

EXHIBIT

1

LOAN AGREEMENT

Dated as of January 9, 2006

By and Among

Borrowers (as defined herein)

And

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

as Lender

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LOAN AGREEMENT

LOAN AGREEMENT dated as of January 9, 2006 (as the same may be modified, supplemented, amended or otherwise changed, this "*Agreement*") by and among NESBITT LYNNWOOD PROPERTY LLC, a Delaware limited liability company ("*Lynnwood Borrower*"), NESBITT BELLEVUE PROPERTY LLC, a Delaware limited liability company ("*Bellevue Borrower*"), NESBITT PORTLAND PROPERTY LLC, a Delaware limited liability company ("*Portland Borrower*"), NESBITT COLORADO SPRINGS PROPERTY LLC, a Delaware limited liability company ("*Colorado Springs Borrower*"), NESBITT DENVER PROPERTY LLC ("*Denver Borrower*"), a Delaware limited liability company, NESBITT LIVONIA PROPERTY LLC, a Delaware limited liability company ("*Livonia Borrower*"), NESBITT BLUE ASH PROPERTY LLC, a Delaware limited liability company ("*Blue Ash Borrower*"), and NESBITT EL PASO PROPERTY L.P., a Delaware limited partnership ("*El Paso Borrower*"), each having an address at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405 (each of the foregoing, a "*Borrower*" and collectively together with their respective permitted successors and assigns, "*Borrowers*"), and GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation (together with its successors and assigns, "*Lender*").

1. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

1.1 Specific Definitions. The following terms have the meanings set forth below:

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

Allocated Loan Amount: with respect to each Property, the amount set forth with respect to such Property on Schedule 6.

Amortization Commencement Date: March 6, 2008, as such date may be changed in accordance with Section 2.2.4.

Approved Capital and FF&E Expenses: (A) Required Repairs or (B) FF&E Expenses and Capital Expenses incurred by a Borrower, which Capital Expenses shall either be (i) included in the Approved Capital Budget for the Property owned by such Borrower or (ii) approved by Lender; provided that Lender shall not unreasonably withhold its consent for such expenditures as are incurred for emergencies, requirements of franchisors under a Franchise Agreement, requirements of law or compliance with the Loan Documents.

Approved Operating Expenses: operating expenses incurred by a Borrower which (i) are within 105% of the total amounts included in the Approved Operating Budget for the Property owned by such Borrower for the current calendar month or year to date; provided that, for purposes hereof, operating expenses in such Approved Operating Budget shall be deemed to be increased from the amounts in the applicable Approved Operating Budget to the extent that such increased amounts are not more than any increase in operating revenues from the amounts

in such Approved Operating Budget or directly relate to variances in occupancy levels or emergencies or unforeseen circumstances or as a result of requirements of law or requirements of franchisors under a Franchise Agreement or in connection with compliance with the Loan Documents; (ii) are for real estate taxes, insurance premiums, electric, gas, oil, water, sewer or other utility service to such Property; or (iii) have been approved by Lender, which approval shall not be unreasonably withheld, and which approval shall be deemed given if Lender fails to respond to a request for approval within five (5) Business Days following request for such approval.

Available Cash: as of each Payment Date, the amount of Rents, if any, remaining in the Deposit Account after the application of all of the payments required under clauses (i) through (v) of Section 3.13(a).

Bellevue Property Agreement: that certain Declaration of Protective Conditions, Covenants and Restrictions dated May 12, 1980 made by CC&F Washington Properties, Inc., a Washington corporation, which was recorded on May 13, 1980 as Recording No. 8005130448 in the Official Records of King County, Washington, pertaining to the land described therein, as amended by that certain Notice of Succession to Ownership dated October 14, 1980 made by Cabot, Cabot & Forbes Co., a Delaware corporation, and CC&F Washington Properties, Inc., a Washington corporation, which was recorded on October 15, 1980 as Recording No. 8010210323 in the Official Records of King County, Washington, as further amended by that certain Notice of Amendment and Succession of the Declaration of Protective Conditions, Covenants and Restrictions, Cabot, Cabot & Forbes, I-90/Bellevue Business Park dated October 13, 1981 made by CC&F Bellevue, Inc., a Washington corporation, which was recorded as Recording No. 8110150240 in the Official Records of King County, Washington, as further amended by that certain Notice of CC&F Successor dated March 6, 1984 made by CC&F Bellevue, Inc., a Washington corporation, and CC&F Investment Company Limited Partnership, a Delaware limited partnership, which was recorded on March 22, 1984 as Recording No. 8403220558 in the Official Records of King County, Washington.

Blue Ash Property Agreement: that certain Declaration of Restrictive Covenants dated May 9, 1979 made by The Prudential Insurance Company of America, a New Jersey corporation, which was recorded on May 10, 1979, in Mortgage Book 4279, Page 414 in the Hamilton County, Ohio Records, pertaining to the land described therein, as amended by that certain Amendment No. 1 to Declaration of Restrictive Covenants dated February 14, 1980 made by The Prudential Insurance Company of America, a New Jersey corporation, which was recorded on February 19, 1980, in Mortgage Book 4323, Page 1812 in the Hamilton County, Ohio Records, as further amended by that certain Amendment No. 2 to Declaration of Restrictive Covenants dated August 6, 1984 made by The Prudential Insurance Company of America, a New Jersey corporation, which was recorded on September 11, 1984, in Mortgage Book 4521, Page 1803 in the Hamilton County, Ohio Records.

Borrower Representative(s): (i) with respect to Lynnwood Borrower, Lynnwood 44th Avenue West Associates, an Illinois general partnership; (ii) with respect to Bellevue Borrower, Bellevue Hotel Associates, an Illinois general partnership; (iii) with respect to Portland Borrower, Portland Hotel Associates, an Illinois general partnership; (iv) with respect to Colorado Springs Borrower, Colorado Springs Hotel Associates, an Illinois general partnership;

(v) with respect to Denver Borrower, Denver Hampden Associates, an Illinois general partnership; (vi) with respect to Livonia Borrower, Livonia Hotel Associates, an Illinois general partnership; (vii) with respect to Blue Ash Borrower, Blue Ash Embassy Associates, an Illinois general partnership; and (viii) with respect to El Paso Borrower, the El Paso GP.

Business Day: any day other than a Saturday, Sunday or any day on which commercial banks in New York, New York are authorized or required to close.

Calculation Date: the last day of each calendar quarter during the Term.

Capital Expenses: expenses that are capital in nature or required under GAAP to be capitalized.

Cash Trap Period: shall commence, if, (i) an Event of Default has occurred and is continuing, and shall end if such Event of Default has been cured and no other Default or Event of Default has occurred and is continuing, or (ii) as of any Calculation Date, the Underwritten Debt Service Coverage Ratio is less than 0.75:1.00 (a "**DSCR Cash Trap Period**"), and shall end when the Properties have achieved an Underwritten Debt Service Coverage Ratio of at least 0.75:1.00 for two consecutive Calculation Dates.

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

Control: with respect to any Person, either (i) ownership directly or indirectly of 49% or more of all equity interests in such Person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

Debt: the unpaid Principal, all interest accrued and unpaid thereon, any Yield Maintenance Premium and all other sums due to Lender in respect of the Loan or under any Loan Document.

Debt Service: with respect to any particular period, the scheduled Principal and interest payments due under the Note in such period.

Debt Service Coverage Ratio: as of any date, the ratio calculated by Lender of (i) the Net Operating Income for the 12-month period ending with the most recently completed calendar month to (ii) the Debt Service with respect to such period.

Default: the occurrence of any event under any Loan Document which, with the giving of notice or passage of time, or both, would be an Event of Default.

Default Rate: a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) 5% above the Interest Rate, compounded monthly.

Defeasance Collateral: U.S. Obligations, which provide payments (i) on or prior to, but as close as possible to, all Payment Dates and other scheduled payment dates, if any,

under the Note after the Defeasance Date and up to and including the Stated Maturity Date, and (ii) in amounts equal to or greater than the Scheduled Defeasance Payments.

Defeasance Percentage: the percentage derived by dividing, (i) in the case of an initial Partial Defeasance, the original principal amount of the Defeased Note by the original principal amount of the Note or (ii) in the case of a subsequent Defeasance, the amount of the subsequent Defeased Note by the original principal amount of its corresponding Undefeased Note.

Denver Property Agreement: that certain Reciprocal Easement Agreement dated June 2, 1980 made by Crow Denoff Associates, a Colorado limited partnership, Crow-Watson #1, a Texas limited partnership, El Torito-La Fiesta Restaurants, Inc. a corporation, Annuity Board of the Southern Baptist Convention, Crow Tamarac Square Associates, a Colorado limited partnership, Connecticut General Life Insurance Company, a corporation, Denver Homotel Associates, Ltd., a Colorado limited partnership, Lomas & Nettleton Financial corporation, a Delaware corporation, and Trammell Crow Company, Inc., a Texas corporation, which was recorded on June 19, 1980, in Book 2175 at Page 499 in Denver County, Colorado, pertaining to the land described therein, as amended by that certain letter dated June 18, 1980 made by Denver Homotel Associates, Ltd., a Colorado limited partnership for the benefit of, and accepted and agreed to by, Crow Denoff Associates, a Colorado limited partnership, and Crow-Watson #1, a Texas limited partnership, which was recorded on August 20, 1980, in Book 22121 at Page 622 in Denver County, Colorado, as further amended by that certain letter dated May 10, 1984 made by Crow Tamarac Square Associates, a Texas limited partnership for the benefit of, and accepted and agreed to by, Crow Denoff Associates, a Colorado limited partnership, and Crow-Watson #7, a Texas limited partnership, which was recorded on May 11, 1984, in Book 3095 at Page 544 and re-recorded June 6, 1984, in Book 3116 at Page 347 in Denver County, Colorado.

Deposit Bank: Wachovia Bank, National Association, or such other bank or depository selected by Lender in its discretion.

DLJ Fund: DLJ Real Estate Capital Partners II, L.P., a Delaware limited partnership.

DLJ Key Principal: any of the following (i) the DLJ Fund, provided that, at the time in question, the DLJ Fund is directly or indirectly Controlled (in the sense of clause (ii) of the defined term "Control") by Credit Suisse Group or (ii) any Person directly or indirectly Controlled (in the sense of clause (i) or (ii) of the defined term "Control") by Credit Suisse Group or (iii) any direct or indirect wholly-owned subsidiary of Credit Suisse Group.

Eligible Institution: a depository institution insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P, P-1 by Moody's and F-1+ by Fitch. in the case of accounts in which funds are held for thirty (30) days or less or, in the case of Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's.

El Paso GP: Nesbitt El Paso GP, Inc., a Delaware corporation.

ERISA: the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

ERISA Affiliate: all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with Borrowers (or any Borrower), are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

FF&E Expenses: costs and expenses that are for fixtures, furnishings, equipment, furniture, and other items of tangible personal property now or hereafter located in or on a Property or the Improvements thereon or used in connection with the use, occupancy, operation and maintenance of all or any part of the hotel located on a Property, other than stocks of food and other supplies held for consumption in normal operation but including, without limitation, appliances, machinery, equipment, signs, artwork, office furnishings and equipment, guest room furnishings, and specialized equipment for kitchens, laundries, bars, restaurant, public rooms, health and recreational facilities, linens, dishware, all partitions, screens, awnings, shades, blinds, floor coverings, hall and lobby equipment, heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevators, escalators, air conditioning and communication plants or systems with appurtenant fixtures, vacuum cleaning systems, call or beeper systems, security systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials; reservation system computer and related equipment; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of, parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; and the Vehicles (as defined in the USALI).

Franchise Agreement: with respect to each Property, the Franchise Agreement identified on Schedule 7, pursuant to which the applicable Borrower has the right to operate the hotel on its Property under a name and hotel system controlled by the applicable franchisor, as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with Section 5.31.

GAAP: generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

Governmental Authority: any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) now or hereafter in existence.

Guarantor: Nesbitt Family Trust 3 LLC, a Delaware limited liability company, subject to substitution and release as provided herein.

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

Interest Period: (i) the period from the date hereof through the first day thereafter that is the 5th day of a calendar month and (ii) each period thereafter from the 6th day of each calendar month through the 5th day of the following calendar month; except that the Interest Period, if any, that would otherwise commence before and end after the Maturity Date shall end on the Maturity Date. Notwithstanding the foregoing, if Lender exercises its right to change the Payment Date to a New Payment Date in accordance with Section 2.2.4, then from and after such election, each Interest Period shall be the period from the New Payment Date in each calendar month through the day in the next succeeding calendar month immediately preceding the New Payment Date in such calendar month.

Interest Rate: a rate of interest equal to 6.14% per annum (or, when applicable pursuant to this Agreement or any other Loan Document, the Default Rate).

Inventory: as defined in the UCC, and including items which would be entered on a balance sheet under the line items for "Inventories" or "china, glassware, silver, linen and uniforms" under USALI.

Key Principal(s): (i) Patrick M. Nesbitt; provided, however, in the event of the death or incapacity of Patrick M. Nesbitt, the Patrick M. Nesbitt Family Trust shall be deemed to be the "Key Principal" (whereupon all references herein or in any other Loan Document to "Key Principal" shall mean The Patrick M. Nesbitt Family Trust) and/or (ii) each and any DLJ Key Principal.

Leases: all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, a Property or the Improvements relating thereto, including any guarantees, extensions, renewals, modifications or amendments thereof and all additional remainders, reversions and other rights and estates appurtenant thereunder. As used herein, the term "Leases" shall not include Hotel Transactions.

Legal Requirements: statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Borrower, any Loan Document or all or part of any Property or the construction, ownership, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to any Borrower, at any time in force affecting all or part of any Property.

Lien: any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, assignment, security interest or any other encumbrance, charge or transfer of, on or affecting all or any part of any Property or any interest therein, or any direct or indirect interest in any Borrower or in any Borrower Representative, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances.

Livonia Property Agreement: that certain Building and Use Restrictions Agreement dated as of October 6, 1988, by and between David V. Johnson, Victor Corporate Park Land Investment Partnership, a Michigan co-partnership, and Livonia Hotel Associates, an Illinois general partnership, which was recorded on October 7, 1988 in Liber 23915 at Page 613 in the Wayne County Records, Michigan, pertaining to the land described therein.

Loan Documents: this Agreement and all other documents, agreements and instruments now or hereafter executed by one or more Borrowers, Guarantor or their respective Affiliates and delivered to Lender for purposes of evidencing or securing the Loan, including the following, each of which is dated as of the date hereof: (i) the Promissory Note or Promissory Notes made by Borrowers to Lender or the aggregate principal amount equal to the Loan (the "***Note***"), (ii) each Mortgage, Assignment of Leases and Rents and Security Agreement made by a Borrower (or the Deed of Trust, Assignment of Leases and Rents and Security Agreement made by a Borrower to a trustee, as the case may be) in favor of Lender which covers the Property owned by such Borrower (collectively, the "***Mortgages***"), (iii) each Assignment of Leases and Rents from a Borrower to Lender, (iv) each Assignment of Agreements, Licenses, Permits and Contracts from a Borrower to Lender, (v) each Clearing Account Agreement (collectively, the "***Clearing Account Agreements***") among each Borrower, Lender, Manager and the banks selected by Borrowers, (vi) the Deposit Account Agreement (the "***Deposit Account Agreement***") among Borrowers, Lender, Manager and the Deposit Bank and (vii) the Guaranty of Recourse Obligations made by Guarantor (the "***Recourse Carveout Guaranty***"); as each of the foregoing may be (and each of the foregoing defined terms shall refer to such documents as they may be) amended, restated, replaced, supplemented or otherwise modified from time to time.

Lynnwood Property Agreement: that certain Declaration of Protective Covenants, Conditions, Easements and Restrictions for Quadrant I-5 Center dated February 22, 1991 made by Quadrant Taiyo Associates I, a Washington general partnership, which was recorded on February 25, 1991 as Recording No. 9102250309 in the Official Records of Snohomish County, Washington, pertaining to the land described therein, as amended by that certain Clarification of Recorded Document dated April 1992 made by Quadrant Taiyo Associates I, a Washington general partnership, which was recorded on April 23, 1992 as Recording No. 9204230640 in the Official Records of Snohomish County, Washington, as further amended by that certain Agreement of Merger and Surrender of Declarant Authority dated June 18, 1992 made by the Board of Directors of the Quadrant I-5 Center Owners Association, a Washington non-profit corporation, and Quadrant Taiyo Associates I, a Washington general partnership, which was recorded on June 25, 1992 as Recording No. 9206250231 in the Official Records of Snohomish County, Washington.

