) A portion of the proceeds of the Loan in an amount approved by Lender shall be designated as a reserve in the Project Budget approved by Lender for the payment of Taxes assessed against the Real Estate (the "**Real Estate Tax Reserve**"). So long as no Event of Default exists and the Real Estate Tax Reserve is not exhausted, Taxes assessed against the Real Estate shall be paid from the Real Estate Tax Reserve. If: (i) an Event of Default exists or (ii) the Real Estate Tax Reserve is exhausted, then Borrower shall make monthly deposits to Lender equal to one-twelfth (1/12) of one hundred ten percent (110%) of the annual Taxes next to become due upon the Real Estate; provided that in the case of the first such deposit, there shall be deposited, in addition, an amount which, when added to the aggregate amount of monthly sums next payable under this Section 10.8, will result in a sufficient reserve to pay the Taxes next becoming due one month prior to the date when such Taxes are, in fact, due and payable pursuant to applicable law. The amount of such deposits (herein generally called "**Tax Deposits**") shall be based upon Lender's reasonable estimate as to the amount of Taxes next to be payable. Lender shall have no obligation to make any Advance of Loan proceeds, including any Advance to pay Taxes if an Event of Default exists.

(b) The aggregate of the monthly Tax Deposit, together with monthly payments of interest and/or principal and interest payable on the Note shall be paid in a single payment each month, to be applied, so long as no Event of Default has occurred hereunder and is continuing, first to payment of Taxes and then in the order set forth in Section 5 of the Note.

(c) It shall be the responsibility of Borrower to furnish Lender with the bills for the Taxes not later than thirty (30) days prior to the date on which the same are due and payable without penalty or premium of any kind. If, after the Borrower becomes obligated to make Tax Deposits in accordance with Section 10.8(a) above, the total Tax Deposit on hand shall not be sufficient to pay all of the Taxes when the same shall become due, then Borrower

shall deliver to Lender at the time of the submission of the bills to Lender as above an amount equal to the deficiency. If the total of such Tax Deposit exceeds the amount necessary to pay the Taxes, such excess shall be credited against subsequent payments to be made for such deposits.

(d) If an Event of Default exists hereunder, then in addition to all other rights, powers and remedies of Lender hereunder or under any other Loan Document, Lender may, at its option, without being required to do so and to the extent permitted by law, apply any Tax Deposits on hand to any of the Obligations, in such order and manner as Lender may elect in its discretion. When the Obligations have been fully paid and performed, as the case may be, any remaining Tax Deposits shall be paid to Borrower. All Tax Deposits are hereby pledged as additional security for the Obligations, and shall be held by Lender to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Borrower.

(e) Provided that Borrower shall furnish the bills for the Taxes and the amount of any deficiency on or before the time required for such delivery as provided in Section 10.8(c) hereof, and so long as no Event of Default exists hereunder, Lender shall use its reasonable efforts to cause such bills to be paid on or before the dates on which the bills are due and payable without premium or penalty, and if Lender fails to timely pay the Taxes under those circumstances, Lender shall be responsible for penalties and interest assessed for late payments.

**Section 10.9. Personal Property.** (a) All of Borrower's personal property, fixtures, furnishings, furniture, attachments and equipment located on or used in connection with the Project, including Fixtures, Furnishings and Equipment, shall always be located at the Project, except as expressly permitted by the terms of this Loan Agreement, and shall also be kept free and clear of all chattel mortgages, conditional vendor's liens and all other liens, encumbrances and security interests of any kind whatever (other than as expressly permitted hereunder or as otherwise approved by Lender in writing), and (b) Borrower shall, from time to time upon request by Lender, furnish Lender with evidence of such ownership satisfactory to Lender, including searches of applicable public records. Borrower shall have the right to sell obsolete or damaged and unusable tangible personal property, so long as all of the proceeds thereof shall be used to replace such tangible personal property.

**Section 10.10. Proceedings.** If any proceedings are filed seeking to enjoin or otherwise prevent or declare unlawful the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium hotel regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units, or any Environmental Proceedings are filed, Borrower shall give immediate notice thereof to Lender and, to the extent permitted by applicable Laws and at its sole expense (a) cause such proceedings to be vigorously contested in good faith, and (b) in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom. Without limiting the generality of the foregoing, Borrower shall resist the entry or seek the stay of any temporary or permanent injunction that may be entered and use its best efforts to bring about a favorable and speedy disposition of all such proceedings, as well as any Environmental Proceedings.

**Section 10.11. Lender's Action for its Own Protection Only.** The authority herein conferred upon Lender, and any action taken by Lender, to inspect the Project, to approve contracts, to approve the Project Budget, and all other documents and instruments submitted to Lender, will be exercised and taken by Lender and any of Lender's agents or independent contractors retained by Lender for such purposes as aforesaid for their own protection only and may not be relied upon by Borrower or any other party for any purposes whatever; and neither Lender nor any of Lender's agents or independent contractors shall be deemed to have assumed any responsibility to Borrower or any other party with respect to any such action herein authorized or taken by Lender or such agents or independent contractors. Any review, investigation or inspection conducted by Lender or any agent or representative of Lender in order to verify independently Borrower's satisfaction of any conditions precedent to the closing of the Loan under this Loan Agreement, Borrower's performance of any of the covenants, agreements and obligations of Borrower under this Loan Agreement or under any of the other Loan Documents, or the truth of any representations and warranties made by Borrower hereunder or under any of the other Loan Documents (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Lender of) (a) any of Borrower's representations and warranties under this Loan Agreement or Lender's reliance thereon, or (b) Lender's reliance upon any certifications of Borrower or any other person or entity required under this Loan Agreement or any other facts, information or reports furnished Lender by Borrower hereunder.

**Section 10.12. Furnishing Information.** Borrower will:

(a) promptly supply Lender with such information concerning its affairs and properties relating the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium hotel regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units as Lender may hereafter request in its reasonable discretion from time to time, including, without limiting the generality of the foregoing, copies of such utility bills, real estate tax bills and insurance bills as Lender may request in its reasonable discretion;

(b) promptly notify Lender of any condition or event which constitutes (or which upon the giving of notice or lapse of time or both would constitute) a Default or an Event of Default of any term, condition, warranty, representation or provision of this Loan Agreement or of any of the other Loan Documents; and

(c) promptly notify Lender of any condition or event resulting in the occurrence of any Material Adverse Effect.

**Section 10.13. Documents of Further Assurance.** Borrower shall, from time to time, upon Lender's reasonable request, execute, deliver, record and furnish such documents as Lender may reasonably deem necessary or desirable to (a) perfect and maintain perfected as valid security title and liens upon the Project, the Land and the other Collateral, the security title and liens granted by Borrower to Lender under the Mortgage and the other Loan Documents as contemplated by this Loan Agreement, (b) correct any errors of a typographical nature or inconsistencies which may be



contained in any of the other Loan Documents, and (c) consummate fully the transaction contemplated under this Loan Agreement.

**Section 10.14. Furnishing Reports.** Borrower shall provide Lender with access at the Project during normal business hours. Borrower shall provide Lender promptly after Borrower's receipt thereof with copies of all written inspections, reports, test results, and management reports received by Borrower from time to time from its employees, agents, representatives, Design Professionals, engineers, Contractors and any other Person related to the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units.

**Section 10.15. Furnishing Notices.** Borrower shall deliver to Lender copies of all default notices received or given by Borrower (or its agents or representatives) under any of the Leases, Permits, and Contracts, within five (5) Business Days after such notice is given or received, as the case may be. Borrower shall also provide Lender with copies of all notices pertaining to the Project or any part thereof received by Borrower or any of Borrower's agents or employees from any Governmental Authority or from any insurance company providing insurance on any of the Project and all other written notices, within five (5) Business Days after such notices are received.