Management Agreement: the management agreement between a Borrower and Manager, pursuant to which Manager is to manage the Property owned by such Borrower, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with Section 5.12.

Manager: Windsor Capital Group, Inc., a Colorado corporation, or any successor, assignee or replacement manager appointed by Borrower in accordance with Section 5.12.

Material Alteration: any alteration affecting structural elements of a Property the cost of which exceeds \$500,000; provided, however, that in no event shall (i) any Required Repairs, (ii) any tenant improvement work performed pursuant to any Lease existing on the date hereof or entered into hereafter in accordance with the provisions of this Agreement, or (iii) alterations performed as part of a Restoration, constitute a Material Alteration.

Material Lease: any restaurant or bar Lease or any other commercial Lease in excess of 5,000 square feet of the Improvements at any Property.

Maturity Date: the date on which the final payment of principal of the Note (or the Defeased Note, if applicable) becomes due and payable as therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

Monthly Debt Service Payment Amount: an amount equal to **\$1,224,161.92**, which is the monthly amount required to fully amortize the Principal over an amortization schedule of 300 months at the Interest Rate, it being understood that any proportionate payments received under any Defeased Note shall also be attributed to such amount.

Net Operating Income: for any period, the amount, if any, by which Operating Income for the Properties for such period exceeds the amount of Operating Expenses for the Properties for such period; *provided*, that in determining Net Operating Income, (i) Operating Expenses shall be increased by (A) the greater of (1) the total amount of deposits into the FF&E/Capital Reserve Subaccount in such period, and (2) 4% of Operating Income for such period; (B) the amount, if any, by which actual Management Fees are less than 4% of total room revenues for such period, and (C) the amount, if any, by which the total of actual fees under the Franchise Agreement and marketing expenses (inclusive of any expenses attributable to sales functions at the Properties) is less than 8.5% of total room revenues for such period, (ii) appropriate adjustments shall be made to account for an assumed daily occupancy level of the Properties of 75% (calculated based on all the Properties) and (iii) Operating Expenses shall not include any expenditure for which the corresponding item of revenue has been excluded from Operating Income. Any reference in this Agreement to net operating income where such term is not capitalized shall mean, with respect to any applicable period, the net operating income for the Properties during such period determined in accordance with GAAP.

Net Sales Proceeds: with respect to the sale of any Property, the gross proceeds of such sale less all reasonable and customary transaction costs approved by Lender in its reasonable discretion.

Officer's Certificate: a certificate delivered to Lender by a Borrower which is signed by a senior executive officer of such Borrower or its Borrower Representative.

Operating Expenses: the total of all expenditures, computed in accordance with GAAP, of whatever kind relating to the ownership, operation and maintenance of a Property that are incurred, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments, and other similar costs, and contributions to reserve accounts required under Article 3 hereof (other

than FF&E/Capital Reserve Subaccount) during the applicable period (but costs reimbursed or paid from any reserve shall not be included in Operating Expenses); *provided* that Operating Expenses will not include Debt Service, Capital Expenses, non-cash items such as depreciation and amortization or any extraordinary one-time expenditures not considered operating expenses under GAAP.

Operating Income: all income, computed in accordance with GAAP, derived from the ownership and operation of a Property from whatever source, *including*, but not limited to, Rents and interest on credit balances in accounts, but *excluding* sales, use or occupancy or other taxes on receipts required to be accounted for to any Governmental Authority, tips and gratuities (including service charges added to a customer's bill or statement in lieu of gratuities which are payable to employees), uncollectible accounts, sales of furniture, fixtures and equipment, insurance Proceeds (other than Proceeds of business interruption or other loss of income insurance), sums and credits received in settlement of claims for loss or damage to merchandise, unforfeited security deposits from commercial Leases, utility and other similar deposits and any disbursements from the reserve accounts required under Article 3 hereof.

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

Payment Date: the 6th day of each calendar month or, upon Lender's exercise of its right to change the Payment Date in accordance with Section 2.2.4, the New Payment Date (in either case, if such day is not a Business Day, the Payment Date shall be the first Business Day thereafter). The first Payment Date hereunder shall be March 6, 2006.

Permitted Encumbrances: (i) the Liens created by the Loan Documents, (ii) all Liens and other matters disclosed in the Title Insurance Policies, (iii) Liens, if any, for Taxes or Other Charges not yet delinquent, (iv) any workers', mechanics' or other similar involuntary Liens on a Property provided that any such Lien is bonded or discharged within 30 days after a Borrower first receives notice of such Lien and (v) such other title and survey exceptions and other matters affecting title as Lender approves in writing in Lender's reasonable discretion.

Permitted Transfers:

- (i) a Lease entered into in accordance with the Loan Documents; or
- (ii) Hotel Transactions; or
- (iii) a Permitted Encumbrance; or
- (iv) a Transfer and Assumption pursuant to Section 5.26.2; or
- (v) the Transfer of a Property pursuant to Section 2.4.2; or
- (vi) a Transfer by DLJ Fund of direct or indirect interests in Borrowers to any Person Controlled or under common Control with the DLJ Fund, provided that

Windsor Capital Group, Inc. (or any successor, assignee or replacement Manager appointed by Borrower in accordance with Section 5.12) continues to manage the Properties; or

(vii) provided that no Default or Event of Default shall then exist, a Transfer of a direct or indirect interest in a Borrower or in a Borrower Representative to any Person provided that:

(A) such Transfer shall not (x) cause the transferee (other than, directly or indirectly, a Key Principal), together with its Affiliates, to acquire Control of any Borrower or of any Borrower Representative or to increase its direct or indirect interest in any Borrower or in any Borrower Representative to an amount which equals or exceeds 49% or (y) result in any Borrower or in any Borrower Representative no longer being Controlled by at least one of the Key Principals;

(B) after giving effect to such Transfer, Key Principals (in the aggregate) shall continue to own at least 51% of all equity interests (direct or indirect) in Borrowers;

(C) Borrowers shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer not less than 10 days prior to the date of such Transfer; and

(D) Borrowers and El Paso GP (unless and until the El Paso Property has been released from the Lien of the Loan Documents in accordance with Section 2.4.2) shall all continue to be Special Purpose Bankruptcy Remote Entities; or

(viii) a Transfer of a direct or indirect interest in any Borrower or in any Borrower Representative that occurs by devise or bequest or by operation of law upon the death of a natural person that was the holder of such interest to a member of the immediate family of such interest holder or a trust established for the benefit of such immediate family member, provided that:

(A) no such Transfer shall result in a change of the day to day operations of any Property;

(B) Borrowers shall give Lender notice of such Transfer together with copies of all instruments effecting such Transfer not less than 30 days after the date of such Transfer;

(C) Borrowers and El Paso GP (unless and until the El Paso Property has been released from the Lien of the Loan Documents in accordance with Section 2.4.2) shall all continue to be Special Purpose Bankruptcy Remote Entities;

(D) if any such Transfer would result in a change of Control of such Borrower and occurs prior to the occurrence of a Secondary Market Transaction,

such Transfer is approved by Lender in writing within 30 days after any such Transfer; and

(E) if any such Transfer would result in a change of Control of such Borrower and occurs after the occurrence of a Secondary Market Transaction, Borrowers, at Borrowers' sole cost and expense, shall, within 30 days after any such Transfer, (a) deliver (or cause to be delivered) a substantive non-consolidation opinion to Lender and the Rating Agencies with respect to the applicable Borrower and such transferee in form and substance satisfactory to Lender and the Rating Agencies, (b) obtain the prior written consent of Lender which shall not be unreasonably withheld and (c) reimburse Lender for all reasonable expenses incurred by Lender in connection with such Transfer; or

(ix) any change in the trustees of The Patrick M. Nesbitt Family Trust, provided that:

(A) the same shall not result in a change of the day to day operations of any Property,

(B) Borrowers shall give Lender notice of such change together with copies of all instruments effecting such change not less than 30 days after the occurrence of the same,

(C) such additional or replacement trustee shall (a) be solvent, (b) have never been convicted of a felony, (c) have never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding and (d) have no outstanding judgments against him/her and

(D) either (x) Patrick M. Nesbitt remains as a co-trustee under the Patrick M. Nesbitt Family Trust or (y) if such change occurs as a result of the death or incapacity of Patrick M. Nesbitt, Lender shall have approved any replacement trustee, which consent shall not be unreasonably withheld; or

(x) Transfers (including a Transfer which results in a change of Control of Borrowers from one Key Principal to another) between the Key Principals of any direct or indirect interests in the RECP/Windsor II, LLC, a Delaware limited liability company:

(A) Borrowers and El Paso GP (unless and until the El Paso Property has been released from the Lien of the Loan Documents in accordance with Section 2.4.2) shall all continue to be Special Purpose Bankruptcy Remote Entities and

(B) Borrowers shall give Lender notice of such Transfer together with copies of all instruments effecting any such Transfer not less than 10 days after the date of such Transfer.

Notwithstanding anything to the contrary contained in clause (vii), (viii), (ix) or (x) if, as a result of such Permitted Transfer, Guarantor no longer either Controls (in the sense of clause (ii) of the defined term "Control) or owns any direct or indirect interest in Borrowers, it shall also be a condition hereunder that, on or prior to the date of such Permitted Transfer, one or more creditworthy Persons reasonably satisfactory to Lender that Controls Borrower or owns a direct or indirect interest in Borrowers, shall execute and deliver a guaranty of recourse obligations (in substantially the same form as the guaranty of recourse obligations delivered to Lender by Guarantor on the date hereof), whereupon the previous guarantor shall be released from any further liability under the guaranty and from and after the date of such Permitted Transfer, such replacement guarantor shall be the "Guarantor" for all purposes set forth in this Agreement. Lender agrees that a DLJ Key Principal shall be deemed satisfactory to Lender as a replacement guarantor provided that, at the time such DLJ Key Principal is to become the replacement guarantor, (A) such DLJ Key Principal Controls (in the sense of clause (ii) of the defined term "Control") or owns a direct or indirect interest in Borrowers, (B) the net worth of such DLJ Key Principal has not materially diminished from its present net worth and (C) such DLJ Key Principal shall (1) be solvent, (2) have never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, (3) have no outstanding judgments against it (which are not being appealed and/or have not been bonded over), (4) have no indictment or conviction for any Patriot Act Offense, and (5) not then be under investigation by any governmental authority for alleged criminal activity.

Person: any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

Plan: (i) an employee benefit or other plan established or maintained by a Borrower or any ERISA Affiliate or to which a Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

Properties: collectively, the parcels of real property and Improvements thereon owned by Borrowers and encumbered by the Mortgages; together with all rights pertaining to such real property and Improvements, and all other collateral for the Loan as more particularly described in the Granting Clauses of the Mortgages and referred to therein as the Mortgaged Property or the Trust Property, as applicable. The location of each Property is identified on Schedule 1.

Property Agreements: collectively, the Bellevue Property Agreement, the Blue Ash Property Agreement, the Denver Property Agreement, the Livonia Property Agreement and the Lynnwood Property Agreement, and, individually, each, a "**Property Agreement**".

Rating Agency: each of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("**S&P**"), Moody's Investors Service, Inc. ("**Moody's**"), and Fitch, Inc., a division of Fitch Ratings Ltd. ("**Fitch**") or any other nationally-recognized statistical rating

organization to the extent any of the foregoing have been engaged by Lender or its designee in connection with or in anticipation of any Secondary Market Transaction.

Rating Comfort Letter: a letter issued by each of the applicable Rating Agencies which confirms that the taking of the action referenced to therein will not result in any qualification, withdrawal or downgrading of any existing ratings of Securities created in a Secondary Market Transaction.

Release Date: the earlier to occur of (i) 36 months after the date hereof and (ii) the date that is two (2) years from the “startup day” (within the meaning of Section 860G(a)(9) of the Code) of the REMIC Trust established in connection with a Securitization involving this Loan.

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

Release Amount: with respect to any Property released pursuant to Section 2.4.2, the sum of (i) the greater of (A) 100% of the Net Sales Proceeds with respect to such Property and (B) 125% of the Allocated Loan Amount for such Property plus (ii) in the event that the amount set forth in clause (i) would not be sufficient to satisfy the DSCR Release Threshold set forth in Section 2.4.2(j), an amount equal to a portion of the then-outstanding Principal such that the DSCR Release Threshold would be satisfied after reduction of the Loan by the amount in clause (i) plus such amount.

Rents: all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding) or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of each Borrower, Manager or any of their agents or employees for the benefit of a Borrower from any and all sources arising from or attributable to each Property and the Improvements, including all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, parking charges, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of each Property or rendering of services by any Borrower, Manager or any of their agents or employees, or any operator or manager of the hotel or the commercial space located in the Improvements at any Property or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales, and proceeds, if any, from business interruption or other loss of income insurance. Notwithstanding the foregoing, “Rents” shall not include payments made by Borrowers to Manager pursuant to the Management Agreements.

Scheduled Defeasance Payments: (i) in the case of a Full Defeasance, the Monthly Interest Payment Amount and/or the Monthly Debt Service Payment Amount, as the case may be, required under the Note (or, to the extent that there has been a previous Partial Defeasance, Undeferred Note, as the case may be) for all Payment Dates occurring after the Defeasance Date (including the outstanding Principal balance on the Note (or Undeferred Note, as the case may be) as of the Stated Maturity Date) and (ii) in the case of a Partial Defeasance, the Monthly Interest Payment Amount and/or the Monthly Debt Service Payment Amount, as the case may be, multiplied by the Defeasance Percentage for all Payment Dates occurring after the Defeasance Date (including the outstanding Principal balance on the Note (or Undeferred Note, as the case may be) as of the Stated Maturity Date).

Security Agreement: a security agreement in form and substance that would be satisfactory to Lender (in Lender's sole but good faith discretion) pursuant to which Borrowers grant Lender a perfected, first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral.

Servicer: a servicer selected by Lender to service the Loan, including any "master servicer" or "special servicer" appointed under the terms of any pooling and servicing agreement or similar agreement entered into as a result of a Secondary Market Transaction.

State: as to any Property, the state in which such Property is located.

Stated Maturity Date: February 6, 2011, as such date may be changed in accordance with Section 2.2.4.

Taxes: all real estate and personal property taxes, assessments, water rates or sewer rents, maintenance charges, impositions, vault charges and license fees, now or hereafter levied or assessed or imposed against all or part of the Properties.

Term: the entire term of this Agreement, which shall expire upon repayment in full of the Debt and full performance of each and every obligation to be performed by Borrowers pursuant to the Loan Documents.

Title Insurance Policies: the ALTA mortgagee title insurance policies in the form acceptable to Lender issued with respect to each Property and insuring the Liens of the Mortgages.

Transfer: any sale, conveyance, transfer, Lease or assignment, or the entry into any agreement to sell, convey, transfer, lease or assign, whether by law or otherwise, of, on, in or affecting (i) all or part of any Property (including any legal or beneficial direct or indirect interest therein), (ii) any direct or indirect interest in any Borrower (including any profit interest), or (iii) any direct or indirect interest in any Borrower Representative. For the avoidance of doubt, the creation and existence of a Lien shall not constitute a Transfer hereunder.

UCC: the Uniform Commercial Code as in effect in the State or the state in which any of the Cash Management Accounts are located, as the case may be.

Underwritten Debt Service: with respect to any particular period, the greater of (i) scheduled Principal and interest payments due under the Note in such period or (ii) the product of (A) the outstanding principal as of the end of such period multiplied by (B) 11.33%.

Underwritten Debt Service Coverage Ratio: as of any date, the ratio calculated by Lender of (i) the Net Operating Income for the 12-month period ending with the most recently completed calendar month to (ii) the Underwritten Debt Service with respect to such period.

U.S. Obligations: obligations that are “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended, and, to the extent acceptable to the applicable Rating Agencies, other non-callable government securities satisfying the REMIC Provisions (hereinafter defined), in each case to the extent such obligations are not subject to prepayment, call or early redemption. As used herein, “**REMIC Provisions**” mean provisions of the federal income tax law relating to real estate mortgage investment conduits, which appear at Sections 860A through 860G of Subchapter M of Chapter 1 of Subtitle A of the Code, and related provisions, and temporary and final regulations and, to the extent not inconsistent with such temporary and final regulations, proposed regulations, and published rulings, notices and announcements promulgated thereunder, as the foregoing may be in effect from time to time.

USALI: Uniform System of Accounts for the Lodging Industry, 9th edition (or most current edition adopted by Borrowers).

Welfare Plan: an employee welfare benefit plan, as defined in Section 3(1) of ERISA.

Yield Maintenance Premium: an amount which, when added to the outstanding Principal, would be sufficient to purchase U.S. Obligations which provide payments (a) on or prior to, but as close as possible to, all successive scheduled payment dates under this Agreement through the Stated Maturity Date and (b) in amounts equal to the Monthly Debt Service Payment Amount and/or Monthly Interest Payment Amount, as the case may be, required under this Agreement through the Stated Maturity Date together with the outstanding principal balance of the Note as of the Stated Maturity Date assuming all such Monthly Debt Service Payment Amounts and/or Monthly Interest Payment Amounts, as the case may be, are made. In no event shall the Yield Maintenance Premium be less than zero.

1.2 Index of Other Definitions. The following terms are defined in the sections or Loan Documents indicated below:

- “Annual Budget” - 6.3.5
- “Applicable Taxes” - 2.2.3
- “Approved Annual Budget” - 6.3.5
- “Approved Capital and FF&E Expenditure Period” - 3.4
- “Approved Capital Budget” - 6.3.5
- “Approved Operating Budget” - 6.3.5
- “Augmentation Triggering Event” - 5.35
- “Award” - 7.3.2

“Bankruptcy Proceeding” - 4.7
“Bellevue Property” - Schedule 1
“Blue Ash Property” - Schedule 1
“Borrower Provided Information” - 9.1.1
“Borrower’s Recourse Liabilities” - 10.1
“Broker” - 10.2
“Capital Reserve Shortfall” - 3.4
“Cash Collateral Subaccount” - 3.10
“Cash Management Accounts” - 3.12
“Casualty” - 7.2.1
“Casualty/Condemnation Prepayment” - 2.3.2
“Casualty/Condemnation Subaccount” - 3.8
“Clearing Account” - 3.1
“Clearing Account Agreement” - 1.1 (Definition of Loan Documents)
“Clearing Bank” - 3.1
“Colorado Springs Property” - Schedule 1
“Condemnation” - 7.3.1
“Defeasance Collateral Account” - 2.3.3
“Defeasance ” - 2.3.3
“Defeasance Event” - 2.3.3
“Defeasance Date” - 2.3.3
“Defeased Note” - 2.3.3
“Deficiency” - 3.4
“Deficiency Period” - 3.4
“Deficiency Subaccount” - 3.4
“Denver Property” - Schedule 1
“Deposit Account” - 3.1
“Deposit Account Agreement” - 1.1 (Definition of Loan Documents)
“Disclosure Document” - 9.1.2
“Draft Budget” - 6.3.5
“DSCR Cash Trap Period” - 1.1 (Definition of Cash Trap Period)
“DSCR Release Threshold” - 2.4.2
“Easements” - 4.14
“Eligible Account” - Deposit Account Agreement
“El Paso Property” - Schedule 1
“Endorsement” - 5.26
“Environmental Laws” - 4.21
“Equipment” - Mortgage
“Event of Default” - 8.1
“Exchange Act” - 9.1.2
“FF&E/Capital Reserve Subaccount” - 3.4
“Fitch” - 1.1 (Definition of Rating Agency)
“Full Defeasance ” - 2.3.3
“Government Lists” - 5.33
“Hazardous Substances” - 4.21
“Improvements” - Mortgage

“Indemnified Liabilities” - 5.30
“Indemnified Party” - 5.30
“Independent Director” - Schedule 5
“Insurance Premiums” - 7.1.2
“Insured Casualty” - 7.2.2
“Late Payment Charge” - 2.5.3
“Lender’s Consultant” - 5.8.1
“Liabilities” - 9.1.3
“Licenses” - 4.11
“Livonia Property” - Schedule 1
“Loan” - 2.1
“Lynnwood Property” - Schedule 1
“Minimum Approved Capital and FF&E Expenditure Amount” - 3.4
“Moody’s” - 1.1 (Definition of Rating Agency)
“Monthly Interest Payment Amount” - 2.2.1
“Mortgage” - 1.1 (Definition of Loan Documents)
“Net Worth” - 5.35
“Net Worth Threshold” - 5.35
“New Payment Date” - 2.2.4
“Note” - 1.1 (Definition of Loan Documents)
“Notice” - 6.1
“O & M Program” - 5.8.3
“OFAC” - 5.33
“Operating Expense Subaccount” - 3.7
“Partial Defeasance” - 2.3.3
“Patriot Act” - 5.33
“Patriot Act Offense” - 5.33
“Permitted Equipment Financing” - 5.22
“Permitted Indebtedness” - 5.22
“Permitted Investments” - Deposit Account Agreement
“Permitted Prepayment Date” - 2.3.4
“Policies” - 7.1.2
“Portland Property” - Schedule 1
“Principal” - 2.1
“Proceeds” - 7.2.2
“Property Agreement” - 1.1 (Definition of Property Agreements)
“Proposed Material Lease” - 5.10.2
“Provided Information” - 9.1.1
“Qualified Carrier” - 7.1.1
“Recourse Carveout Guaranty” - 1.1 (Definition of Loan Documents)
“Remedial Work” - 5.8.2
“REMIC Provisions” - 1.1 (Definition of U.S. Obligations)
“Required Records” - 6.3.6
“Required Repairs” - 3.2
“Restoration” - 7.4.1
“S&P” - 1.1 (Definition of Rating Agency)

“*Secondary Market Transaction*” - 9.1.1
 “*Securities*” - 9.1.1
 “*Securities Act*” - 9.1.2
 “*Security Deposit Account*” - 3.9
 “*Security Deposit Subaccount*” - 3.9
 “*Significant Casualty*” - 7.2.2
 “*Special Purpose Bankruptcy Remote Entity*” - 5.13
 “*Springing Recourse Event*” - 10.1
 “*Subaccounts*” - 3.1
 “*Successor Borrower*” - 2.3.3
 “*Tax and Insurance Subaccount*” - 3.3
 “*Third Party Report*” - 9.1.3
 “*Toxic Mold*” - 4.21
 “*Transfer and Assumption*” - 5.26
 “*Transferee Borrower*” - 5.26
 “*Undefeased Note*” - 2.3.3

1.3 Principles of Construction. Unless otherwise specified, (i) all references to sections and schedules are to those in this Agreement, (ii) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined, (iv) the word “including” means “including but not limited to,” and (v) accounting terms not specifically defined herein shall be construed in accordance with GAAP.

2. GENERAL LOAN TERMS

2.1 The Loan. Lender is making a loan (the “*Loan*”) to Borrowers on the date hereof, in the original principal amount (the “*Principal*”) of \$187,500,000, which shall mature on the Stated Maturity Date. Each Borrower acknowledges receipt of the Loan, the proceeds of which are being and shall be used to (i) repay and discharge existing loans relating to the Properties, (ii) fund certain of the Subaccounts, and (iii) pay transaction costs. Any excess proceeds may be used for any lawful purpose. No amount repaid in respect of the Loan may be reborrowed.

2.2 Interest; Monthly Payments.

2.2.1 Generally. From and after the date of the funding of the Loan, interest on the unpaid Principal shall accrue at the Interest Rate and be payable as hereinafter provided. On March 6, 2006 and each Payment Date thereafter through and including the Payment Date immediately preceding the Amortization Commencement Date, Borrowers shall pay interest on the unpaid Principal accrued at the Interest Rate during the Interest Period immediately preceding such Payment Date (the “*Monthly Interest Payment Amount*”). On the Amortization Commencement Date and each Payment Date thereafter through and including January 6, 2011, Borrowers shall pay the Monthly Debt Service Payment Amount. The Monthly Debt Service Payment Amount due on any Payment Date shall first be applied to the payment of the interest accrued during the preceding Interest Period and the remainder of such Monthly Debt Service

Payment Amount shall be applied to the reduction of the unpaid Principal. All accrued and unpaid interest shall be due and payable on the Maturity Date. If, after a Secondary Market Transaction, the Loan is repaid on any date other than on a Payment Date (whether prior to or after the Stated Maturity Date), Borrowers shall also pay interest that would have accrued on such repaid Principal to but not including the next Payment Date; *provided*, however, if (after a Secondary Market Transaction) such prepayment or repayment occurs after a Payment Date but within such time as the master servicer under the applicable pooling and servicing agreement is obligated or permitted to distribute the prepayment amount to the securities holders on the distribution date which occurs in the same month as such Payment Date, then Borrowers shall be obligated to pay interest on the prepayment amount to such prepayment date rather than interest thereon to the next Payment Date.

2.2.2 Default Rate. After the occurrence and during the continuance of an Event of Default, the entire unpaid Debt shall bear interest at the Default Rate, and shall be payable upon demand from time to time, to the extent permitted by applicable law.

2.2.3 Taxes. Any and all payments by Borrowers hereunder and under the other Loan Documents shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on Lender's income, and franchise taxes imposed on Lender by the law or regulation of any Governmental Authority (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to in this Section 2.2.3 as "*Applicable Taxes*"). If any Borrower shall be required by law to deduct any Applicable Taxes from or in respect of any sum payable hereunder to Lender, the following shall apply: (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.2.3), Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. Payments pursuant to this Section 2.2.3 shall be made within ten days after the date Lender makes written demand therefor.

2.2.4 New Payment Date. Lender shall have the right, to be exercised not more than once during the term of the Loan, to change the Payment Date to a date other than the sixth day of each month (a "*New Payment Date*"), on 30 days' written notice to Borrowers; provided, however, that any such change in the Payment Date: (i) shall not modify the amount of regularly scheduled monthly principal and interest payments, except that the first payment of principal and interest payable on the New Payment Date shall be accompanied by interest at the interest rate herein provided for the period from the Payment Date in the month in which the New Payment Date first occurs to the New Payment Date, (ii) shall change the Amortization Commencement Date to the New Payment Date occurring in the month set forth in the definition of Amortization Commencement Date, and (iii) shall change the Stated Maturity Date to the New Payment Date occurring in the month set forth in the definition of Stated Maturity Date.

2.3 Loan Repayment.

2.3.1 Repayment. Borrowers shall repay the entire outstanding principal balance of the Note in full on the Maturity Date, together with interest thereon to (but excluding) the date of repayment and any other amounts due and owing under the Loan Documents. Borrowers shall have no right to prepay or defease all or any portion of the Principal except in accordance with Sections 2.3.2, 2.3.3, 2.3.4, 2.4.1, 2.4.2, 2.4.3 and 7.4.2 below. Except during the continuance of an Event of Default, all proceeds of any repayment, including any prepayments of the Loan (other than the Monthly Debt Service Payment Amount, which shall be applied in accordance with Section 2.2.1), shall be applied by Lender as follows in the following order of priority: *First*, accrued and unpaid interest at the Interest Rate; *Second*, to Principal; and *Third*, to any other amounts then due and owing under the Loan Documents. If prior to the Permitted Prepayment Date the Debt is accelerated by reason of an Event of Default, then Lender shall be entitled to receive, in addition to the unpaid Principal and accrued interest and other sums due under the Loan Documents, an amount equal to the Yield Maintenance Premium applicable to such Principal so accelerated. During the continuance of an Event of Default, all proceeds of repayment, including any payment or recovery on one or more of the Properties (whether through foreclosure, deed-in-lieu of foreclosure, or otherwise) shall, unless otherwise provided in the Loan Documents, be applied in such order and in such manner as Lender shall elect in Lender's discretion.

2.3.2 Mandatory Prepayments. The Loan is subject to mandatory prepayment in certain instances of Insured Casualty or Condemnation (each a "*Casualty/Condemnation Prepayment*"), in the manner and to the extent set forth in Section 7.4.2. Each Casualty/Condemnation Prepayment, after deducting Lender's costs and expenses (including reasonable attorneys' fees and expenses) in connection with the settlement or collection of the Proceeds or Award, shall be applied in the same manner as repayments under Section 2.3.1. Provided that no Event of Default is continuing, any such mandatory prepayment under this Section 2.3.2 shall be without the payment of the Yield Maintenance Premium. Notwithstanding anything to the contrary contained herein, each Casualty/Condemnation Prepayment shall be applied in inverse order of maturity and shall not extend or postpone the due dates of the monthly installments due under the Note or this Agreement, or change the amounts of such installments.

2.3.3 Defeasance

(a) **Conditions to Defeasance.** Provided no Event of Default shall be continuing, Borrowers shall have the right at any time after the Release Date and prior to the Permitted Prepayment Date to voluntarily defease the entire amount of the Principal (a "*Full Defeasance*") or a portion of the Principal (a "*Partial Defeasance*") (any such Full Defeasance or Partial Defeasance, a "*Defeasance*") by providing Lender with the Defeasance Collateral (a "*Defeasance Event*"), subject to the satisfaction of the following conditions precedent:

(i) Borrowers shall give Lender not less than thirty (30) days prior written notice specifying a date (the "*Defeasance Date*") on which the Defeasance Event is to occur.

(ii) Borrowers shall pay to Lender (A) all payments of Principal and interest due on the Loan to and including the Defeasance Date (and if such Defeasance

Date is a date other than on a Payment Date, Borrowers shall also pay interest that would have accrued on such defeased Principal to but not including the next Payment Date) and (B) all other sums, then due under the Note, this Agreement and the other Loan Documents;

(iii) Borrowers shall deposit the Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of subsections (b) and (c) of this Section 2.3.3;

(iv) Borrowers shall execute and deliver to Lender a Security Agreement in respect of the Defeasance Collateral Account and the Defeasance Collateral;

(v) Borrowers shall deliver to Lender an opinion of counsel for Borrowers that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected security interest in the Defeasance Collateral Account and the Defeasance Collateral, (B) if a securitization has occurred, the REMIC Trust formed pursuant to such securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of a Defeasance Event pursuant to this Section 2.3.3, and (C) a non-consolidation opinion with respect to the Successor Borrower;

(vi) In the case of a Partial Defeasance, the execution and delivery by Borrowers of all necessary documents to amend and restate the Note and issue two substitute notes: one having a principal balance equal to the defeased portion of the original Note (the "*Defeased Note*") and the other having a principal balance equal to the undefeased portion of the original Note (the "*Undefeased Note*"). The Defeased Note and Undefeased Note shall have terms identical to the terms of the Note, except for the principal balance and a pro rata allocation of the Monthly Debt Service Payment Amount. (After a Partial Defeasance, all references hereunder and in the other Loan Documents to "*Note*" shall be deemed to mean the Undefeased Note, unless expressly provided to the contrary.) A Defeased Note cannot be the subject of any further Defeasance;

(vii) Borrowers shall deliver to Lender a Rating Comfort Letter as to the Defeasance Event;

(viii) Borrowers shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.3.3 have been satisfied;

(ix) Borrowers shall deliver a certificate of a nationally recognized public accounting firm acceptable to Lender certifying that the Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

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

(xi) Borrowers shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including Lender's reasonable attorneys' fees and expenses and Rating Agency fees and expenses.

(b) **Defeasance Collateral Account.** On or before the date on which Borrowers deliver the Defeasance Collateral, Borrowers shall open at any Eligible Institution the defeasance collateral account (the "*Defeasance Collateral Account*") which shall at all times be an Eligible Account. The Defeasance Collateral Account shall contain only (i) Defeasance Collateral, and (ii) cash from interest and principal paid on the Defeasance Collateral. All cash from interest and principal payments paid on the Defeasance Collateral shall be paid over to Lender on each Payment Date and applied first to accrued and unpaid interest and then to Principal. Any cash from interest and principal paid on the Defeasance Collateral not needed to pay accrued and unpaid interest or Principal shall be retained in the Defeasance Collateral Account as additional collateral for the Loan. Borrowers shall cause the Eligible Institution at which the Defeasance Collateral is deposited to enter an agreement with Borrowers and Lender, satisfactory to Lender in its sole discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Defeasance Collateral in accordance with this Agreement. The Successor Borrower shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Defeasance Collateral for federal, state and local income tax purposes in its income tax return. Borrowers shall prepay all cost and expenses associated with opening and maintaining the Defeasance Collateral Account. Lender shall not in any way be liable by reason of any insufficiency in the Defeasance Collateral Account.