**Section 10.16. Correction of Defects.** Within five (5) Business Days after Borrower acquires knowledge of or is given notice of a material defect in the Project or Borrower learns of or is notified by Lender of any departure from other requirements of this Loan Agreement, Borrower will proceed with diligence to correct all such defects and departures. Borrower shall complete such corrections within thirty (30) days after Borrower acquires such knowledge or is given such notice, or, if such corrections cannot reasonably be completed within thirty (30) days, such additional period of time as it shall take with diligence to complete such corrections. Upon Borrower acquiring knowledge of such defect (other than as a result of written notice to Borrower from Lender), Borrower shall promptly advise Lender in writing of such matter and the measures being taken to make such corrections along with an estimate of the time of completion.

**Section 10.17. No Additional Debt.** Borrower shall not, without the prior written consent of Lender, create, incur, assume, guarantee or be or remain liable for any indebtedness (whether personal or nonrecourse, secured or unsecured, and whether owed to a third party or to an Affiliate) other than:

- (a) Indebtedness to Lender arising under this Loan Agreement, the Note or any of the other Loan Documents;
- (b) Customary and necessary trade payables in respect of the Project reasonably incurred in the ordinary course of business, but not incurred through (i) the borrowing of money, or (ii) the obtaining of credit except for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services;
- (c) The Subordinate Loan; and
- (d) Permitted Gym Equipment Leases, if any.

**Section 10.18. Permits.** Borrower shall: (a) maintain in full force and effect all Permits which are necessary under applicable Laws in order to own, construct, use, occupy, operate and maintain the Project, to establish the Project as a condominium hotel and to market and sell the Condominium Units, (b) promptly comply with all conditions thereof, and (c) promptly deliver to Lender copies of all written notices sent or received by Borrower or Borrower's agents in connection with the Permits or matters pertaining thereto. Borrower shall make or cause to be made prompt application for and shall obtain all Permits which are necessary to use, occupy, operate and maintain the Project as a condominium hotel project, and the marketing or sale of the Condominium Units under all applicable Laws. Once issued, Borrower shall keep all Permits in full force and effect, shall promptly comply with all conditions thereof, and shall promptly deliver to Lender copies of all material notices sent or received by Borrower or Borrower's agents in connection with the Permits or matters pertaining thereto.

**Section 10.19. Indemnification.** Borrower shall indemnify, defend and hold Lender and Lender's officers, directors, employees, agents and consultants (including Lender's Construction Consultant) (the "**Indemnified Parties**") harmless from and against all claims, injury, damage, loss, costs, including attorneys' fees (based upon services rendered at hourly rates) and costs, and liability of any and every kind to any persons or property by reason of (a) the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of a condominium regime with respect to the Project pursuant to the Declaration and the marketing and sale of the Condominium Units; (b) any other action or inaction by, or matter which is the responsibility of, Borrower; and (c) the breach of any representation or warranty or failure to fulfill any of Borrower's obligations under this Loan Agreement or any other Loan Document in each case except to the extent (and only to the extent) arising solely out of Lender's gross negligence or willful misconduct.

**Section 10.20. Prohibition Against Cash Distributions and Application of Cash Flow.** Borrower shall make no Distributions of any kind until after the Obligations have been paid in full. Notwithstanding the foregoing, any Net Sale Proceeds which are generated from the sale of a Condominium Unit and which are in excess of the Release Price required to be paid to Lender under this Loan Agreement may be retained by Borrower and used by Borrower in any manner which Borrower may elect.

**Section 10.21. Insurance Reporting Requirements.** Borrower shall promptly notify the insurance carrier or agent therefor (with a copy of such notification being provided to Lender) if there is any increase in hazard relating to the Project, or transfer of title to the Project or any part thereof.

**Section 10.22. Compliance With Laws.** Borrower shall promptly comply with all applicable Laws, together with all notices to correct all violations thereof, of any Governmental Authority having jurisdiction over Borrower or the Project.

**Section 10.23. Organizational Documents.** Borrower shall not permit or suffer any amendment or modification of either its Organizational Documents in any respect except as may be consented to by Lender in its reasonable discretion, shall not permit or suffer the issuance of any new Membership interests in Borrower or the transfer of any of the Membership interests in Borrower. Borrower shall provide to Lender copies of all amendments to its Organizational Documents that do not require the consent of Lender within five (5) days after execution. Lender

shall notify Borrower of its approval or disapproval of any changes to Borrower's Organizational Documents requiring Lender's approval within fifteen (15) Business Days following Lender's receipt of any proposed amendment, together with sufficient information to enable Lender to evaluate such proposed documents.

**Section 10.24. Post-Construction Alterations.** Following Completion of the Project, Borrower shall not make any material alterations to the Project without the prior written consent of Lender.

**Section 10.25. Lost Note.** Borrower shall, if the Note is mutilated, destroyed, lost, or stolen, promptly deliver to Lender, in substitution therefor, a new promissory note containing the same terms and conditions as the Note mutilated, destroyed, lost, or stolen, and with a notation thereon of the unpaid principal and accrued and unpaid interest. Borrower shall provide fifteen (15) days' prior notice to Lender before making any duplicate payments to any third parties claiming payments under the lost Note.

**Section 10.26. Hazardous Material.** Borrower shall keep or shall cause the Project to be kept free of any Hazardous Material contamination except for Hazardous Material used in the construction and normal operation of the Project in the ordinary course and in compliance with all Environmental Laws. Borrower shall comply or shall cause its contractors or agents to comply with any and all Laws with respect to the discharge and removal of Hazardous Material, and Borrower shall pay immediately when due the costs of removal of any such Hazardous Material, and shall cause the Project to be kept free of any lien imposed pursuant to such Laws. In the event Borrower fails to commence to cure any contamination of the Project within thirty (30) days, after written notice to Borrower of such contamination, Lender may declare an Event of Default under this Loan Agreement and/or cause the Project to be freed from the Hazardous Material with the cost of the removal added to the indebtedness evidenced by the Note and secured by the Mortgage (regardless of whether such indebtedness then increases the outstanding balance of the Note to an amount in excess of the face amount thereof). Borrower further agrees not to release or dispose, or allow the release or disposal, of any Hazardous Material at the Project in violation of any applicable Laws. Lender shall have the right at any time during the Loan Term (but not more often than once per annum unless an Event of Default has occurred or Lender has, in Lender's reasonable judgment cause to believe that either a release of Hazardous Materials or a violation of Environmental Laws has or may occur), following notice to Borrower, to conduct an environmental audit of the Project and Borrower shall cooperate in the conduct of such environmental audit. Borrower shall give Lender and its agents and its employees access to the Project to remove Hazardous Material and Borrower agrees to indemnify and hold Lender free and harmless from and against all loss, costs, including attorneys' fees and costs, damages and expenses Lender may sustain by reason of the assertion against Lender by any party of any claim in connection with such Hazardous Material. The foregoing indemnification shall survive repayment of the Note, and shall be in addition to the separate indemnity and other agreements contained in the environmental remediation and indemnification agreement executed and delivered by Borrower at the closing.

**Section 10.27. Asbestos.** Borrower shall not install nor permit to be installed in the Project any product or material containing more than 0.1 percent asbestos by weight that when dry, may be crumbled, pulverized or reduced to powder by hand pressure or any substance containing asbestos and deemed hazardous by Laws respecting such material, and with respect to any such material

currently present in the Project shall promptly either (a) remove any material which such Laws deem hazardous and require to be removed or (b) otherwise comply with such federal and state Laws, at Borrower's expense and sole risk. If Borrower shall fail to so remove or otherwise comply, Lender may declare an Event of Default under this Loan Agreement and/or do whatever is necessary to eliminate said substances from the Project or otherwise comply with applicable Law, and the costs thereof shall be added to the indebtedness evidenced by the Note and secured by the Mortgage (regardless of whether such indebtedness then increases the outstanding balance of the Note to an amount in excess of the face amount thereof). Borrower shall give Lender and its agents and employees access to the Project to remove such asbestos or substances. Borrower shall defend, indemnify, and save Lender harmless from all loss, costs, including attorneys' fees (based upon services rendered at hourly rates) and costs, damages (including consequential damages) and expenses asserted or proven against Lender by any party, as a result of the presence of such substances, and any removal or compliance with Laws. The foregoing indemnification shall survive repayment of the Note.