(c) **Successor Borrower.** In connection with a Defeasance Event under this Section 2.3.3, Borrowers shall, if required by the Rating Agencies or if Borrowers elect to do so, establish or designate a successor entity (the "*Successor Borrower*") which shall be a Special Purpose Bankruptcy Remote Entity and which shall be approved by the Rating Agencies. Any such Successor Borrower may, at Borrowers' option, be an Affiliate of Borrowers. Borrowers shall transfer and assign all obligations, rights and duties under and to the Defeased Note, together with the Defeasance Collateral to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrowers shall pay a minimum of \$1,000 to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Borrowers shall pay all costs and expenses incurred by Lender, including Lender's attorney's fees and expenses, incurred in connection therewith.

2.3.4 Optional Prepayments. On and after the third Payment Date prior to the Stated Maturity Date (the "*Permitted Prepayment Date*"), Borrowers shall have the right to prepay the Loan in whole (but not in part), provided that Borrowers give Lender at least 15 days' prior written notice thereof. If, after a Secondary Market Transaction, any such prepayment is not made on a Payment Date, Borrowers shall also pay interest that would have accrued on such prepaid Principal to, but not including, the next Payment Date; *provided*, however, if (after a Secondary Market Transaction) such prepayment or repayment occurs after a Payment Date but within such time as the master servicer under the applicable pooling and servicing agreement is obligated or permitted to distribute the prepayment amount to the securities holders on the distribution date which occurs in the same month as such Payment Date, then Borrower shall be obligated to pay interest on the prepayment amount to such prepayment date rather than interest

thereon to the next Payment Date. Any such prepayment shall be made without payment of the Yield Maintenance Premium.

2.4 Release of Properties.

2.4.1 Release on Defeasance. If Borrowers have elected a Full Defeasance and the requirements of Section 2.3.3 and this Section 2.4 have been satisfied, the Properties shall be released from the Liens of the Mortgages and the Defeasance Collateral pledged pursuant to the Security Agreement shall be the sole source of collateral securing the Note. In connection with the release of the Lien, Borrowers shall submit to Lender (and the public trustee, if applicable), not less than thirty (30) days prior to the Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), releases of Lien (and related Loan Documents) for execution by Lender and/or the public trustee, if applicable. Such releases shall be in a form appropriate in the jurisdiction in which the Properties are located and contain standard provisions protecting the rights of the releasing lender. In addition, Borrowers shall provide all other documentation Lender reasonably requires to be delivered by Borrowers in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such release in accordance with the terms of this Agreement. Borrower shall pay all costs, taxes and expenses associated with the release of the Lien of the Mortgage, including Lender's reasonable attorneys' fees.

2.4.2 Sale of Properties. From and after the Release Date, any Borrower may obtain the release of any Property owned by it from the Lien of the Mortgage encumbering such Property (and related Loan Documents) thereon upon a bona fide third-party sale of such Property, *provided* each of the following conditions are satisfied:

(a) The sale of such Property is pursuant to an arms' length agreement to a third party not Affiliated with any Borrower or Guarantor, and in which no Borrower and no Affiliate of any Borrower and/or Guarantor has any beneficial interest;

(b) Borrowers shall defease an amount of Principal equal to the Release Amount for the Property in question and Borrowers shall satisfy all of the requirements of Section 2.3.3 with respect to such Defeasance;

(c) Both immediately before such sale and immediately thereafter, no Default or Event of Default shall be continuing;

(d) Concurrently with such sale, either (i) the Borrower owning the Property being released shall dissolve and liquidate or (ii) such Borrower's Borrower Representative shall cease to be a partner or member of such Borrower, and in all events all remaining Borrowers and the El Paso GP (unless and until the El Paso Property has been released in accordance with this Section 2.4.2) shall remain Special Purpose Bankruptcy Remote Entities;

(e) After giving effect to such release, each Borrower shall remain a Special Purpose Bankruptcy Remote Entity;

(f) Borrowers shall have given Lender at least 20 days' prior written notice of such sale, accompanied by a copy of the applicable contract of sale and all related documents, and drafts of any applicable release documents (which shall be subject to Lender's approval);

(g) Borrowers shall have delivered to Lender a copy of the final closing settlement statement for such sale;

(h) Borrowers shall have paid to Lender all costs and expenses (including reasonable attorneys' fees) incurred by Lender in connection with such sale and the release of such Property from the Lien of the Loan Documents;

(i) Borrowers and Guarantor shall execute and deliver such documents as Lender may reasonably request to confirm the continued validity of the Loan Documents and the Liens thereof; and

(j) After giving effect to such release and Defeasance, the Underwritten Debt Service Coverage Ratio for all of the Properties then remaining subject to the Liens of the Mortgages shall be no less than the greater of the following (the "*DSCR Release Threshold*"): (i) the Underwritten Debt Service Coverage Ratio immediately preceding such release and (ii) 1.50:1.00, which is the Underwritten Debt Service Coverage Ratio as of the date hereof.

2.4.3 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrowers, upon payment in full of the Debt in accordance herewith, release or, if requested by Borrowers, assign to Borrowers' designee (without any representation or warranty by and without any recourse against Lender whatsoever), the Liens of the Loan Documents if not theretofore released.

2.5 Payments and Computations.

2.5.1 Making of Payments. Each payment by a Borrower or Borrowers shall be made in funds settled through the New York Clearing House Interbank Payments System or other funds immediately available to Lender by 3:00 p.m., New York City time, on the date such payment is due, to Lender by deposit to such account as Lender may designate by written notice to Borrowers. Whenever any such payment shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day thereafter. All such payments shall be made irrespective of, and without any deduction, set-off or counterclaim whatsoever and are payable without relief from valuation and appraisal laws and with all costs and charges incurred in the collection or enforcement thereof, including attorneys' fees and court costs.

2.5.2 Computations. Interest payable under the Loan Documents shall be computed on the basis of the actual number of days elapsed over a 360-day year.

2.5.3 Late Payment Charge. If any Principal, interest or other sum due under any Loan Document is not paid by Borrowers on the date on which it is due (other than the balloon payment of Principal due on the Maturity Date or acceleration of the Loan), Borrowers shall pay to Lender upon demand an amount equal to the lesser of 5% of such unpaid sum or the maximum amount permitted by applicable law (the "*Late Payment Charge*"), in order to defray

the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Such amount shall be secured by the Loan Documents.

3. CASH MANAGEMENT AND RESERVES

3.1 Cash Management Arrangements. Each Borrower shall cause all Rents under Leases at its Property to be transmitted directly by tenants of such Property, and all Rents in the nature of sums payable by issuers of credit cards accepted at such Property to be transmitted directly by such issuers, in each case into a trust account (the "*Clearing Account*") maintained by Borrower at a local bank selected by such Borrower, which shall at all times be an Eligible Institution (each, a "*Clearing Bank*") as more fully described in the Clearing Account Agreements. Without in any way limiting the foregoing, all Rents received by Borrowers or Manager shall be deposited into the applicable Clearing Account within one Business Day of receipt. Funds deposited into each Clearing Account shall be swept by each Clearing Bank on a daily basis into an Eligible Account at the Deposit Bank controlled by Lender (the "*Deposit Account*") and applied and disbursed in accordance with this Agreement. Funds in the Deposit Account shall be invested at Lender's discretion only in Permitted Investments. Lender will also establish subaccounts of the Deposit Account which shall at all times be Eligible Accounts (and may be ledger or book entry accounts and not actual accounts) (such subaccounts are referred to herein as "*Subaccounts*"). The Deposit Account and any Subaccount will be under the sole control and dominion of Lender, and no Borrower shall have any right of withdrawal therefrom. Borrowers shall pay for all expenses of opening and maintaining all of the above accounts.

3.2 Required Repairs. Borrowers shall perform and complete each item of the repairs and environmental remedial work relating to the Properties described on Schedule 2 (the "*Required Repairs*") within six (6) months of the date hereof or such shorter period of time for such item set forth on Schedule 2.

3.3 Taxes and Insurance. Borrowers shall pay to Lender on each Payment Date (i) one-twelfth of the Taxes that Lender estimates will be payable during the next 12 months in order to accumulate with Lender sufficient funds to pay all such Taxes at least 30 days prior to their respective delinquency dates and (ii) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least 30 days prior to the expiration of the Policies. Such amounts will be transferred by Lender to a Subaccount (the "*Tax and Insurance Subaccount*"). Provided that no Event of Default has occurred and is continuing, Lender will (a) apply funds in the Tax and Insurance Subaccount to payments of Taxes and Insurance Premiums required to be made by Borrowers pursuant to Sections 5.2 and 7.1, provided that Borrowers have promptly supplied Lender with notices of all Taxes and Insurance Premiums due, or (b) reimburse Borrowers for such amounts upon presentation of evidence of payment; subject, however, to Borrowers' right to contest Taxes in accordance with Section 5.2. In making any payment relating to Taxes and Insurance Premiums, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If Lender

determines in its reasonable judgment that the funds in the Tax and Insurance Subaccount will be insufficient to pay (or in excess of) the Taxes or Insurance Premiums next coming due, Lender may correspondingly increase (or decrease) the monthly contribution required to be made by Borrowers to the Tax and Insurance Subaccount.

3.4 FF&E/Capital Expense Reserves.

(a) Borrower shall pay to Lender (i) **\$7,500,000** on the date hereof and (ii) on each Payment Date, an amount equal to one-twelfth of **4%** of the annual Rents for the Properties, based on the prior year. Lender will transfer such amounts into a Subaccount (the "***FF&E/Capital Reserve Subaccount***"). Additionally, upon thirty (30) days' prior notice to Borrower, Lender may reassess the amount of the monthly payment required under this Section from time to time to the extent reasonably necessary if, in its commercially reasonable determination one or more of the Properties is not being maintained in accordance with prudent hotel management standards for similar hotels in the same geographic area.

(b) Provided that no Event of Default has occurred and is continuing, Lender shall disburse funds held in the FF&E/Capital Reserve Subaccount to Borrower, within 15 days after the delivery by Borrower to Lender of a request therefor (but not more often than once per month), provided that (i) such disbursement is for an Approved Capital and FF&E Expense; (ii) if any individual disbursement is for \$50,000 or more, Lender shall have (if it desires) verified (by an inspection conducted at Borrower's expense (but only to the extent such expense is reasonable)) performance of the work associated with such Approved Capital and FF&E Expense; and (iii) the request for disbursement is accompanied by (A) an Officer's Certificate certifying (1) that such funds will be used to pay or reimburse Borrower for Approved Capital and FF&E Expense and a description thereof, (2) that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (3) that the same has not been the subject of a previous disbursement, and (4) that all previous disbursements have been used to pay the previously identified Approved Capital and FF&E Expense, and (B) if any individual disbursement is for \$50,000 or more, lien waivers or other evidence of payment satisfactory to Lender, (C) if any individual disbursement is for \$50,000 or more, at Lender's option, a title search for the applicable Property or Properties indicating that such Property or Properties are free from all Liens, claims and other encumbrances not previously approved by Lender or Permitted Encumbrances and (D) such other evidence as Lender shall reasonably request that the Approved Capital and FF&E Expenses at the subject Property or Properties to be funded by the requested disbursement have been completed to the extent of funds then requested and are paid for or will be paid upon such disbursement to Borrower. Any such disbursement of more than \$50,000 to pay (rather than reimburse) Approved Capital and FF&E Expense may, at Lender's option, be made by joint check payable to Borrower and the payee on such Approved Capital and FF&E Expense.

(c) Notwithstanding anything to the contrary contained in this Section, if during any calendar year one or more property improvement plans are issued in connection with any Franchise Agreement, the cost of which (when taken together with the anticipated Capital Expenses set forth in the Approved Capital Budget for such calendar year) exceed 4% of the annual Rents for the Properties, based on the prior year (such amount being referred to herein as

the "*Capital Reserve Shortfall*"), then Lender shall have the right, in the exercise of its commercially reasonable judgment, to increase the monthly contribution required to be made by Borrower to the FF&E/Capital Reserve Subaccount on each Payment Date to account for such Capital Reserve Shortfall, and Borrower shall pay such amount, as increased, for such time period as Lender determines such increase is necessary (based upon Lender's commercially reasonable determination of the period of time required to complete the items set forth in the applicable property improvement plan(s), the anticipated availability of Available Cash during such period and the amount of such Capital Reserve Shortfall).

(d) After the date hereof and prior to February 1, 2008 (such period, the "*Approved Capital and FF&E Expenditure Period*"), Borrowers shall spend at least \$15,000,000 towards Approved Capital and FF&E Expenses at the Properties (the "*Minimum Approved Capital and FF&E Expenditure Amount*"). In connection with the foregoing, Borrowers shall be entitled to request disbursements of funds from the FF&E/Capital Reserve Subaccount in accordance with and subject to the terms and conditions set forth in paragraph (b) above. At the end of the Approved Capital and FF&E Expenditure Period, Borrowers shall deliver to Lender an Officer's Certificate certifying as to the amount of Approved Capital and FF&E Expenses spent during the Approved Capital and FF&E Expenditure Period, which shall be accompanied by the relevant invoices therefor and/or other evidence of payment reasonably acceptable to Lender. If such Officer's Certificate (together with the supporting invoices and backup) indicates that Borrowers have spent less than the Minimum Approved Capital and FF&E Expenditure Amount during the Approved Capital and FF&E Expenditure Period (such difference being referred to herein as the "*Deficiency*"), then such failure shall not constitute an Event of Default, but (provided that no Cash Trap Period is then continuing) on the immediately succeeding Payment Date and on each Payment Date thereafter, all Available Cash shall be paid to Lender for transfer into a Subaccount (the "*Deficiency Subaccount*") until such time that the aggregate amount of funds that have been deposited into the Deficiency Subaccount plus the amount of funds that are then on deposit in the FF&E/Capital Reserve Subaccount are at least equal to the Deficiency. The period of time (if any) in which Available Cash is being swept into the Deficiency Subaccount is referred to herein as the "*Deficiency Period*"). Provided no Event of Default shall have occurred and is continuing, Lender shall disburse funds held in the Deficiency Subaccount to Borrowers in the same manner and subject to the terms and conditions applicable to disbursements from the FF&E/Capital Reserve Subaccount set forth in paragraph (b) above.

3.5 Intentionally Omitted.

3.6 Intentionally Omitted.

3.7 Operating Expense Subaccount. On each Payment Date during a Cash Trap Period or the Deficiency Period, a portion of Rents that have been deposited into the Deposit Account during the immediately preceding Interest Period in an amount equal to the monthly amount set forth in the Approved Operating Budget for the following month (plus any other amounts requested by Borrowers for such month for payment of items constituting Approved Operating Expenses, which are not included in the Approved Operating Budget), shall be transferred into a Subaccount for the purpose of payment of Approved Operating Expenses (the "*Operating Expense Subaccount*"). Provided no Event of Default has occurred and is

continuing, Lender shall disburse funds held in the Operating Expense Subaccount to Borrowers, within 5 Business Days after delivery by Borrowers to Lender of a request therefor, in increments of at least \$1,000, provided (i) such disbursement is for an Approved Operating Expense; and (ii) such disbursement is accompanied by (A) an Officer's Certificate certifying (1) that such funds will be used to pay Approved Operating Expenses and a description thereof, (2) that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (3) that the same has not been the subject of a previous disbursement, and (4) that all previous disbursements have been or will be used to pay the previously identified Approved Operating Expenses, and (B) if requested by Lender in connection with any Approved Operating Expense which are not included in the Approved Operating Budget, reasonably detailed documentation reasonably satisfactory to Lender as to the amount, necessity and purpose therefor. Notwithstanding anything to the contrary contained herein, if sufficient funds have been collected in the Deposit Account to make the payments required under clauses (i) through (iv) of Section 3.13(a) on the next succeeding Payment Date, then Borrower shall be entitled to request disbursements from the Operating Expense Subaccount on a weekly basis, for payment of Operating Expenses incurred or to be incurred during the then-current Interest Period or during any prior Interest Period. Subject to satisfaction of the conditions set forth herein, Lender shall authorize such amounts to be paid from the Deposit Account (including, if necessary, from the Cash Collateral Subaccount or the Deficiency Subaccount), irrespective of whether sufficient funds have been allocated to the Operating Expense Subaccount from Rents received during the prior Interest Period as contemplated in the first sentence of this Section or otherwise.