**Section 10.28. Transactions with Affiliates.** Borrower shall not enter into, or be a party to, any transaction with respect to the Project with any Related Party or Trump Party, except as expressly permitted in this Loan Agreement.

**Section 10.29. Fixtures, Furnishings and Equipment.** Borrower shall not, without the prior written consent of Lender, which consent may be given or withheld in Lender's reasonable discretion, permit any of the Fixtures, Furnishings and Equipment, and other personal property, to be removed at any time from the Project unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equivalent suitability and not materially less value, owned by Borrower, free and clear of any lien or security interest other than the security interest of Lender therein.

**Section 10.30. Contracts.** Borrower shall not enter into any leasing, service, parking, maintenance, management, or purchase agreements of equipment (whether as an installment sale or otherwise); or other contract or agreement relating to the operation and maintenance of the Project which requires expenditures in the aggregate in excess of \$5,000 in any one year period, or, with respect to purchase agreements for equipment, which are for a purchase price in the aggregate excess of \$10,000, without the prior written consent of Lender, which consent may be given or withheld in Lender's reasonable discretion (other than the Permitted Gym Equipment Leases). All such contracts, leases and agreements (other than the Permitted Gym Equipment Leases) shall provide, or Borrower will deliver a letter, in form and substance satisfactory to Lender, executed by the other party to said agreement to the effect, that upon the occurrence of an Event of Default hereunder, or under the Loan, or any of the other Loan Documents, and Lender's acquisition and/or obtaining control of the Project, through foreclosure, sale or other means, such agreement shall terminate upon Lender's request at no cost to Lender, upon prior notice of not more than ninety (90) days.

**Section 10.31. Leasing.** Borrower shall not lease or otherwise enter into any occupancy agreements for or with respect to all or any portion of the Project without Lender's prior written consent.

**Section 10.32. Maintenance of Project.** Borrower shall maintain the Project in accordance with the terms and conditions of this Loan Agreement. Borrower shall indemnify, defend and hold

Lender harmless from and against all claims for injury, damage, or loss, together with costs (including reasonable attorneys' fees and costs) and liability of any and every kind to any persons or property by reason of the failure of Borrower to comply with the terms and conditions of this Loan Agreement.

**Section 10.33. Single Purpose Entity.** So long as the Obligations are outstanding, Borrower hereby covenants and agrees that it shall:

(a) not own any asset or property other than (i) the Project, and (ii) incidental personal property relating to the ownership or operation of the Project;

(b) not enter into any contract, agreement or other undertaking to provide personal services to any Person;

(c) expressly limit Borrower's purpose in its operating agreement to owning, constructing, using, occupying, operating and maintaining the Project, to establishing the Project as a condominium hotel, to marketing and selling the Condominium Units and to other lawful activities incidental thereto;

(d) not engage in any business other than the ownership, construction, use, occupancy, operation and maintenance of the Project, the establishment of the Project as a condominium hotel with respect to the Project pursuant to the Declaration, the marketing and sale of the Condominium Units and other lawful activities incidental thereto;

(e) not make any loans or advances to any Person;

(f) not own a subsidiary and shall not acquire obligations or securities of its Affiliates or any other Person;

(g) pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) only from its own assets as the same shall become due;

(h) do all things necessary to observe organizational formalities and preserve its existence, and shall not permit any partner of Borrower to, amend, modify or otherwise change any Organizational Documents of Borrower in any manner not permitted by the provisions of Section 10.23 hereof without the prior written consent of Lender;

(i) maintain all of its books, records, financial statements and bank accounts separate from those of any other Person and shall file its own tax returns;

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

(k) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(l) not seek the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of Borrower, nor transfer or otherwise dispose of all or substantially all of its assets other than in connection with the sale of the Condominium Units as provided in this Loan Agreement;

(m) not commingle the funds and other assets of Borrower with those of any other Person;

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

(o) not hold itself out to be responsible for the debts or obligations of any other Person and shall not assume, guarantee or pay the debts or obligations of any other Person;

(p) prepare separate tax returns and financial statements, or if part of a consolidated group, then Borrower shall be shown as a separate member of such group;

(q) allocate and charge fairly and reasonably any common employee or overhead shared with any other Person; and

(r) transact all business with Affiliates on an arm's length basis as required by Section 10.28.

The Members of the Borrower have not and will not: (1) advance or contribute property to Borrower other than by way of a capital contribution, or (2) accept or cause to be made any transfer or distribution of Borrower's assets to such Members in respect of their ownership of Borrower.

**Section 10.34. Financial Reporting.**

(a) Borrower shall keep and maintain at Borrower's sole cost and expense complete and accurate books and records on a cash basis and Borrower shall report its operations for tax purposes on cash basis method. The fiscal year of Borrower shall end on December 31 of each year. Borrower shall permit Lender and any authorized representatives of Lender to have access to and to inspect, examine and make copies of the books and records, any and all accounts, data and other documents of Borrower at all reasonable times upon the giving of reasonable notice of such intent. Lender may retain an investigator to research the public records and reputation of any principal of Borrower or Guarantor. In addition, in the event that any Default, Event of Default, adverse litigation (against Borrower or Guarantor) or any Material Adverse Effect occurs, Borrower shall promptly notify Lender of such occurrence.

(b) Borrower will prepare, at Borrower's sole cost and expense, and furnish to Lender the following financial information related to the Project:

(i) within twenty (20) calendar days after the end of each calendar month, (A) an unaudited income statement of Borrower for the prior calendar month on an accrual basis setting forth all Gross Sale Proceeds and Rents, if any, received during such month, and an unaudited expense statement, (B) a current rent roll as of the first

day of such calendar month (if there are any tenants of the Land or any part thereof), (C) a current list of all agreements relating to or pertaining to services to the Project or the conversion, management, operation, sale, and leasing, of the Project, including, without limitation, copies of all Purchase Agreements relating to Approved Sales, and (D) a summary of all activities undertaken in regard to the Project, including a summary of all conversion expenses paid during such month, together with copies of any permits obtained by Borrower, (E) a summary of any sale of Condominium Units at the Project during such month, including a description of the Gross Sale Proceeds and the Approved Closing Costs, and (F) a statement of the current balance of the tenant security account, if any, together with a list of all tenants whose deposits are held thereunder and the current balance for each such tenant.

(ii) within thirty (30) calendar days after the end of each fiscal quarter of Borrower unless such fiscal quarter is the last fiscal quarter of any fiscal year of Borrower: (1) an unaudited balance sheet of Borrower dated as of the end of such fiscal quarter on the basis of sound accounting principles consistently applied, (2) an unaudited related income statement of Borrower for such fiscal quarter on the basis of sound accounting principles consistently applied, (3) an unaudited statement of cash flows for such fiscal quarter on the basis of sound accounting principles consistently applied, and (4) an unaudited statement of member's capital on the basis of sound accounting principles consistently applied.

(iii) by no later than sixty (60) days after the end of such fiscal year (A) an unaudited balance sheet of Borrower dated as of the end of such fiscal year, (B) an unaudited related income statement of Borrower for such fiscal year, (C) an unaudited statement of cash flows as of the end of the fiscal year, and (D) previously prepared supporting schedules and backup information as reasonably requested by Lender, all of which shall be certified by Borrower and Guarantor as being, to the best of Borrower's and such Guarantor's knowledge, true and correct.

(iv) by no later than February 15 after the end of each fiscal year (A) an unaudited cumulative income statement of Borrower for the prior fiscal year on an accrual basis setting forth all Gross Sale Proceeds and Rents received during such period, and an unaudited expense statement, (b) a summary of all activities undertaken in regard to the establishment of the Project as a condominium hotel during such previous fiscal year, including a summary of all condominium conversion expenses paid during such period, together with copies of any permits obtained by Borrower, and (c) a summary of any sales of Condominium Units at the Project during such period, including a description of the Gross Sale Proceeds and the Approved Closing Costs.

(v) if Lender reasonably determines same to be necessary, by not later than sixty (60) days following the end of Borrower's fiscal year, annual unaudited financial statements for Borrower. The annual unaudited financial statements shall include (a) an annual balance sheet of Borrower dated as of the end of such fiscal year, (b) an annual income statement of Borrower for such fiscal year, and (c) an annual statement of cash flows for such fiscal year.

(vi) for Borrower, Guarantor and each entity reporting income and expense of the Project, by not later than April 30<sup>th</sup>, all tax returns and any related tax schedules reasonably requested by Lender, together with the current personal financial statements for Guarantor.

(vii) Promptly after the end of each fiscal year, but by no later than each February 15, Borrower will cause its accountant to prepare and deliver to Lender a report setting forth in sufficient detail all such additional information and data with respect to business transactions effected by or involving Borrower, including, without limitation, all Approved Sales, during the fiscal year as will enable Lender to timely comply with applicable Laws, rules and regulations. Borrower shall prepare and supply such additional financial reports and other information as Lender may reasonably determine are appropriate. Borrower shall supply such additional information and detail as to any item or items contained on any such statement that Lender may reasonably require.

**Section 10.35. USA Patriot Act.** Neither Borrower, nor any Member of Borrower, nor Guarantor is (or will be) a Person with whom Lender is restricted from doing business with under regulations of the OFAC of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, Borrower hereby agrees to provide the Lender with any additional information that the Lender deems necessary from time to time in order to ensure compliance with all applicable Laws concerning money laundering and similar activities.

**Section 10.36. Hotel Unit.** During the Loan Term and until such time as the Obligations have been paid in full, Borrower shall own the Hotel Unit in fee simple and shall not have the right to sell, transfer, lease or otherwise convey title to the Hotel Unit to any Person.

**Section 10.37. Homeowner's Association Dues.** Until the Obligations are paid in full, Borrower shall provide Lender with a monthly verification that Borrower's portion of the condominium homeowner's association dues, if any, has been paid. Borrower's failure to pay Borrower's portion of such dues shall be an Event of Default hereunder.

**Section 10.38. Hotel Management.** Upon Substantial Completion of the Project, the Project will be managed by the Hotel Manager pursuant to the Hotel Management Agreement delivered to and approved by Lender. Not later than five (5) Business Days after Lender has approved the Hotel Management Agreement in writing, Borrower shall cause the Hotel Manager to execute and deliver to Lender, the Subordination of Hotel Management Agreement. Borrower shall not pay, and Hotel Manager shall not accept, annual payments under the Hotel Management Agreement (including all fees, reimbursements or other rights to payment) in an amount in excess the amounts set forth in the Hotel Management Agreement approved by Lender. Borrower shall not, without first obtaining Lender's consent and approval, modify, amend or waive any provision of the Hotel Management Agreement or terminate or cancel the Hotel Management Agreement, or cause the termination and



cancellation thereof, nor shall Borrower have the right to enter into any other agreement regarding the management of the Project with any third party or Affiliate of Borrower without first obtaining Lender's written approval thereof, which approval may be conditioned upon, among other things, receipt of a property manager's subordination agreement, executed by such third party or such Affiliate, in scope, form, substance and legal sufficiency satisfactory to Lender and its legal counsel.

**Section 10.39. Franchise Agreement.** Other than the License Agreement, Borrower shall not enter into any license, franchise or similar agreements without the express consent of Lender. In connection with the execution of any franchise agreement or license with the Licensor, Borrower shall cause Licensor to deliver to Lender a so-called "Comfort Letter" in a form and substance satisfactory to Lender. Lender hereby consents to the License Agreement in the form provided to and reviewed by Lender prior to the Closing Date. The Comfort Letters from Licensor shall be delivered on or before the Closing Date.

**Section 10.40. License Agreement.** Borrower shall operate the Project as a condominium hotel under the name of "Trump International Hotel & Tower Fort Lauderdale" (or such other name or names as may be reasonably approved by Lender) and Borrower shall not conduct or otherwise do business with respect to the Project under any other trade name without the consent of Lender in its sole discretion.

**Section 10.41. Interstate Land Sales Full Disclosure Act Covenant.** Borrower shall take all necessary steps to comply with the ongoing requirements of the Interstate Land Sales Full Disclosure Act.

**Section 10.42. No Modification of Trump Agreements.** Borrower shall not, without first obtaining Lender's consent and approval, cause or allow any of the Trump Agreements to be modified, amended or terminated.

## ARTICLE 11

### CASUALTIES

**Section 11.1. Casualty.** Borrower shall give Lender prompt written notice of the occurrence of any casualty affecting the entire Project, or any portion thereof. All insurance proceeds on the Project and all causes of action, claims, compensation, awards and recoveries for any damage to any part of the Project or for any damage or injury to the Project, for any loss or diminution in value of the same or any part thereof, are hereby assigned to and shall be paid to Lender. Lender may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Lender is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower shall from time to time deliver to Lender any instruments required to permit such participation. Lender shall apply any sums received by it under this Section 11.1 first to the payment of all of its out-of-pocket costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums, and then, Lender may elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, to apply the remainder of such sums received pursuant to this Article 11 to the payment of the Obligations in whatever order Lender directs in its sole discretion. In all

events, Borrower hereby assigns to Lender all insurance proceeds on the Project and all causes of action, claims, compensation, awards and recoveries for any damage to any part of the Project or for any damage or injury to the Project for any loss or diminution in value of the same or any part thereof.

**Section 11.2. Application of Proceeds from Casualty.**

(a) If (1) the cost and expenses to repair such damage to a condition at least equal to the condition existing prior to the casualty causing the loss or damage, as reasonably determined by Lender, is equal to or less than \$10,000,000 in the aggregate, and (2) if:

(i) The insurance claim for the damage is adjusted within ninety (90) days after the occurrence of such damage; and

(ii) No Event of Default shall have occurred hereunder and be continuing; and

(iii) the Project can, in Lender's reasonable judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty causing the loss or damage within nine (9) months after the receipt of insurance proceeds by Borrower or Lender and the Completion of the Project shall occur prior to the Loan Maturity; and

(iv) all necessary Governmental Approvals can be obtained to allow the restoration and continued construction of the Improvements as described herein; and

(v) there are sufficient sums available (through insurance proceeds and contributions by Borrower, the full amount of which shall, at Lender's option, have been deposited with Lender to be held by Lender) for such restoration or repair (including, without limitation, for any out-of-pocket costs and reasonable expenses of Lender to be incurred in administering payments on account of said restoration or repair) and for payment of all debt service on the Loan to become due and payable during such restoration or repair, and

(vi) with respect to the Condominium Units which are subject to Valid Sale Contracts or Related Sales Contracts, ninety-five percent (95%) thereof either do not have the right, as a result of the casualty and any delay in construction caused thereby, to terminate their contracts or, if they have such a right, have reaffirmed their Valid Sale Contracts and Related Sales Contracts and have extended the Title Transfer Closing date of the conveyance of such Condominium Units, and

(vii) Borrower so elects by written notice delivered to Lender within thirty (30) days after the occurrence of the casualty,

then Lender shall, solely for the purposes of such restoration or repair, advance so much of the insurance claim proceeds which have been received, and any funds deposited by Borrower therefor, to Borrower for restoration and repair in the manner and upon the same terms as Advances of the Loan are made pursuant to the Loan Documents, including, but not

limited to, the prior reasonable approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and Subcontractors in form and substance satisfactory to Lender in its reasonable discretion, with any remainder proportionately allocated for either return to Borrower as reimbursement for funds expended by Borrower in an effort to restore and repair the Project or for application to a prepayment of the principal of the Loan, as the case may be.