3.8 Casualty/Condemnation Subaccount. Borrowers shall pay, or cause to be paid, to Lender all Proceeds or Awards due to any Casualty or Condemnation to be transferred to a Subaccount (the "*Casualty/Condemnation Subaccount*") in accordance with the provisions of Section 7. All amounts in the Casualty/Condemnation Subaccount shall be disbursed in accordance with the provisions of Section 7.

3.9 Security Deposits. Each Borrower shall keep all security deposits under Leases at a separately designated account under such Borrower's control at the Clearing Bank (and in the case of a letter of credit, assigned with full power of attorney and executed sight drafts to Lender) so that the security deposits shall not be commingled with any other funds of such Borrower (such account, the "*Security Deposit Account*"). After the occurrence of an Event of Default, Borrowers shall, upon Lender's request, if permitted by applicable Legal Requirements, turn over to Lender the security deposits (and any interest theretofore earned thereon) under Leases, to be held by Lender in a Subaccount (the "*Security Deposit Subaccount*") subject to the terms of the Leases. Security deposits held in the Security Deposit Subaccount will be released by Lender upon notice from Borrowers together with such evidence as Lender may reasonably request that such security deposit is required to be returned to a tenant pursuant to the terms of a Lease or may be applied as Rent pursuant to the rights of Borrower under the applicable Lease. Any letter of credit or other instrument that any Borrower receives in lieu of a cash security deposit under any Lease shall (i) be maintained in full force and effect in the full amount unless replaced by a cash deposit as hereinabove described and (ii) if permitted pursuant to any Legal Requirements, name Lender as payee or mortgagee thereunder (or at Lender's option, be fully assignable to Lender).

3.10 Cash Collateral Subaccount. If a Cash Trap Period shall have commenced, then on the immediately succeeding Payment Date and on each Payment Date thereafter during the continuance of such Cash Trap Period, all Available Cash shall be paid to Lender, which amounts shall be transferred by Lender into a Subaccount (the "**Cash Collateral Subaccount**") as cash collateral for the Debt; *provided*, however, during the Deficiency Period, Lender shall have the right (but not the obligation) to disburse any funds that have been deposited into the Cash Collateral Subaccount into the Deficiency Subaccount, if applicable pursuant to Section 3.4(d). During the continuance of a DSCR Cash Trap Period (and provided no other kind of Cash Trap Period is then continuing), any amounts held in the Cash Collateral Subaccount shall be used (x) to fund any shortfall in the Deposit Account necessary to pay the amounts specified in clauses (i) - (vi) of Section 3.13(a) and (y) to reimburse Borrowers for any out-of-pocket expenditures paid by Borrowers for Approved Operating Expenses which were not paid pursuant to Section 3.7 due to insufficient funds in the Deposit Account in any give prior Interest Period. Any funds in the Cash Collateral Account and not previously disbursed or applied shall be disbursed to Borrowers upon the termination of such Cash Trap Period. Lender shall have the right, but not the obligation, at any time during the continuance of an Event of Default, in its sole and absolute discretion to apply all sums then on deposit in the Cash Collateral Subaccount to the Debt, in such order and in such manner as Lender shall elect in its sole and absolute discretion, including to make a prepayment of Principal (together with the applicable Yield Maintenance Premium applicable thereto).

3.11 Intentionally Omitted.

3.12 Grant of Security Interest; Earnings on Accounts; Application of Funds. As security for payment of the Debt and the performance by Borrowers of all other terms, conditions and provisions of the Loan Documents, each Borrower hereby pledges and assigns to Lender, and grants to Lender a security interest in, all such Borrower's right, title and interest in and to all Rents and in and to all payments to or monies held in the Clearing Account, the Deposit Account, all Subaccounts created pursuant to this Agreement (collectively, the "**Cash Management Accounts**"). Each Borrower hereby grants to Lender a continuing security interest in, and agrees to hold in trust for the benefit of Lender, all Rents in its possession prior to the (i) payment of such Rents to Lender or (ii) deposit of such Rents into the Deposit Account. No Borrower shall, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Cash Management Account, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default, Lender may apply any sums in any Cash Management Account in any order and in any manner as Lender shall elect in Lender's discretion without seeking the appointment of a receiver and without adversely affecting the rights of Lender to foreclose the Lien of any Mortgage or exercise its other rights under the Loan Documents. All interest which accrues on the funds in any Cash Management Account shall accrue for the benefit of Borrowers and shall be taxable to Borrowers and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. Upon repayment in full of the Debt, all remaining funds in the Subaccounts, if any, shall be promptly disbursed to Borrowers.

3.13 Property Cash Flow Allocation.

(a) All Rents deposited into the Deposit Account during the immediately preceding Interest Period shall be applied on each Payment Date (except to the extent previously paid under Section 3.7) as follows in the following order of priority:

(i) First, to make payments into the Tax and Insurance Subaccount as required under Section 3.3;

(ii) Second, to pay the monthly portion of the fees charged by the Deposit Bank in accordance with the Deposit Account Agreement;

(iii) Third, to Lender to pay the Monthly Interest Payment Amount or the Monthly Debt Service Payment Amount, as the case may be, due on such Payment Date (plus, if applicable, interest at the Default Rate and all other amounts, other than those described under other clauses of this Section 3.13(a), then due to Lender under the Loan Documents);

(iv) Fourth, to make payments into the FF&E/Capital Reserve Subaccount as required under Section 3.4;

(v) Fifth, during the continuance of a Cash Trap Period or the Deficiency Period, to make payments for Approved Operating Expenses as required under Section 3.7; and

(vi) Lastly, (A) during the continuance of the Deficiency Period (and provided no Cash Trap Period is continuing), to make payments in an amount equal to all Available Cash on such Payment Date into the Deficiency Subaccount in accordance with Section 3.4(d), if required pursuant to Section 3.4(d); or (B) during the continuance of a Cash Trap Period, to make payments in an amount equal to all Available Cash on such Payment Date into the Cash Collateral Subaccount in accordance with Section 3.10; or (C) if no Cash Trap Period is continuing, to make payments in an amount equal to all Available Cash on such Payment Date to Borrowers; provided, however, that to the extent that sufficient funds have been collected in the Deposit Account to make the payments required under clauses (i) through (iv) of this Section 3.13(a) on the next succeeding Payment Date, then such payments to Borrowers pursuant to this clause (vi)(C) shall be made on a twice weekly basis.

(b) The failure of Borrowers to make all of the payments required under clauses (i) through (v), (vi)(A) and (vi)(B) of Section 3.13(a) in full on each Payment Date shall constitute an Event of Default under this Agreement; provided, however, no such Event of Default shall occur if adequate funds are available in the Deposit Account for such payments.

(c) Notwithstanding anything to the contrary contained in this Section 3.13, during the continuance of an Event of Default, Lender may apply all Rents deposited into the Deposit Account and other proceeds of repayment in such order and in such manner as Lender shall elect.

4. REPRESENTATIONS AND WARRANTIES

Borrowers represent and warrant to Lender as of the date hereof that, except to the extent (if any) disclosed on Schedule 3 with reference to a specific Section of this Article 4:

4.1 Organization; Special Purpose. Each Borrower and each Borrower Representative has been duly organized and is validly existing and in good standing under the laws of the state of its formation, with requisite power and authority, and all rights, licenses, permits and authorizations, governmental or otherwise, necessary to own its properties and to transact the business in which it is now engaged. Each Borrower and each Borrower Representative is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, business and operations. Each Borrower and the El Paso GP is a Special Purpose Bankruptcy Remote Entity.

4.2 Proceedings; Enforceability. Each Borrower has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents. The Loan Documents have been duly executed and delivered by each Borrower that is a party to such Loan Document and constitute legal, valid and binding obligations of such Borrower enforceable against such Borrower in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and general principles of equity. The Loan Documents are not subject to, and no Borrower has asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

4.3 No Conflicts. The execution, delivery and performance of the Loan Documents by Borrowers and the transactions contemplated hereby will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property of any Borrower pursuant to the terms of, any agreement or instrument to which any Borrower is a party or by which its property is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over any Borrower or any of its properties. No Borrower's rights under the Licenses, the Management Agreement or the Franchise Agreements will be adversely affected by the execution and delivery of the Loan Documents, any Borrower's performance thereunder, the recordation of the Mortgages, or the exercise of any remedies by Lender. Any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by any Borrower of the Loan Documents has been obtained and is in full force and effect.

4.4 Litigation. There are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority now pending or threatened against or affecting any Borrower, any Borrower Representative, the Manager or any Property, which, if adversely determined, might materially adversely affect the condition (financial or otherwise) or business of any Borrower, any Borrower Representative, Manager or the condition or ownership of any Property.

4.5 Agreements. No Borrower is in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions

contained in any Permitted Encumbrance or any other material agreement or instrument to which any Borrower is a party or by which any Borrower or any Property is bound.

4.6 Title. Borrowers have good, marketable and indefeasible title in fee to the real property and good title to the balance of the Properties, free and clear of all Liens except the Permitted Encumbrances. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of each Property to a Borrower have been paid. The Mortgages when properly recorded in the appropriate records, together with any UCC Financing Statements required to be filed in connection therewith, will create (i) a valid, perfected first priority liens on the Borrowers' interest in the Properties and (ii) valid and perfected first priority security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To Borrowers' knowledge, all mortgage, recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents have been paid. The Permitted Encumbrances do not materially adversely affect the value, operation or use of any Property, or Borrowers' ability to repay the Loan. No Condemnation or other proceeding has been commenced or, to Borrowers' best knowledge, is contemplated with respect to all or part of any Property or for the relocation of roadways providing access to any Property. There are no claims for payment for work, labor or materials affecting any Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents. There are no outstanding options to purchase or rights of first refusal affecting all or any portion of any Property. To Borrowers' knowledge, the survey for each Property delivered to Lender does not fail to reflect any material matter of the kind which customarily is shown on a survey affecting such Property or the title thereto. To Borrowers' knowledge, all of the Improvements included in determining the appraised value of each Property lie wholly within the boundaries and building restriction lines of such Property, and no improvement on an adjoining property encroaches upon such Property, and no easement or other encumbrance upon such Property encroaches upon any of the Improvements, except as shown on the surveys and except those insured against by the Title Insurance Policies. Each parcel comprising each Property is a separate tax lot and is not a portion of any other tax lot that is not a part of such Property. To Borrowers' knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting any Property, or any contemplated improvements to any Property that may result in such special or other assessments, other than as shown in the Title Policies.

4.7 No Bankruptcy Filing. No Borrower is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "*Bankruptcy Proceeding*"), and Borrowers have no knowledge of any Person contemplating the filing of any such petition against any Borrower. In addition, none of the Borrowers, nor any Borrower Representative, nor any principal or Affiliate of any Borrower or any Borrower Representative has been a party to, or the subject of a Bankruptcy Proceeding for the past ten years.

4.8 Full and Accurate Disclosure. No statement of fact made by any Borrower in any Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not misleading. There is no material fact presently known to any Borrower that has not been disclosed to Lender which adversely affects, or, as far as any Borrower can foresee, might adversely affect, any Property or the business, operations or condition (financial or otherwise) of any Borrower. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of Borrowers and the Properties (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of each Borrower and each Property as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. No Borrower has any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments or any liabilities or obligations not expressly permitted by this Agreement. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of any Borrower or any Property from that set forth in said financial statements.

4.9 Tax Filings. To the extent required, each Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by such Borrower. Each Borrower believes that its tax returns (if any) properly reflect the income and taxes of such Borrower for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

4.10 No Plan Assets. As of the date hereof and throughout the Term (i) no Borrower is or will be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, (ii) none of the assets of any Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) no Borrower is or will be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with any Borrower are not and will not be subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans.

4.11 Compliance. Each Borrower and each Property and the use thereof comply in all material respects with all applicable Legal Requirements (including with respect to parking and applicable zoning and land use laws, regulations and ordinances). No Borrower is in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of any Borrower. Each Property is used exclusively for hotel use and other appurtenant and related uses. To Borrowers' knowledge, in the event that all or any part of the Improvements at any Property are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the knowledge of Borrowers, threatened with respect to the zoning of any Property. Neither the zoning nor any other right to construct, use or operate any Property is in any way dependent

upon or related to any property other than such Property. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Properties (collectively, the "*Licenses*"), have been obtained and are in full force and effect. The use being made of each Property is in conformity with the certificate of occupancy issued for such Property and all other restrictions, covenants and conditions affecting such Property.

4.12 Contracts. There are no service, maintenance or repair contracts affecting any Property that are not terminable on one month's notice or less without cause and without penalty or premium. All service, maintenance or repair contracts affecting any Property have been entered into at arms-length in the ordinary course of the business of the Borrower which owns such Property and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

4.13 Federal Reserve Regulations; Investment Company Act. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Loan Document. No Borrower is (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.14 Easements; Utilities and Public Access. All easements, cross easements, licenses, air rights and rights-of-way or other similar property interests (collectively, "*Easements*"), if any, necessary for the full utilization of the Improvements for their intended purposes have been obtained, are described in the Title Insurance Policies and are in full force and effect without default thereunder. Each Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Property are located in the public right-of-way abutting such Property, and all such utilities are connected so as to serve such Property without passing over other property absent a valid easement. All roads necessary for the use of each Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

4.15 Physical Condition. Each Property, including all Improvements, parking facilities, systems, Equipment and landscaping, are in good condition, order and repair in all material respects; there exists no structural or other material defect or damages to any Property, whether latent or otherwise. No Borrower has received notice from any insurance company or bonding company of any defect or inadequacy in any Property, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. No portion of any Property is located in an area as identified by the Federal Emergency Management Agency as an area having

special flood hazards. The Improvements have suffered no material casualty or damage which has not been fully repaired and the cost thereof fully paid.

4.16 Leases. No Property is subject to any Leases other than the Leases listed on Schedule 8. Except as set forth on Schedule 8: (i) each Lease is in full force and effect; (ii) the tenants under the Leases have accepted possession of and are in occupancy of all of their respective demised premises, have commenced the payment of rent under the Leases, and there are no offsets, claims or defenses to the enforcement thereof; (iii) all rents due and payable under the Leases have been paid and no portion thereof has been paid for any period more than 30 days in advance; (iv) the rent payable under each Lease is the amount of fixed rent set forth on Schedule 8, and there is no claim or basis for a claim by the tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under any Lease which remains outstanding, there are no defaults on the part of the landlord under any Lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; (vi) to Borrowers' best knowledge, there is no present material default by the tenant under any Lease; (vii) all security deposits under Leases are as set forth on Schedule 8 and are held consistent with Section 3.9; (viii) the applicable Borrower is the sole owner of the entire lessor's interest in each Lease; (ix) each Lease is the valid, binding and enforceable obligation of such Borrower and the applicable tenant thereunder; (x) no Person has any possessory interest in, or right to occupy, any Property except under the terms of the Lease (other than in connection with Hotel Transactions); and (xi) each Lease is subordinate to the Loan Documents, either pursuant to its terms or pursuant to a subordination and attornment agreement. None of the Leases contains any option to purchase or right of first refusal to purchase any Property or any part thereof. Neither the Leases nor the Rents have been assigned or pledged except to Lender, and no other Person has any interest therein except the tenants thereunder.

4.17 Fraudulent Transfer. No Borrower has entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and each Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of each Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed such Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Each Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. No Borrower intends to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of such Borrower).