(b) If the requirements of Section 11.2(a) above are not met, Lender shall have the right to elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, to accelerate the Obligations and declare the Obligations to be immediately due and payable and promptly apply the remainder of such sums received pursuant to this Section 11.2 to the payment of the Obligations in whatever order Lender directs in its absolute discretion, with any remainder being paid to Borrower or as Borrower shall direct.

(c) Any reduction in the Obligations resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and applies such sums to the Obligations and, in any event, the unpaid portion of the Obligations shall remain in full force and effect and Borrower shall not be excused in the payment thereof. If Borrower has the right to, and Borrower elects to, restore or repair the Project after the occurrence of a casualty as provided above, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds shall be sufficient for the purpose, restore, repair, replace and rebuild the Project as nearly as possible to its value, condition and character immediately prior to such casualty in accordance with the foregoing provisions and Borrower shall pay to Lender all out-of-pocket costs and expenses of Lender incurred in administering payments on account of said rebuilding, restoration or repair, provided that Lender makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any Obligations secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in any proceedings therefor and to give receipts therefor.

(d) A prepayment of the Obligations which is required by the terms of this Article 11 shall not be subject to a prepayment fee or penalty.

## ARTICLE 12

### CONDEMNATION

**Section 12.1. Condemnation.** (a) In the event any of the Project or any portion thereof is taken or damaged by eminent domain powers of any Governmental Authority, the award shall be paid to Lender (and all awards and proceeds on the Project and all causes of action, claims, compensation, awards and recoveries for any such taking, or for any damage or injury to the Project for any loss or diminution in value of the same or any part thereof, are hereby assigned to Lender) and applied to payment of the principal amount of the Obligations, after deducting any costs incurred by Lender in connection therewith, and the Obligations, at Lender's option may be declared immediately due and payable. No prepayment penalty shall apply to prepayment of the Loan made through the application of eminent domain or condemnation awards.

(b) Notwithstanding the foregoing, Lender agrees not to accelerate the Obligations and declare such Obligations to be immediately due and payable, and agrees to permit Borrower to use the condemnation award to repair the Project **provided, however,** that the following terms and conditions are satisfied:

(i) The portion of the Project which is the subject of the taking: (A) does not adversely affect the use, occupancy, operation or maintenance of the balance of the Project as a luxury condominium hotel as described in this Loan Agreement and the Plans, (B) does not adversely affect the marketability or the value of the Condominium Units as such Units are described in the Declaration, (C) does not involve the taking of any of the Condominium Units, (D) does not adversely affect access to the Project, and (E) does not adversely affect Borrower's performance of any of its obligations under all reciprocal easement agreements burdening the Project and does not adversely affect or interfere with the rights and enjoyment provided by all reciprocal easement agreements benefiting the Project; and

(ii) The following conditions are satisfied:

(A) No Event of Default shall exist; and

(B) the Project can, in Lender's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the taking within nine (9) months after the receipt of the condemnation award by either Borrower or Lender and the Completion of the Project shall occur prior to the Loan Maturity; and

(C) all necessary Governmental Approvals can be obtained to allow the rebuilding and reoccupancy of the Project, as the case may be, as described in the Plans; and

(D) there are sufficient sums available (through the condemnation award and contributions by Borrower, the full amount of which shall, at Lender's option, have been deposited with Lender to be held by Lender) for such restoration or repair (including, without limitation, for any out-of-pocket

costs and reasonable expenses of Lender to be incurred in administering payments on account of said restoration or repair) and for payment of all debt service on the Loan to become due and payable during such restoration or repair; and

(E) with respect to the Condominium Units which are subject to Valid Sale Contracts or Related Sales Contracts, ninety-five percent (95%) thereof either do not have the right, as a result of the condemnation or any delay in construction caused thereby, to terminate their contracts or, if they have such a right, have reaffirmed their Valid Sale Contracts and Related Sales Contracts and have extended the Title Transfer Closing date of the conveyance of such Condominium Units; and

(F) Borrowers so elects by written notice delivered to Lender within the earlier of ten (10) days after settlement of the condemnation award or forty-five (45) days after the occurrence of the taking,

then Lender shall, solely for the purposes of such restoration or repair, advance so much of the condemnation award which has been received, and any funds deposited by Borrower therefor, to Borrower for restoration and repair in the manner and upon the same terms as Advances of the Loan are made pursuant to the Loan Documents, including, but not limited to, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and Subcontractors in form and substance satisfactory to Lender in its reasonable discretion, with any remainder proportionately allocated for either return to Borrower as reimbursement for funds expended by Borrower in an effort to restore and repair the Project or for application to a prepayment of the principal of the Loan, as the case may be.

(c) Any reduction in the Obligations resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and applies such sums to the Obligations and, in any event, the unpaid portion of the Obligations shall remain in full force and effect and Borrower shall not be excused in the payment thereof. If Borrower has the right to, and Borrower elects to, restore or repair the Project after the occurrence of a taking as provided above, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the condemnation award shall be sufficient for the purpose, restore, repair, replace and rebuild the Project as nearly as possible to its value, condition and character immediately prior to such condemnation or taking in accordance with the foregoing provisions and Borrower shall pay to Lender all out-of-pocket costs and expenses of Lender incurred in administering payments on account of said rebuilding, restoration or repair, provided that Lender makes the portion of such award allocated to restoration available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any Obligations secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or

involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to collect and receive any such awards, payments or other compensation from the parties or authorities making the same, to appear in any proceedings therefor and to give receipts therefor.

## ARTICLE 13

### ASSIGNMENTS

#### **Section 13.1. Prohibition of Assignments by Borrower or of Interests in Borrower/Affiliate Transfers.**

(a) Borrower shall not assign or attempt to assign its rights under this Loan Agreement or under any other Loan Document, and except for the sale of the Residential Hotel Condominium Units and the Retail Condominium Units in the Project contemplated by and in accordance with the terms of this Loan Agreement, Borrower will not suffer or permit any of its interests or rights in the Project and the other Collateral (whether legal or equitable) to be assigned, sold, pledged, encumbered, transferred, hypothecated or otherwise disposed of, by operation of law or otherwise, until the provisions of this Loan Agreement and the other Loan Documents have been fully complied with and the Obligations have been repaid in full.

(b) Except for the pledge of the Members ownership interest in Borrower to the Subordinate Lender pursuant to that certain Collateral Assignment of Membership Interests, dated as of the date hereof from Borrower to Subordinate Lender, none of the ownership interests in Borrower, whether such ownership interest is direct or indirect, shall be sold, assigned, transferred, conveyed, pledged, encumbered or otherwise hypothecated, as the case may be, without the prior written consent of Lender.

**Section 13.2. Successors and Assigns.** Subject to the foregoing restrictions on transfer and assignment contained in this Article 13, this Loan Agreement shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and assigns.