4.18 Ownership of Borrower. Except for El Paso Borrower, the sole member of each Borrower is the its Borrower Representative. The sole general partner of El Paso Borrower is the El Paso GP. The only limited partner of El Paso Borrower is El Paso Hotel Associates, an Illinois general partnership, which general partnership is also the sole shareholder El Paso Borrower's Borrower Representative. The membership, partnership and shareholder (as applicable) interests in each Borrower and in each Borrower Representative are owned free and

clear of all Liens, warrants, options and rights to purchase. No Borrower has any obligation to any Person to purchase, repurchase or issue any ownership interest in it. The organizational chart attached hereto as Schedule 4 is complete and accurate and illustrates all Persons who have a direct or indirect ownership interest in each Borrower (other than Persons having non-Control interests in the DLJ Fund).

4.19 Purchase Options. Neither any Property nor any part thereof are subject to any purchase options or other similar rights in favor of third parties.

4.20 Management Agreement. The Management Agreements are in full force and effect. With respect to each Management Agreement, there is no default, breach or violation existing thereunder, and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation thereunder, by either party thereto.

4.21 Hazardous Substances. Except as disclosed in the environmental reports delivered to Lender prior to the date hereof, (i) no Property is in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, any state super-lien and environmental clean-up statutes (including with respect to Toxic Mold), any local law requiring related permits and licenses and all amendments to and regulations in respect of the foregoing laws (collectively, "*Environmental Laws*"); (ii) no Property is subject to any private or governmental Lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous, toxic and/or dangerous substances, toxic mold or fungus of a type that may pose a risk to human health or the environment or would negatively impact the value of the Property ("*Toxic Mold*") or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "*Hazardous Substances*"); (iii) to the best of each Borrower's knowledge, after due inquiry, no Hazardous Substances are or have been (including the period prior to such Borrower's acquisition of its Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from any Property other than in compliance with all Environmental Laws; (iv) to the best of each Borrower's knowledge, after due inquiry, no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect any Property; (v) to the best of Borrowers' knowledge, after due inquiry, no Toxic Mold is on or about any Property which requires remediation; (vi) no underground storage tanks exist on any Property and no Property has ever been used as a landfill; and (vii) there have been no environmental investigations, studies, audits, reviews or other analyses conducted by or on behalf of any Borrower which have not been provided to Lender.

4.22 Name; Principal Place of Business. No Borrower uses or will use any trade name or has done or will not do business under any name other than its actual name set forth herein. The principal place of business of each Borrower is its primary address for notices as set forth in Section 6.1, and no Borrower has any other place of business, except for its Property.

4.23 Other Debt. There is no indebtedness with respect to any Property or any excess cash flow or any residual interest therein, whether secured or unsecured, other than Permitted Encumbrances and Permitted Indebtedness.

4.24 Franchise Agreements. Each Franchise Agreement is in full force and effect, there is no default, breach or violation existing thereunder by either party thereto, and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation by either party thereunder.

4.25 Property Agreements. The Property Agreements are in full force and effect and neither the applicable Borrowers nor, to Borrowers' knowledge, any other party to any Property Agreement, are in default thereunder, and to the best of Borrowers' knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. Except as set forth in Section 1.1, the Property Agreements have not been modified, amended or supplemented.

Whether or not expressly stated herein, all representations in this Article 4 regarding any Property or Properties (including without limitation representations regarding physical condition, financial performance, legal status, and entitlements) are qualified as being made to the knowledge of Borrowers after reasonable inquiry.

All of the representations and warranties in this Article 4 and elsewhere in the Loan Documents (i) shall survive for so long as any portion of the Debt remains owing to Lender but shall only be deemed made as of the date hereof and (ii) shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.21 shall survive in perpetuity.

5. COVENANTS

Until the end of the Term, Borrowers hereby covenant and agree with Lender that:

5.1 Existence. Each Borrower and each Borrower Representative shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all Licenses, and (iv) qualify to do business and remain in good standing under the laws of each jurisdiction, in each case as and to the extent required for the ownership, maintenance, management and operation of the Property owned by it.

5.2 Taxes and Other Charges. Borrowers shall pay all Taxes and Other Charges as the same become due and payable, and deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid no later than 30 days before they would be delinquent if not paid (provided, however, that Borrowers need not pay such Taxes nor furnish such receipts for payment of Taxes paid by Lender pursuant to Section 3.3). Borrowers shall not suffer and shall promptly cause to be paid and discharged any Lien against any Property, and shall promptly pay for all utility services provided to any Property. After prior notice to Lender, Borrowers, at their own expense, may contest by appropriate legal

proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and is continuing, (ii) such proceeding shall suspend the collection of the Taxes or such Other Charges, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which any Borrower is subject and shall not constitute a default thereunder, (iv) no part of or interest in any Property will be in danger of being sold, forfeited, terminated, canceled or lost, (v) Borrowers shall have furnished such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, which shall not be less than 125% of the Taxes and Other Charges being contested, and (vi) Borrowers shall promptly upon final determination thereof pay the amount of such Taxes or Other Charges, together with all costs, interest and penalties. Lender may pay over any such security or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

5.3 Access to Properties. Borrowers shall permit agents, representatives, consultants and employees of Lender to inspect the Properties or any part thereof at reasonable hours upon reasonable advance notice.

5.4 Repairs; Maintenance and Compliance; Alterations.

5.4.1 Repairs; Maintenance and Compliance. Borrowers shall at all times maintain, preserve and protect all franchises and trade names, and Borrowers shall cause the Properties to be maintained in a good and safe condition and repair and shall not remove, demolish or alter the Improvements or Equipment (except for alterations performed in accordance with Section 5.4.2 and normal replacement of Equipment with Equipment of equivalent value and functionality). Borrowers shall promptly comply with all Legal Requirements and immediately cure properly any material violation of a Legal Requirement. Borrowers shall notify Lender in writing within one Business Day after any Borrower first receives notice of any such non-compliance. Borrowers shall promptly repair, replace or rebuild any part of any Property that becomes damaged, worn or dilapidated and shall complete and pay for any Improvements at any time in the process of construction or repair.

5.4.2 Alterations. Any Borrower may, without Lender's consent, perform alterations to the Improvements and Equipment which (i) do not constitute a Material Alteration and (ii) are in the ordinary course of such Borrower's business. No Borrower shall perform any Material Alteration without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed. Lender may, as a condition to giving its consent to a Material Alteration, require that Borrowers deliver to Lender security for payment of the cost of such Material Alteration in an amount not greater than 125% of the cost of the Material Alteration as estimated by Lender (or 100% of the cost of the Material Alteration, if the same is the subject of a fixed price or guaranteed maximum cost construction contract). Upon substantial completion of the Material Alteration, Borrowers shall provide evidence satisfactory to Lender that (i) the Material Alteration was constructed in accordance with applicable Legal Requirements and substantially in accordance with plans and specifications approved by Lender (which approval shall not be unreasonably withheld or delayed), (ii) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with the Material

Alteration have been paid in full and have delivered unconditional releases of lien (other than liens and/or charges that Borrowers dispute in good faith, subject in any event to the provisions of Section 5.27) and (iii) all material Licenses necessary for the use, operation and occupancy of the Material Alteration (other than those which depend on the performance of tenant improvement work) have been issued. Borrowers shall reimburse Lender upon demand for all out-of-pocket costs and expenses (including the reasonable fees of any architect, engineer or other professional engaged by Lender) incurred by Lender in reviewing plans and specifications or in making any determinations necessary to implement the provisions of this Section 5.4.2.

5.5 Performance of Other Agreements. Borrowers shall observe and perform each and every material term to be observed or performed by one or more Borrowers pursuant to the terms of any material agreement or instrument affecting or pertaining to any Property, including the Franchise Agreements.

5.6 Cooperate in Legal Proceedings. Borrowers shall cooperate fully with Lender with respect to, and permit Lender, at its option, to participate in, any proceedings before any Governmental Authority which may in any way affect the rights of Lender under any Loan Document.

5.7 Further Assurances. Borrowers shall, at Borrowers' sole cost and expense, (i) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Debt and/or for the better and more effective carrying out of the intents and purposes of the Loan Documents, as Lender may reasonably require from time to time; and (ii) upon Lender's request therefor given from time to time after the occurrence of any Default or Event of Default pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to any Borrower and to any Borrower Representative and (b) searches of title to one or more of the Properties, each such search to be conducted by search firms reasonably designated by Lender in each of the locations reasonably designated by Lender.

5.8 Environmental Matters.

5.8.1 Hazardous Substances. So long as one or more Borrowers own or are in possession of one or more of the Properties, each such Borrower shall (i) keep the Property owned or possessed by it in compliance with all Environmental Laws, (ii) promptly notify Lender if such Borrower shall become aware that (A) any Hazardous Substance is on or near such Property in a manner that does not comply with Environmental Law, (B) such Property is in violation of any Environmental Laws or (C) any condition on or near such Property shall pose a threat to the health, safety or welfare of humans and (iii) remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law (or as shall be required by Lender in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified environmental consulting firm engaged by Lender ("*Lender's Consultant*")), promptly after such Borrower becomes aware of same, at Borrowers' sole expense. Nothing herein shall prevent such Borrower from recovering such expenses from any other party that may be liable for such removal or cure.

5.8.2 Environmental Monitoring.

(a) Borrowers shall give prompt written notice to Lender of (i) any proceeding or inquiry by any party (including any Governmental Authority) with respect to the presence of any Hazardous Substance on, under, from or about any Property, (ii) all claims made or threatened by any third party (including any Governmental Authority) against any Borrower or any Property or any party occupying any Property relating to any loss or injury resulting from any Hazardous Substance, and (iii) any Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Property that could cause such Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Upon becoming aware of the presence of mold or fungus at any Property, Borrowers shall (i) undertake an investigation to identify the source(s) of such mold or fungus and shall develop and implement an appropriate remediation plan to eliminate the presence of any Toxic Mold, (ii) perform or cause to be performed all acts reasonably necessary for the remediation of any Toxic Mold (including taking any action necessary to clean and disinfect any portions of such Property affected by Toxic Mold, including providing any necessary moisture control systems at the affected Property), and (iii) provide evidence reasonably satisfactory to Lender of the foregoing. Borrowers shall permit Lender to join and participate in, as a party if it so elects, any legal or administrative proceedings or other actions initiated with respect to any Property in connection with any Environmental Law or Hazardous Substance, and Borrowers shall pay all reasonable attorneys' fees and disbursements incurred by Lender in connection therewith.

(b) Upon Lender's request, at any time and from time to time, Borrowers shall provide an inspection or audit of one or more Properties designated by Lender prepared by a licensed hydrogeologist, licensed environmental engineer or qualified environmental consulting firm approved by Lender assessing the presence or absence of Hazardous Substances on, in or near such Property or Properties, and if Lender in its good faith judgment determines that reasonable cause exists for the performance of such environmental inspection or audit, then the cost and expense of such audit or inspection shall be paid by Borrowers. Such inspections and audit may include soil borings and ground water monitoring. If Borrowers fail to provide any such inspection or audit within 30 days after such request, Lender may order same, and Borrowers hereby grant to Lender and its employees and agents access to the Properties and a license to undertake such inspection or audit.

(c) If any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for any Hazardous Substance, whether such Hazardous Substance existed prior to the ownership of the applicable Property by any Borrower, or presently exists or is reasonably suspected of existing, Borrowers shall cause such operations and maintenance plan to be prepared and implemented at their expense upon request of Lender, and with respect to any Toxic Mold, Borrowers shall take all action necessary to clean and disinfect any portions of the Improvements affected by Toxic Mold in or about the Improvements, including providing any necessary moisture control systems at the affected Property. If any investigation, site monitoring, containment, cleanup, removal, restoration or other work of any kind is reasonably necessary under an applicable Environmental Law ("**Remedial Work**"), Borrowers shall commence all such Remedial Work within 30 days after written demand by Lender and thereafter diligently prosecute to completion all such Remedial Work within such period of time as may be required

under applicable law). All Remedial Work shall be performed by licensed contractors approved in advance by Lender and under the supervision of a consulting engineer approved by Lender. All costs of such Remedial Work shall be paid by Borrowers, including Lender's reasonable attorneys' fees and disbursements incurred in connection with the monitoring or review of such Remedial Work. If Borrowers do not timely commence and diligently prosecute to completion the Remedial Work, Lender may (but shall not be obligated to) cause such Remedial Work to be performed at Borrowers' expense. Notwithstanding the foregoing, Borrowers shall not be required to commence such Remedial Work within the above specified time period: (x) if prevented from doing so by any Governmental Authority, (y) if commencing such Remedial Work within such time period would result in any Borrower or such Remedial Work violating any Environmental Law, or (z) if Borrowers, at their expense and after prior written notice to Lender, are contesting by appropriate legal, administrative or other proceedings, conducted in good faith and with due diligence, the need to perform Remedial Work. Borrowers shall have the right to contest the need to perform such Remedial Work, provided that, (1) Borrowers are permitted by the applicable Environmental Laws to delay performance of the Remedial Work pending such proceedings, (2) neither any Property nor any part thereof or interest therein will be sold, forfeited or lost if a Borrower fails to promptly perform the Remedial Work being contested, and if such Borrower fails to prevail in contest such Borrower would thereafter have the opportunity to perform such Remedial Work, (3) Lender would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which Borrowers have not furnished additional security as provided in clause (4) below, or to any risk of criminal liability, and neither any Property nor any interest therein would be subject to the imposition of any Lien for which Borrowers have not furnished additional security as provided in clause (4) below, as a result of the failure to perform such Remedial Work and (4) Borrowers shall have furnished to Lender additional security in respect of the Remedial Work being contested and the loss or damage that may result from Borrowers' failure to prevail in such contest in such amount as may be reasonably requested by Lender but in no event less than one hundred twenty-five percent (125%) of the cost of such Remedial Work as estimated by Lender or Lender's Consultant and any loss or damage that may result from Borrowers' failure to prevail in such contest.

(d) No Borrower shall install or permit to be installed on any Property any underground storage tank.

5.8.3 O & M Program. In the event any environmental report delivered to Lender in connection with the Loan recommends the development of or continued compliance with an operation and maintenance program for any Property (including, without limitation, with respect to the presence of asbestos and/or lead-based paint) ("**O & M Program**"), Borrowers shall develop (or continue to comply with, as the case may be) such O & M Program and shall, during the term of the Loan, including any extension or renewal thereof, comply in all material respects with the terms and conditions of the O & M Program.

5.9 Title to the Properties. Borrowers will warrant and defend the title to the Properties, and the validity and priority of all Liens granted or otherwise given to Lender under the Loan Documents, subject only to Permitted Encumbrances, against the claims of all Persons.

5.10 Leases.

5.10.1 Generally. Upon request, Borrowers shall furnish Lender with executed copies of all Leases then in effect. All renewals of Leases and all proposed leases shall provide for rental rates and terms comparable to existing local market rates and shall be arm's length transactions with bona fide, independent third-party tenants.

5.10.2 Material Leases. No Borrower shall enter into a proposed Material Lease or a proposed renewal, extension or modification of an existing Material Lease without the prior written consent of Lender, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed. Prior to seeking Lender's consent to any Material Lease, Borrowers shall deliver to Lender a copy of such proposed lease (a "*Proposed Material Lease*") blacklined to show changes from the standard form of Lease approved by Lender and then being used by Borrowers. Lender shall approve or disapprove each Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease for which Lender's approval is required under this Agreement within 10 Business Days of the submission by Borrowers to Lender of a written request for such approval, accompanied by a final copy of the Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease. If requested by Borrowers, Lender will grant conditional approvals of Proposed Material Leases or proposed renewals, extensions or modifications of existing Material Leases at any stage of the leasing process, from initial "term sheet" through negotiated lease drafts, provided that Lender shall retain the right to disapprove any such Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease, if subsequent to any preliminary approval material changes are made to the terms previously approved by Lender, or additional material terms are added that had not previously been considered and approved by Lender in connection with such Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease. Provided that no Event of Default is continuing, if Borrowers provide Lender with a written request for approval (which written request shall specifically refer to this Section 5.10.2 and shall explicitly state that failure by Lender to approve or disapprove within 10 Business Days will constitute a deemed approval) and Lender fails to reject the request in writing delivered to Borrowers within 10 Business Days after receipt by Lender of the request, the Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease shall be deemed approved by Lender, and the applicable Borrower shall be entitled to enter into such Proposed Material Lease or proposed renewal, extension or modification of an existing Material Lease.

5.10.3 Minor Leases. Notwithstanding the provisions of Section 5.10.2 above, provided that no Event of Default is continuing, renewals, amendments and modifications of existing Leases and proposed leases shall not be subject to the prior approval of Lender provided (i) the proposed lease would be a Minor Lease or the existing Lease as amended or modified or the renewal Lease is a Minor Lease, (ii) the Lease as amended or modified or the renewal Lease or series of leases or proposed lease or series of leases: (a) shall provide for net effective rental rates comparable to existing local market rates, (b) with respect to Leases for the retail portion of any Property, shall have an initial term (together with all renewal options) of not less than two years or greater than fifteen years, (c) shall provide for automatic self-operative subordination to the Mortgages and, at Lender's option, (x) attornment to Lender and (y) the unilateral right by Lender, at the option of Lender, to subordinate the Liens of the Mortgages to the Lease, and (d) shall not contain any option to purchase, any right of first refusal to purchase, any right to terminate (except in the event of the destruction or condemnation of substantially all of the

applicable Property) or any requirement for a non-disturbance or recognition agreement. Borrowers shall deliver to Lender copies of all Leases which are entered into pursuant to the preceding sentence together with Borrowers' certification that it has satisfied all of the conditions of the preceding sentence within ten days after the execution of the Lease. With respect to any Lease or proposed renewal, extension or modification of an existing Lease that requires Lender's consent under this Section 5.10.3, provided that no Event of Default is continuing, if Borrowers provide Lender with a written request for approval (which written request shall specifically refer to this Section 5.10.3 and shall explicitly state that failure by Lender to approve or disapprove within 10 Business Days will constitute a deemed approval) and Lender fails to reject the request in writing delivered to Borrowers within 10 Business Days after receipt by Lender of the request, the proposed Lease or proposed renewal, extension or modification of an existing Lease shall be deemed approved by Lender, and the applicable Borrower shall be entitled to enter into such proposed Lease or proposed renewal, extension or modification of an existing Lease.

5.10.4 Additional Covenants with respect to Leases. Each Borrower (i) shall observe and perform the material obligations imposed upon the lessor under the Leases and shall not do or permit anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default that such Borrower shall send or receive under any Lease; (iii) shall enforce, in accordance with commercially reasonable practices for properties similar to the applicable Property, the terms, covenants and conditions in the Leases to be observed or performed by the lessees, short of termination thereof; (iv) shall not collect any of the Rents more than one month in advance (other than security deposits); (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (vi) shall not modify any Lease in a manner inconsistent with the Loan Documents; (vii) shall not convey or transfer or suffer or permit a conveyance or transfer of any Property so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees under Leases; (viii) shall not consent to any assignment of or subletting under any Material Lease unless required in accordance with its terms without the prior consent of Lender, which, with respect to a subletting, may not, so long as no Event of Default is continuing, be unreasonably withheld or delayed; and (ix) shall not cancel or terminate any Lease or accept a surrender thereof (except in the exercise of the applicable Borrower's commercially reasonable judgment in connection with a tenant default under a Minor Lease) without the prior consent of Lender, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed.

5.11 Estoppel Statement. After request by Lender, Borrowers shall within ten days furnish Lender with a statement addressed to Lender, its successors and assigns, duly acknowledged and certified, setting forth (i) the unpaid Principal, (ii) the Interest Rate, (iii) the date installments of interest and/or Principal were last paid, (iv) any offsets or defenses to the payment of the Debt, and (v) that the Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

5.12 Property Management.

5.12.1 Management Agreement. Each Borrower shall (i) cause the Property owned by it to be managed pursuant to a Management Agreement; (ii) promptly perform and

observe all of the covenants required to be performed and observed by it under such Management Agreement and do all things necessary to preserve and to keep unimpaired its rights thereunder; (iii) promptly notify Lender of any default under such Management Agreement of which it is aware; and (iv) promptly enforce the performance and observance of all of the covenants required to be performed and observed by Manager under such Management Agreement. Without Lender's prior written consent, no Borrower shall (a) surrender, terminate, cancel, extend or renew its Management Agreement or otherwise replace the Manager or enter into any other management agreement (except pursuant to Section 5.12.2); (b) reduce or consent to the reduction of the term of its Management Agreement; (c) increase or consent to the increase of the amount of any charges under its Management Agreement; (d) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release any of its rights and remedies under, its Management Agreement; (e) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under its Management Agreement (or any successor management agreement) if such default permits the Manager to terminate such Management Agreement (or such successor management agreement); or (f) suffer or permit the ownership, management or control of the Manager to be transferred to a Person other than an Affiliate of a Borrower without the prior written consent of Lender, which consent shall not be unreasonably withheld.

5.12.2 Termination of Manager. If (i) as of any two consecutive Calculation Dates, Borrowers fail to maintain a Debt Service Coverage Ratio of at least 1.00:1.00 or (ii) an Event of Default shall be continuing, or (iii) Manager is in default under any Management Agreement, or (iv) upon the gross negligence, malfeasance or willful misconduct of the senior management of Manager, Borrowers shall, at the request of Lender, terminate the Management Agreements and replace Manager with a replacement manager acceptable to Lender in Lender's discretion and the applicable Rating Agencies on terms and conditions satisfactory to Lender and the applicable Rating Agencies. All calculations of the Debt Service Coverage Ratio for purposes of this Section 5.12.2 shall be subject to verification by Lender. Lender will not require the termination of any Management Agreement under clause (i) above unless Lender determines in the exercise of its good faith reasonable judgment that the performance of the Manager is below the standard of performance of property managers of similar properties, taking into account any adverse market conditions. Borrowers' failure to appoint an acceptable manager within thirty (30) days after Lender's request of Borrowers to terminate the Management Agreements in accordance with the foregoing shall constitute an immediate Event of Default. Borrowers may from time to time appoint a successor manager to manage the Properties, which successor manager and Management Agreement shall be approved in writing by Lender in Lender's discretion and the applicable Rating Agencies.

5.13 Special Purpose Bankruptcy Remote Entity. Each Borrower and the El Paso GP shall at all times be a Special Purpose Bankruptcy Remote Entity. No Borrower shall directly or indirectly make any change, amendment or modification to its, or to its Borrower Representative's, organizational documents, or otherwise take any action, in either case, which could result in any Borrower or the El Paso GP not being a Special Purpose Bankruptcy Remote Entity. A "*Special Purpose Bankruptcy Remote Entity*" shall have the meaning set forth on Schedule 5 hereto.

5.14 Assumption in Non-Consolidation Opinion. Each Borrower and each Borrower Representative shall conduct their business so that the assumptions (with respect to each Person) made in that certain substantive non-consolidation opinion letter dated the date hereof delivered by Borrowers' counsel in connection with the Loan, shall be true and correct in all material respects.

5.15 Change In Business or Operation of Properties. Borrowers shall not purchase or own any real property other than the Properties and shall not enter into any line of business other than the ownership and operation of the Properties, or make any material change in the scope or nature of their business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business or otherwise cease to operate the Properties as hotel properties, or terminate such business for any reason whatsoever (other than temporary cessation in connection with renovations to a Property).

5.16 Debt Cancellation. No Borrower shall cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to such Borrower by any Person, except for adequate consideration and in the ordinary course of such Borrower's business.

5.17 Affiliate Transactions. No Borrower shall enter into, or be a party to, any transaction with an Affiliate of any Borrower or any of the members or partners, as applicable, of any Borrower except in the ordinary course of business and on terms which are fully disclosed to Lender in advance and are no less favorable to such Borrower or such Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party. Lender accepts and approves the Management Agreements.

5.18 Zoning. No Borrower shall initiate or consent to any zoning reclassification of any portion of any Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.19 No Joint Assessment. No Borrower shall suffer, permit or initiate the joint assessment of any Property (i) with any other real property constituting a tax lot separate from such Property (except to the extent of appurtenant rights in other property), and (ii) with any portion of such Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such Property.

5.20 Principal Place of Business. No Borrower shall change its principal place of business or chief executive office without first giving Lender 30 days' prior notice.

5.21 Change of Name, Identity or Structure. No Borrower shall change its name, identity (including its trade name or names) or such Borrower's corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in such Borrower's structure, without first obtaining the prior written consent of Lender. Each Borrower shall execute and deliver to

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

5.22 Indebtedness.

(a) No Borrower shall individually directly or indirectly create, incur or assume any indebtedness other than (i) the Debt, (ii) unsecured trade payables incurred in the ordinary course of business relating to the ownership and operation of the Property owned by such Borrower which (A) when taken together with Permitted Equipment Financing (hereinafter defined) of such Borrower, do not exceed, at any time, a maximum amount of 3% of the Allocated Loan Amount of the Property owned by such Borrower (or, when taken together with the unsecured trade payables and Permitted Equipment Financing of all Borrowers, 3% of the original amount of the Principal) and (B) are paid within sixty (60) days of the date incurred or invoiced and (iii) Permitted Equipment Financing which, together with unsecured payables permitted pursuant to the preceding clause (ii), does not exceed, at any time, a maximum aggregate amount of three percent (3%) of the original amount of the Principal (collectively, "***Permitted Indebtedness***"). Notwithstanding the foregoing, however (x) the dollar threshold limitations described in the foregoing clause (ii) above shall not apply to any amounts that are payable out of the reserves established under Article 3 of this Agreement; (y) Taxes, Insurance Premiums and Capital Expenses that are approved by Lender or required pursuant to the Franchise Agreements do not constitute "trade payables" within the meaning of this Section and as the limitations of this Section shall not apply to the payment, or incurrence of payment obligations, of such Taxes or Insurance Premiums; and (z) with respect to the 60-day period set forth above, Borrowers may, at their own expense, contest the amount or validity of any such Permitted Indebtedness (during which time such 60-day period shall be tolled), provided that if Borrowers desire to withhold payment of such Permitted Indebtedness during the pendency of the contest, (1) no part of or interest in any Property will be in danger of being sold, forfeited, terminated, canceled or lost, (2) Borrowers shall have furnished such security as may be requested by Lender, to insure the payment of any such Permitted Indebtedness, together with all interest and penalties thereon, which shall not be greater than 125% of the Permitted Indebtedness being contested, and (3) Borrowers shall promptly upon final determination thereof pay the amount of such Permitted Indebtedness, together with all costs, interest and penalties and Borrower shall be permitted to use such security to make such payment. As used herein, "***Permitted Equipment Financing***" means equipment financing that is (i) entered into in the ordinary course of Borrower's business, (ii) for equipment related to the ownership and operation of the Property whose removal would not materially damage or impair the value of the Property, and (iii) which is secured only by the financed equipment.

(b) No Borrower Representative has and will have any indebtedness other than legal liabilities incurred in its capacity as general partner or managing member, as the case may be, of a Borrower and unsecured trade payables in the ordinary course of business relating to acting as general partner or managing member, as the case may be, of a Borrower which

(1) do not exceed, at any time, \$10,000 per Property and (2) are paid within sixty (60) days of the date incurred or invoiced.

5.23 Licenses. No Borrower shall Transfer any License required for the operation of the Property owned by it.

5.24 Compliance with Restrictive Covenants, Etc. No Borrower will modify, waive in any material respect or release any Easements, restrictive covenants or other Permitted Encumbrances, or suffer, consent to or permit the foregoing (other than customary utility easements), without Lender's prior written consent, which consent may be granted or denied in Lender's sole but good faith discretion.

5.25 ERISA.

5.25.1.1 No Borrower shall engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

5.25.1.2 No Borrower shall maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of such Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan or any Welfare Plan or permit the assets of such Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

5.25.1.3 Each Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the Term, as requested by Lender in its sole discretion, that (A) such Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (B) such Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) one or more of the following circumstances is true:

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

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

(iii) such Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.26 Prohibited Transfers.

5.26.1 Generally. No Borrower shall directly or indirectly make, suffer or permit the occurrence of any Transfer other than a Permitted Transfer.

5.26.2 Transfer and Assumption.

(a) Subject to obtaining Lender's prior written consent, which may be withheld in Lender's reasonable discretion, and subject to the terms and satisfaction of all of the conditions precedent set forth in this Section 5.26.2, Borrowers shall have a one-time right to Transfer all (but not less than all) of the Properties (which have not theretofore been released pursuant to Section 2.4.2) to another party (the "*Transferee Borrower*") and have the Transferee Borrower assume all of Borrowers' obligations under the Loan Documents, and have replacement guarantors and indemnitors assume all of the obligations of the indemnitors and guarantors of the Loan Documents (collectively, a "*Transfer and Assumption*"). Borrowers may make a written application to Lender for Lender's consent to the Transfer and Assumption, subject to the conditions set forth in paragraphs (b) and (c) of this Section 5.26.2. Together with such written application, Borrowers will pay to Lender the reasonable review fee then required by Lender. Borrowers also shall pay on demand all of the reasonable costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, and including the fees and expenses of Rating Agencies and other outside entities, in connection with considering any proposed Transfer and Assumption, whether or not the same is permitted or occurs.

(b) Lender shall not unreasonably withhold its consent to a Transfer and Assumption. Lender's consent to a Transfer and Assumption shall be subject to the following conditions:

- (i) No Default or Event of Default has occurred and is continuing;
- (ii) Borrowers have submitted to Lender true, correct and complete copies of any and all information and documents of any kind requested by Lender concerning the Properties, Transferee Borrower, replacement guarantors and indemnitors and Borrowers;
- (iii) Evidence satisfactory to Lender has been provided showing that the Transferee Borrower and such of its Affiliates as shall be designated by Lender comply and will comply with Section 5.13 hereof, as those provisions may be modified by Lender taking into account the ownership structure of Transferee Borrower and its Affiliates;
- (iv) If the Loan, by itself or together with other loans, has been the subject of a Secondary Market Transaction, then Lender shall have received a Rating Comfort Letter from the applicable Rating Agencies;
- (v) If the Loan has not been the subject of a Secondary Market Transaction, then Lender shall have determined that no rating for any securities that would be issued in connection with such securitization will be diminished, qualified, or withheld by reason of the Transfer and Assumption;
- (vi) Borrowers shall have paid all of Lender's reasonable costs and expenses in connection with considering the Transfer and Assumption, and shall have paid the amount requested by Lender as a deposit against Lender's costs and expenses in connection with the effecting the Transfer and Assumption;

(vii) Borrowers, the Transferee Borrower, and the replacement guarantors and indemnitors shall have indicated in writing in form and substance reasonably satisfactory to Lender their readiness and ability to satisfy the conditions set forth in subsection (c) below; and

(viii) The identity, experience, and financial condition of the Transferee Borrower and the replacement guarantors and indemnitors shall be satisfactory to Lender.

(c) If Lender consents to the Transfer and Assumption, the Transferee Borrower and/or Borrower as the case may be, shall immediately deliver the following to Lender:

(i) Borrowers shall deliver to Lender an assumption fee in the amount of 1.00% of the then unpaid Principal;

(ii) Borrowers, Transferee Borrower and the original and replacement guarantors and indemnitors shall execute and deliver to Lender any and all documents required by Lender, in form and substance required by Lender, in Lender's sole discretion;

(iii) Counsel to the Transferee Borrower and replacement guarantors and indemnitors shall deliver to Lender opinions in form and substance satisfactory to Lender as to such matters as Lender shall require, which may include opinions as to substantially the same matters and were required in connection with the origination of the Loan;

(iv) Borrowers shall cause to be delivered to Lender, an endorsement (relating to the change in the identity of the vestee and execution and delivery of the Transfer and Assumption documents) to the Title Insurance Policies in form and substance acceptable to Lender, in Lender's reasonable discretion (the "*Endorsement*"); and

(v) Borrowers shall deliver to Lender a payment in the amount of all remaining unpaid costs incurred by Lender in connection with the Transfer and Assumption, including but not limited to, Lender's reasonable attorneys fees and expenses, all recording fees, and all fees payable to the title company for the delivery to Lender of the Endorsement.

(d) Upon the closing of a Transfer and Assumption, Lender shall release Borrowers and Guarantor from all obligations under the Loan Documents (but as to Borrowers' Recourse Liabilities (and Guarantor's liability therefor), only if expressly assumed by the Transferee Borrower or replacement guarantor, as the case may be, in connection with the Transfer and Assumption).