**Section 13.3. Transfer, Assignment and/or Participation by Lender.** Unless an Event of Default exists, Lender agrees that Lender will not sell, transfer or assign the Note, the Mortgage and the other Loan Documents, or grant participation therein, or issue certificates or securities evidencing a beneficial interest therein in a rated or unrated public offering or private placement. If an Event of Default exists, Lender shall have the right to sell, transfer or assign the Note, the Mortgage and the other Loan Documents, or grant participation therein, or issue certificates or securities evidencing a beneficial interest therein in a rated or unrated public offering or private placement and, to that end, Lender may forward to any purchaser, transferee, assignee, service, participant, investor or credit rating agency rating such securities (collectively, an "Investor") or prospective Investor all documents and information in Lender's possession with respect to Borrower, Guarantor, the Project and the Loan Documents as such Investor or prospective Investor may request.

## ARTICLE 14

### EVENTS OF DEFAULT

**Section 14.1. Events of Default.** The occurrence of any one or more of the following shall constitute an "Event of Default," as such term is used herein:

(a) Borrower shall fail to pay when the same shall be due and payable, any principal of the Loan, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment;

(b) Borrower shall fail to pay when the same shall be due and payable, any interest on the Loan or any other sums due hereunder or under any of the other Loan Documents, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment, and such failure continues for a period of five (5) Business Days after written notice from Lender;

(c) Borrower shall fail to comply with any of its covenants contained in Section 10.7 hereof regarding the payment of insurance proceeds;

(d) Borrower shall fail to comply with any of its covenants contained in Articles 11 or 12, and such failure shall continue for a period of thirty (30) days;

(e) Borrower shall fail to comply with any of its covenants contained in Article 13;

(f) Borrower shall fail to perform any other term, covenant or agreement contained herein or in any of the other Loan Documents (other than those specified elsewhere in this Article 14 or in the other Loan Documents) for thirty (30) days after written notice of such failure has been given to the Borrower by Lender; provided, however, if such default is of a nature that it cannot be cured within thirty (30) days and the Borrower commences and diligently proceeds to cure such default, such cure period shall be extended for such period of time as required to cure such default but in no event more than thirty (30) additional days;

(g) Any representation or warranty of Borrower or Guarantor in this Loan Agreement, any other Loan Document or in any other document or instrument delivered pursuant to or in connection with this Loan Agreement shall prove to have been false in any material respect upon the date when made or deemed to have been made or repeated;

(h) (i) Borrower shall fail to pay when due, or within any applicable period of grace, any indebtedness in excess of \$50,000, or fail to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing indebtedness in excess of \$50,000 for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof, and as to which the holder or holders thereof have commenced legal action with respect thereto provided that the foregoing shall not constitute an Event of Default to the extent that Borrower is diligently, and in good

faith, contesting any such payment or performance and so long as any enforcement of judgment or execution against the Project has been stayed; or

(ii) Guarantor shall fail to pay at maturity, or within any applicable period of grace, any indebtedness in excess of \$50,000, or fail to observe or perform any material term, covenant or agreement contained in any agreement by which it or he, as the case may be, is bound, evidencing or securing indebtedness in excess of \$50,000 for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof, and as to which the holder or holders thereof have commenced legal action with respect thereto provided that the foregoing shall not constitute an Event of Default to the extent that Guarantor is diligently, and in good faith, contesting any such payment or performance and so long as any enforcement of judgment or execution against the Project has been stayed;

(i) Borrower or Guarantor, shall make a general assignment for the benefit of creditors, or admit in writing its inability to pay or generally fail to pay its debts as they mature or become due, or shall petition or apply for the appointment of a trustee or other custodian, liquidator or receiver or of any substantial part of their assets or shall commence any case or other proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect, or shall take any action to authorize or in furtherance of any of the foregoing, or if any such petition or application shall be filed or any such case of other proceeding shall be commenced against Borrower or Guarantor, or Borrower or Guarantor or their respective authorized representative shall indicate its approval thereof or consent thereto;

(j) A decree or order is entered appointing any such trustee, custodian, liquidator or receiver or adjudicating Borrower or Guarantor bankrupt or insolvent, or approving a petition in any such case or other proceeding; or a decree or order for relief is entered in respect of Borrower or Guarantor in an involuntary case under federal bankruptcy laws as now or hereafter constituted and such decree or order for relief entered in an involuntary case under federal bankruptcy laws remains undischarged for more than sixty (60) days;

(k) There shall remain in force, undischarged, unsatisfied and unstayed, for more than thirty (30) days, whether or not consecutive, any uninsured final judgment against Borrower in the amount of \$50,000 or that, with all other outstanding, uninsured, final judgments undischarged against Borrower exceeds in the aggregate \$100,000;

(l) There shall remain in force, undischarged, unsatisfied and unstayed, for more than sixty (60) days, whether or not consecutive, any uninsured final judgment against Guarantor in the amount of \$25,000 or that, with all other outstanding, uninsured, final judgments undischarged against Guarantor, as the case may be, exceeds in the aggregate \$75,000;

(m) If any of the Loan Documents shall be canceled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or with the express prior



written agreement, consent or approval of Lender, or any action at law, suit or in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of Borrower or Guarantor, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof;

(n) Borrower or Guarantor shall be indicted for a federal crime, a punishment for which would likely include the forfeiture of any assets of Borrower or Guarantor;

(o) The failure to satisfy the GMP Requirement on or before GMP Requirement Date;

(p) Borrower fails to satisfy the Pre-Sale Requirements by the First Disbursement Date;

(q) Borrower fails to invest the Minimum Earnest Money Investment in accordance with Section 3.23(e).

(r) Borrower shall be in default or in breach of any term of any Contract or Purchase Agreement (after any requisite notice or cure periods contained in such contract) and such default would result in a and such default would have a Material Adverse Effect;

(s) If Borrower shall commence dissolution or reorganization or shall cease to maintain its existence as a limited liability company;

(t) Borrower shall fail to satisfy all conditions precedent to the First Disbursement Date on or before November 1, 2006;

(u) Subject to Force Majeure, Substantial Completion of the Project fails to occur on or before the twenty-seventh (27<sup>th</sup>) month anniversary of the Closing Date;

(v) Except as expressly permitted by the terms of this Loan Agreement, Borrower shall cause, permit or suffer the Plans to be amended or otherwise changed without the prior written consent of Lender;

(w) Borrower fails to meet deadlines set forth in the Construction Schedule approved by Lender;

(x) Guarantor shall die or be declared legally incompetent and Lender shall not have received each of the Guaranties and the Environmental Indemnity fully executed by a substitute guarantor satisfactory to Lender in its sole discretion within sixty (60) days of the Guarantor's death or declaration of incompetence;

(y) Guarantor shall default in its obligations under the Guaranties or the Environmental Indemnity beyond applicable cure or grace periods, if any, expressly set forth in the Guaranties or the Environmental Indemnity, as the case may be;

(z) Borrower effects a change in the Minimum Price of any Condominium Unit without the prior written consent of Lender;

(aa) Borrower shall enter into any contract for the sale of a Condominium Units which is not a Valid Sale Contract or a Related Party Contract (other than the At-Cost Penthouse Contract), or Borrower shall enter into more Related Party Contracts than is expressly permitted by the terms and conditions of this Loan Agreement;

(bb) an Event of Default shall occur under any other Loan Document;

(cc) Failure of Borrower to make a Deficiency Deposit when required under and in accordance with Article 7 of this Loan Agreement; or

(dd) Any event, occurrence or circumstance occurs which, pursuant to the express terms of this Loan Agreement or any other Loan Documents, constitutes an Event of Default.

Notwithstanding anything to the contrary contained in this Loan Agreement or the other Loan Documents, Lender shall in no event or under any circumstance be obligated or required to accept a cure by Borrower or by any other Person of an Event of Default unless Lender agrees in writing to do so in the exercise of Lender's sole and absolute discretion, it being agreed that once an Event of Default exists, Lender shall be absolutely and unconditionally entitled to pursue all rights and remedies available to it under the Loan Documents or otherwise at law or in equity. The foregoing is not intended to limit or abrogate the rights of Subordinate Lender under the Subordination and Intercreditor Agreement.

## ARTICLE 15

### LENDER'S REMEDIES IN EVENT OF DEFAULT

**Section 15.1. Remedies Conferred Upon Lender.** During the existence of an Event of Default, Lender shall, in addition to all remedies conferred upon Lender by Law and by the terms of the Note, Mortgage and the other Loan Documents, have the right but not the obligation to pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that all such remedies shall be cumulative and that no such remedy shall be to the exclusion of any other:

(a) Take possession of and operate the Project, collect all Rents and other revenues from the Project, whether or not Lender shall take possession, make entry or engage in any other activity with respect to the Project, and do any and every act which Borrower might do in its own behalf, and, Borrower hereby irrevocably appoints and constitutes Lender its lawful attorney-in-fact, with full power of substitution for the purposes aforesaid, it being understood and agreed that the foregoing power of attorney shall be a power coupled with an interest and cannot be revoked;

(b) Withhold further disbursement, if any, of the proceeds of the Loan;

(c) Accrue and collect interest on the Obligations at the Default Rate;

- (d) Declare the Note to be immediately due and payable;
- (e) Use and apply any monies deposited by Borrower with Lender, regardless of the purpose for which the same was deposited, to cure any such Event of Default or to apply on account of any Obligations which is due and owing to Lender; or
- (f) Exercise or pursue any other right or remedy permitted under this Loan Agreement or any of the other Loan Documents or conferred upon Lender by operation of Law.

**Section 15.2. Waiver of Automatic Stay. IN THE EVENT BORROWER OR GUARANTOR SHALL (A) FILE A PETITION WITH ANY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER BANKRUPTCY CODE, AS AMENDED (THE "CODE"), (B) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE CODE, (C) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF, (D) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR FOR ALL OR SUBSTANTIALLY ALL OF ITS ASSETS, OR (E) BE THE SUBJECT OF ANY ORDER, JUDGMENT, OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST BORROWER OR SUCH GUARANTOR FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR RELIEF FOR BORROWER, THEN, LENDER SHALL THEREUPON BE ENTITLED TO OBTAIN AND BORROWER AND GUARANTOR, AS THE CASE MAY BE, TO THE FULLEST EXTENT PERMITTED BY LAW, IRREVOCABLY AND UNCONDITIONALLY CONSENT TO GRANT LENDER IMMEDIATE RELIEF FROM ANY AUTOMATIC STAY IMPOSED BY SECTION 362 OF THE CODE, OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES WHICH WOULD OTHERWISE BE AVAILABLE TO LENDER AS PROVIDED IN THIS LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENTS AND AS OTHERWISE PROVIDED BY LAW, AND BORROWER AND GUARANTOR, AS THE CASE MAY BE, TO THE EXTENT PERMITTED BY LAW, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RIGHT TO OBJECT TO SUCH RELIEF.**

**Section 15.3. Non-Waiver of Remedies. No waiver of any breach or default hereunder shall constitute or be construed as a waiver by Lender of any subsequent breach or default or of any breach or default of any other provision of this Loan Agreement.**

## ARTICLE 16

### GENERAL PROVISIONS

**Section 16.1. Captions.** The captions and headings of various Articles and Sections of this Loan Agreement and Exhibits pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions hereof.

**Section 16.2. Entire Agreement.** This Loan Agreement and the other Loan Documents and instruments delivered in connection herewith, as may be amended from time to time in writing, constitute the entire agreement of the parties with respect to the Project and the Loan, and all prior discussions, negotiations and document drafts are merged herein and therein. Neither Lender nor any employee of Lender has made or is authorized to make any representation or agreement upon which Borrower may rely unless such matter is made for the benefit of Borrower and is in writing signed by an authorized officer of Lender. Borrower agrees that it has not and will not rely on any custom or practice of Lender, or on any course of dealing with Lender, in connection with the Loan unless such matters are set forth in this Loan Agreement or the other Loan Documents or in an instrument made for the benefit of Borrower and in a writing signed by an authorized officer of Lender.

**Section 16.3. Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered, if sent by reputable overnight courier (effective the Business Day following delivery to such courier), if sent by telecopy with confirmation of receipt and a hard copy mailed in accordance with the provisions of this Section 16.3 (effective the Business Day following receipt of confirmation of receipt) or if mailed (effective when received or when receipt thereof is first refused by the intended recipient of the notice) by United States registered or certified mail, postage prepaid, return receipt requested:

If to Borrower:

SB HOTEL ASSOCIATES LLC  
c/o The Stillman Organization, Ltd.  
276 Fifth Avenue  
New York, New York 10001  
Attention Roy Stillman  
Telecopy No.: (212) 686-5650  
Confirmation No.: (212) 686-2400

with copy to:

PROSKAUER ROSE LLP  
1585 Broadway  
New York, New York 10036  
Attention Kenneth S. Hilton, Esq.  
Telecopy No.: (212) 969-2900  
Confirmation No.: (212) 969-3725

If to Lender:

CORUS BANK, N.A.  
3959 N. Lincoln Avenue  
Chicago, Illinois 60613  
Attention: Keith Gibbons  
First Vice President  
Telecopier No. (773) 832-3540  
Confirmation No. (773) 832-3524

With a copy to:

CORUS Bank, N.A.  
3959 N. Lincoln Avenue  
Chicago, Illinois 60613  
Attention: Joel C. Solomon, Esq.,  
General Counsel-Commercial Lending  
Telecopy No.: (773) 832-3626  
Confirmation No.: (773) 832-3526

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other fashion shall be deemed effective only upon receipt.

**Section 16.4. Modification, Waiver.** No modification, waiver, amendment, discharge or change of this Loan Agreement is valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

**Section 16.5. Governing Law.** Borrower hereby acknowledges, consents and agrees this Loan Agreement and the rights of all parties mentioned herein shall be governed by the Laws (as opposed to the conflict of Laws) of the State of Illinois. Notwithstanding the foregoing, the parties agree that:

(a) The creation, attachment and perfection of certain liens and security interests and the procedures governing the enforcement by Lender of the provisional remedies against the Borrower or Guarantor, including by way of illustration but not limitation, foreclosure actions, actions for replevin or claim and delivery of the Project, for injunctive relief or for the appointment of a receiver, or for the foreclosure of any lien or security interest or for the enforcement of the power of sale with respect to the Project shall be governed by the Laws of the State of Florida.

(b) Lender shall comply with applicable State of Florida Laws to the extent required in connection with the foreclosure of the security interests and liens created by this Loan Agreement or any other Loan Document and the enforcement of any power of sale, as the case may be; provided, however, that this subparagraph shall in no event be construed to provide that the substantive Laws of the State of Florida shall apply to this Loan Agreement

or any other Loan Document, all of which are and shall continue to be governed by the substantive law of the State of Illinois. Lender hereby agrees that any and all actions arising out of the Loan transaction including, without limitation, any action against Guarantor, shall be filed in the state or federal courts in the State of Florida.

The Illinois Credit Agreements Act, 815 ILCS 160/1 *et. seq.* shall apply to any action or claim arising out of or relating to this Loan Agreement and the other Loan Documents.

**Section 16.6. Acquiescence Not to Constitute Waiver of Lender's Requirements.** Each and every covenant and condition for the benefit of Lender contained in this Loan Agreement may be waived by Lender, **provided, however,** that to the extent that Lender may have acquiesced in any noncompliance with any conditions precedent to the closing, such acquiescence shall not be deemed to constitute a waiver by Lender of such requirements. A waiver by Lender shall only be evidenced by a writing signed by Lender expressly setting forth the covenant and/or condition waived by Lender.

**Section 16.7. Disclaimer by Lender.** This Loan Agreement is made for the sole benefit of Borrower and Lender (and Lender's successors and assigns and participants, if any) and no other person or persons shall have any benefits, rights or remedies under or by reason of this Loan Agreement. Lender shall not be liable to the General Contractor, any Subcontractors, suppliers, laborers, Design Professionals, engineers, tenants, or other party for labor or services performed or materials supplied in connection any work done on or about or in respect of the Project. Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project. Borrower is not and shall not be an agent of Lender for any purposes. Lender is not and shall not be an agent of Borrower for any purposes. Lender, by making the Loan or any action taken pursuant to any of the Loan Documents, shall not be deemed a partner or a joint venturer with Borrower. Lender shall not be deemed to be in privity of contract with any party to a Construction Document or provider of services to the Project, nor shall any payment of funds directly to a party to a Construction Document or any Subcontractor or provider of services be deemed to create any third-party beneficiary status or recognition of same by Lender.

**Section 16.8. Right of Lender to Make Advances to Cure Borrower's Defaults.** If Borrower shall fail to perform in a timely fashion any of Borrower's covenants, agreements or obligations contained in this Loan Agreement, the Note or the other Loan Documents, and such failure continues for such period of time as to constitute an Event of Default under any of the Loan Documents, Lender may upon prior notice to Borrower (but shall not be required to) perform any of such covenants, agreements and obligations. Loan proceeds advanced by Lender in the exercise of its reasonable judgment in accordance with this Loan Agreement to the extent that the same are needed to protect its security for the Loan is deemed to be obligatory advances hereunder and any amounts expended (whether by disbursement of undisbursed Loan proceeds or otherwise) by Lender in so doing shall constitute additional indebtedness evidenced and secured by the Mortgage and the other Loan Documents.

**Section 16.9. Definitions Included in Amendment.** Definitions contained in this Loan Agreement which identify documents, including the Loan Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof and all future amendments and supplements thereto entered into from time to time to satisfy the requirements of this Loan

Agreement or otherwise with the consent of the Lender. Reference to this Loan Agreement contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Loan Agreement.

**Section 16.10. Time Is of the Essence.** Time is hereby declared to be of the essence of this Loan Agreement and of every part hereof.

**Section 16.11. Execution in Counterparts.** This Loan Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**Section 16.12. Waiver of Jury Trial.** BORROWER AND LENDER EACH WAIVE ALL RIGHTS TO TRIAL BY JURY OF ANY SUITS, CLAIMS, COUNTERCLAIMS, AND ACTIONS OF ANY KIND ARISING UNDER OR RELATING TO THIS LOAN AGREEMENT. BORROWER AND LENDER EACH ACKNOWLEDGE THAT THIS IS A WAIVER OF A LEGAL RIGHT AND REPRESENTS TO THE OTHER THAT THIS WAIVER IS MADE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY. BORROWER AND LENDER EACH AGREE THAT ALL SUCH SUITS, CLAIMS, COUNTERCLAIMS, AND ACTIONS SHALL BE TRIED BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION, WITHOUT A JURY.

**Section 16.13. Conflicts.** In the event of any inconsistency between the terms of this Loan Agreement and any of the other Loan Documents (other than the Note), the terms of this Loan Agreement shall control.

**Section 16.14. Submission to Jurisdiction; Certain Waivers.** Borrower irrevocably (a) submits to the non-exclusive personal jurisdiction of any state or federal court in the State of Illinois or the State of Florida in any suit, action or other legal proceeding relating to this Loan Agreement; (b) agrees that all claims in respect of any such suit, action or other legal proceeding may be heard and determined in, and enforced in and by, any such court; (c) waives any objection that it may now or hereafter have to venue in any such court sitting in Cook County, Illinois or Broward County, Florida or that such court is an inconvenient forum; (d) agrees to service of process in any such proceeding by registered or certified mail, postage prepaid, or in any other manner permitted by law, to any then active agent for service of process at any specified address or to Borrower at its address set forth above or to such other address of which Lender shall have been notified in writing (such service to be effective on the earlier of receipt thereof or, in the case of service by mail, the fifth day after deposit of such service in the mails as aforesaid), and hereby waives any claim of error arising out of service of process by any method provided for herein or any claim that such service was not effectively made; (e) agrees that the failure of its agent to give any notice of any such service of process to it shall not impair or affect the validity of such service or any judgment based thereon; (f) to the extent that Borrower has acquired, or hereafter may acquire, any immunity from jurisdiction of any such court or from legal process therein, waives, to the fullest extent permitted by applicable Law, such immunity; (g) to the fullest extent permitted by applicable Law, in connection with, or with respect to, any suit, action or other legal proceeding relating to this Loan Agreement (i) **WAIVES** any claim that it is immune from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to

it or any of its property, (ii) **WAIVES** any claim that it is not personally subject to the jurisdiction of any such court, (iii) **WAIVES** any right to assert any counterclaim therein (other than compulsory counterclaims under applicable Laws), and (iv) **WAIVES** any claim to punitive or consequential damages, and (h) agrees that Lender shall have the right to bring any legal proceedings (including a proceeding for enforcement of a judgment entered by any of the aforementioned courts) against Borrower in any other court or jurisdiction in accordance with applicable Law. Notwithstanding the foregoing, nothing in this Section shall affect the right of Lender to bring any action or proceeding relating to this Loan Agreement in the courts of any jurisdiction or the right, in connection with any legal action or proceeding whatsoever, to serve legal process in any other manner permitted by law.

**Section 16.15. Set-Offs.** (i) From time to time in connection with the payment of interest due and payable under the Note, and (ii) in all other instances, after the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably authorizes and directs Lender, to charge Borrower's accounts and deposits, if any, with Lender (general or special, time or demand, provisional or final), other than tenant security accounts and earnest money, and to pay over to Lender an amount equal to any amounts from time to time due and payable to Lender hereunder, under the Note or under any other Loan Document. Borrower hereby grants to Lender a security interest in and to all such accounts and deposits, if any, maintained by the Borrower with Lender.

**Section 16.16. Advertising.** Borrower hereby agrees that Lender shall have the right, following the Closing Date, to publicly announce in print or otherwise that Lender has made and closed the Loan to Borrower. In connection therewith, Lender shall have the right to describe the Loan, including the Borrower's name, the type of the Loan (i.e., construction, bridge, mini-perm, etc.), and the Loan amount; and identify the Project and the location thereof, by way of description and/or photographs of the Project. Borrower shall cooperate with Lender in the erection of appropriate signage at the Project advertising the financing of the Project by Lender.

**Section 16.17. Right of Lender to Communicate With Subordinate Lender.** Borrower hereby agrees that Lender shall have the right to communicate with Subordinate Lender during the Loan Term and share information regarding the Borrower, Guarantor, Loan Documents, Subordinate Loan Documents and the Project.

**Section 16.18. Limitation On Liability; Waiver Of Punitive Damages.** BORROWER AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY ARISING UNDER OR RELATING TO THIS AGREEMENT, THE LOAN DOCUMENTS OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL BORROWER HAVE A REMEDY OF (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES IT MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY DISPUTE, WHETHER THE DISPUTE IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE.

[signature page to follow]



Borrower and Lender have executed this Construction Loan Agreement as of the day and year first set forth above.

**BORROWER:**

**SB HOTEL ASSOCIATES LLC**, a Delaware  
limited liability company

By: ROY STILLMAN  
Name: ROY STILLMAN  
Title: President

**LENDER:**

**CORUS BANK, N.A.**

By: \_\_\_\_\_  
Name: Keith Gibbons  
Title: First Vice President

Borrower and Lender have executed this Construction Loan Agreement as of the day and year first set forth above.

**BORROWER:**

**SB HOTEL ASSOCIATES LLC**, a Delaware  
limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LENDER:**

**CORUS BANK, N.A.**

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

Name: Keith Gibbons

Title: First Vice President