5.27 Liens. Without Lender's prior written consent, no Borrower shall create, incur, assume, permit or suffer to exist any Lien on all or any portion of any Property or any direct or indirect legal or beneficial ownership interest in any Borrower or in any Borrower Representative, except Liens in favor of Lender and Permitted Encumbrances and Permitted

Transfers, unless such Lien is bonded or discharged within 30 days after any Borrower first receives notice of such Lien.

5.28 Dissolution. No Borrower shall (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) engage in any business activity not related to the ownership and operation of any Property or (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of such Borrower except to the extent expressly permitted by the Loan Documents.

5.29 Expenses. Borrowers shall pay or reimburse Lender upon receipt of notice for all reasonable out-of-pocket expenses incurred by Lender in connection with the origination and enforcement of the Loan (including reasonable attorneys' fees and disbursements, and the fees and expenses of environmental, engineering and other consultants), and fees, charges or taxes for the recording or filing of Loan Documents, but excluding any expenses incurred in connection with a Secondary Market Transaction. Borrowers shall also pay all reasonable out-of-pocket expenses of Lender in connection with the administration of the Loan in connection with requests by Borrower only. Borrowers shall, upon request, promptly reimburse Lender for all amounts expended, advanced or incurred by Lender to enforce the rights of Lender under this Agreement or any other Loan Document, or to defend or assert the rights and claims of Lender under the Loan Documents, or in connection with any refinancing or restructuring of the Loan in the nature of a "work-out" or any insolvency or bankruptcy proceedings. Any costs and expenses due and payable to Lender hereunder which are not paid by Borrowers within ten days after demand may be paid from any amounts in the Deposit Account, with notice thereof to any Borrower. The obligations and liabilities of Borrowers under this Section 5.29 shall survive the Term and the exercise by Lender of any of its rights or remedies under the Loan Documents, including the acquisition of any Property by foreclosure or a conveyance in lieu of foreclosure. Except to the extent set forth in Section 10.3, Borrower shall not be required to pay any compensation or expenses of any Servicer.

5.30 Indemnity. Borrowers shall defend, indemnify and hold harmless Lender and each of its Affiliates and their respective successors and assigns in ownership of the Loan but not successors in ownership of the Properties unless they also are successors in ownership of the Loan, including the directors, officers, partners, members, shareholders, participants, employees, professionals and agents of any of the foregoing (including any Servicer) and each other Person, if any, who Controls Lender, its Affiliates or any of the foregoing (each, an "***Indemnified Party***"), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for an Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto, court costs and costs of appeal at all appellate levels, investigation and laboratory fees, consultant fees and litigation expenses), that may be imposed on, incurred by, or asserted against any Indemnified Party (collectively, the "***Indemnified Liabilities***") in any manner, relating to or arising out of or by reason of the following: (i) any breach by any Borrower of its obligations under, or any misrepresentation by any Borrower contained in, any Loan Document; (ii) the use or intended use of the proceeds of the Loan; (iii) any information provided by or on behalf of any Borrower; (iv) any claim brought against Lender by a third party with whom one or more Borrowers have

direct privity and which relates to the ownership of any Mortgage, any Property or any interest therein, or receipt of any Rents; (v) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about any Property or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vi) any use, nonuse or condition in, on or about any Property or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of any Property; (viii) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance on, from or affecting any Property; (ix) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance; (x) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance; (xi) any violation of the Environmental Laws which is based upon or in any way related to such Hazardous Substance, including the costs and expenses of any Remedial Work; (xii) any failure of any Property to comply with any Legal Requirement; (xiii) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving any Property or any part thereof, or any liability asserted against Lender with respect thereto; and (xiv) the claims of any lessee of any portion of any Property or any Person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; provided, however, that Borrowers shall not have any obligation to any Indemnified Party hereunder to the extent that such Indemnified Liabilities are caused by or contracted for by an Indemnified Party or arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. Any amounts payable to any Indemnified Party by reason of the application of this paragraph shall be payable within 10 days after demand and shall bear interest at the Default Rate from the date due until paid. The obligations and liabilities of Borrowers under this Section 5.30 shall survive the Term and the exercise by Lender of any of its rights or remedies under the Loan Documents, including the acquisition of any Property by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, however, Borrowers shall not be obligated to indemnify any Indemnified Party for any event or condition specified in clauses (iv) - (vii) and (xii) - (xiv) to the extent that such event or condition first arises on or after the date on which Lender (or its transferee) acquires title or control of the applicable Property or Properties (whether at foreclosure sale, conveyance in lieu of foreclosure or similar transfer) or after a receiver has been appointed for such Property or Properties; *provided that* Borrowers' obligation to indemnify the Indemnified Parties with respect to an event or condition specified in clauses (viii) through (xi) above (relating to Hazardous Substances) shall continue in perpetuity after Lender (or its transferee) acquires title or control of the applicable Property or Properties except to the extent that such specified event or condition first occurs (and is not just discovered) during Lender's period of ownership.

5.31 Franchise Agreements. Each Borrower shall (i) cause the hotel located on the Property owned by such Borrower to be operated pursuant to the Franchise Agreement for such Property; (ii) promptly perform and observe all of the material covenants required to be performed and observed by it under such Franchise Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (iii) promptly notify Lender of any default under such Franchise Agreement of which it is aware; and (iv) promptly enforce the performance and observance of all of the covenants required to be performed and observed by the franchiser under such Franchise Agreement. Without Lender's prior consent, no Borrower

may: (A) surrender, terminate or cancel any Franchise Agreement; (B) permit or suffer the term of a Franchise Agreement to expire or lapse (unless a successor franchise agreement has been approved by Lender in its reasonable discretion and subject to the receipt by Lender of a comfort letter with respect to such successor franchise agreement in form and substance reasonably acceptable to Lender; (C) reduce or consent to the reduction of the term of any Franchise Agreement; (D) voluntarily increase the amount of any charges under any Franchise Agreement; (E) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, any Franchise Agreement or (F) suffer or permit the occurrence of continuance a default beyond any applicable cure period under any Franchise Agreement (or any successor franchise agreement) if such default permits the franchisor to terminate or cancel the Franchise Agreement (or any successor franchise agreement).

5.32 Intentionally Omitted.

5.33 Patriot Act Compliance.

(a) Borrowers will use their good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction over Borrowers and the Properties, including those relating to money laundering and terrorism. Lender shall have the right to audit Borrowers' compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction over Borrowers and the Properties, including those relating to money laundering and terrorism. In the event that any Borrower fails to comply with the Patriot Act or any such requirements of governmental authorities, then Lender may, at its option, cause such Borrower to comply therewith and any and all reasonable costs and expenses incurred by Lender in connection therewith shall be secured by the Mortgages and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "*Patriot Act*" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

(b) Neither any Borrower nor, to Borrower's knowledge, any partner in any Borrower or member of such partner nor any owner of a direct or indirect interest in any Borrower (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "*Patriot Act Offense*" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot

Act Offense. For purposes hereof, the term “**Government Lists**” means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control (“**OFAC**”), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrowers in writing is now included in “Governmental Lists”, or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Lender notified Borrower in writing is now included in “Governmental Lists”

5.34 Hotel Operation. Without in any way limiting the covenants set forth in Section 5.8 or elsewhere in the Loan Documents, Borrowers shall: (i) cause each hotel located on the Properties to be operated, repaired and maintained as a well-maintained hotel providing amenities, services and facilities substantially equivalent or superior to hotels of similar average room rate and targeted market segment from time to time operating in the same or comparable geographic area of the applicable Property, taking into consideration the age and location of the hotel located on the applicable Property and (ii) maintain Inventory in amounts sufficient to meet the hotel industry standard for hotels comparable to the hotel located on the applicable Property and at levels sufficient for the operation of the hotel located on the applicable Property at full occupancy levels.

5.35 Augmentation of Guaranty. If the Guarantor’s Net Worth (defined below) falls below the Net Worth Threshold (defined below) by reason of increased borrowings after the date hereof or sales, pledges, mortgage or other transfers of assets after the date hereof (in each case, an “**Augmentation Triggering Event**”), then within 30 days after notice by Lender thereof, Guarantor shall provide an additional guarantor or guarantors whose Net Worth (when taken together with the Net Worth of Guarantor) shall meet or exceed such Net Worth Threshold, and who shall otherwise acceptable to Lender in Lender’s reasonable discretion exercised in good faith, and such supplemental/replacement guarantor(s) shall execute and deliver to Lender a joinder to the Recourse Carveout Guaranty dated the date hereof or a replacement guaranty in the same form as such Recourse Carveout Guaranty, as the case may be (whereby such supplemental/replacement guarantor(s) agree to be bound by all of the obligation and liabilities of Guarantor set forth in the Recourse Carveout Guaranty), provided that the liability of such supplemental/replacement guarantor(s) under their joinder or separate guaranties shall be limited to the amount by which the Net Worth of the original Guarantor shall be less than the Net Worth Threshold by reason of an Augmentation Triggering Event. Thereafter, all references herein or in any other Loan Document to “Guarantor” shall (i) in the case of a replacement guarantor(s), mean such replacement guarantor(s), as the replacement guarantor(s) thereunder, or (ii) mean, collectively, such supplemental guarantor(s) and Guarantor. As used herein, “**Net Worth**” shall mean, as of a given date, (x) the total assets of Guarantor (or proposed supplemental/replacement guarantor(s), as the case may be) as of such date determined on a market value basis, less (y) the total liabilities of Guarantor’s (or proposed supplemental/replacement guarantor(s)’, as the case may be) as of such date; and “**Net Worth Threshold**” shall mean \$20,000,000.

6. NOTICES AND REPORTING

6.1 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document (a "*Notice*") shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile and confirmed by facsimile answer back, in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party): If to Lender: Greenwich Capital Financial Products, Inc., 600 Steamboat Road, Greenwich, Connecticut 06830, Attention: Mortgage Loan Department, Telecopier (203) 618-2052, with a copy to: Kaye Scholer LLP, 425 Park Avenue, New York, New York 10022, Attention: Stephen Gliatta, Esq., Telecopier: (212) 836-8689; if to Borrowers: c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405, Attention: Chief Operating Officer, Telecopier: (310) 566-1199, with a copy to: Sidley Austin Brown & Wood LLP, 555 West Fifth Street, Suite 4000, Los Angeles, California 90013, Attention: M. Scott Cooper, Esq., Telecopier: (213) 896-6600 and with a copy to: DLJ Real Estate Capital Partners II, L.P., c/o Credit Suisse First Boston, 2121 Avenue of the Stars, Suite 3100, Los Angeles, California 90067, Attention: Robert Cavanaugh, Telecopier: (310) 282-5032. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery during business hours on a Business Day; or in the case of overnight delivery, upon the first attempted delivery during business hours on a Business Day; or in the case of facsimile, upon the confirmation of such facsimile transmission.

6.2 Borrower Notices and Deliveries. Borrowers shall (a) give prompt written notice to Lender of: (i) any litigation, governmental proceedings or claims or investigations pending or threatened against any Borrower or any Borrower Representative which might materially adversely affect any Borrower's or any Borrower Representative's condition (financial or otherwise) or business or any Property; (ii) any material adverse change in any Borrower's or any Borrower Representative's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which any Borrower has knowledge; and (b) furnish and provide to Lender: (i) any Securities and Exchange Commission or other public filings, if any, of any Borrower, any Borrower Representative, Manager, or any Affiliate of any of the foregoing within two (2) Business Days of such filing and (ii) all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested, from time to time, by Lender. In addition, after request by Lender (but no more frequently than twice in any year), Borrowers shall furnish to Lender (x) within ten days, a certificate addressed to Lender, its successors and assigns reaffirming all representations and warranties of each Borrower set forth in the Loan Documents as of the date requested by Lender or, to the extent of any changes to any such representations and warranties, so stating such changes, and (y) within 30 days, tenant estoppel certificates addressed to Lender, its successors and assigns from each commercial tenant at each Property in form and substance reasonably satisfactory to Lender.

6.3 Financial Reporting.

6.3.1 Bookkeeping. Each Borrower shall keep on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of such Borrower and all items of income and expense and any services, Equipment or furnishings provided in connection with the operation of the Property owned by such Borrower, whether such income or expense is realized by such Borrower, Manager or any Affiliate of such Borrower. Lender shall have the right from time to time during normal business hours upon reasonable notice to examine such books, records and accounts at the office of such Borrower or other Person maintaining them, and to make such copies or extracts thereof as Lender shall desire. After an Event of Default, Borrowers shall pay any costs incurred by Lender to examine such books, records and accounts, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

6.3.2 Annual Reports. Borrowers shall furnish to Lender annually, within 120 days after each calendar year, a complete copy of Borrowers' annual financial statements (which may be consolidated financial statements) certified by Borrower and prepared in accordance with GAAP and containing balance sheets and statements of profit and loss for Borrowers and each Property in such detail as Lender may request. Each such statement (x) shall be in form satisfactory to Lender, (y) shall set forth the financial condition and the income and expenses for each Property for the immediately preceding calendar year, including statements of annual net operating income, and (z) shall be accompanied by an Officer's Certificate certifying (1) that such statement is true, correct, complete and accurate and presents fairly the financial condition of each Property and has been prepared in accordance with GAAP and (2) whether to Borrowers' knowledge, there exists a Default or Event of Default, and if so, the nature thereof, the period of time it has existed and the action then being taken to remedy it.

6.3.3 Monthly Reports. Each Borrower shall furnish to Lender within 25 days after the end of each calendar month or calendar quarter (as indicated below) the following items: (i) monthly and year-to-date operating statements, noting net operating income and other information necessary and sufficient under GAAP to fairly represent the financial position and results of operation of the Property owned by such Borrower during such calendar month, all in form satisfactory to Lender; (ii) a balance sheet for such calendar month; (iii) a comparison of the budgeted income and expenses and the actual income and expenses for each month and year-to-date for the Property owned by such Borrower, together with a detailed explanation of any variances of 10% or more between total budgeted and total actual amounts for such period and year-to-date; (iv) a statement of the actual Capital Expenses made by such Borrower during each calendar quarter as of the last day of such calendar quarter; (v) a statement that such Borrower has not incurred any indebtedness other than indebtedness permitted hereunder; (vi) an aged receivables report; (vii) all franchise inspection reports (if any) received by Borrowers in such month and (viii) occupancy rates (including the average daily rate) for each Property. Each such statement shall be accompanied by an Officer's Certificate certifying (1) that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of such Borrower and such Property in accordance with GAAP (subject to normal year-end adjustments) and (2) whether to Borrowers' knowledge, there exists a Default or Event of Default, and if so, the nature thereof, the period of time it has existed and the action then being taken to remedy it.

6.3.4 Other Reports. Each Borrower shall furnish to Lender (i) any annual, monthly or other periodic financial reports or budgets delivered by Manager under the Management Agreements and (ii) within ten Business Days after request, such further detailed information with respect to the operation of the Property owned by such Borrower and the financial affairs of such Borrower or Manager as may be reasonably requested by Lender or any applicable Rating Agency.

6.3.5 Annual Budget. Each Borrower shall prepare and submit (or shall cause Manager to prepare and submit) to Lender by December 15th of each year during the Term a draft budget for the Property owned by such Borrower for the succeeding calendar year (the "**Draft Budget**"). In addition, on or before December 23rd of each year during the Term, each Borrower shall update the Draft Budget and prepare and submit (or cause Manager to prepare and submit) to Lender, for approval by Lender, which approval shall not be unreasonably withheld or delayed, a proposed pro forma budget for the Property owned by such Borrower for the succeeding calendar year (the "**Annual Budget**", and each Annual Budget approved (or deemed approved pursuant to the terms of this Section 6.3.5) by Lender is referred to herein as the "**Approved Annual Budget**"), and, promptly after preparation thereof, any revisions to such Annual Budget. Lender's failure to approve or disapprove any Annual Budget or revision within 30 days after Lender's receipt thereof shall be deemed to constitute Lender's approval thereof. The Annual Budget shall consist of (i) an operating expense budget showing, on a month-by-month basis, in reasonable detail, each line item of such Borrower's anticipated operating income and operating expenses (on an accrual basis), including amounts required to establish, maintain and/or increase any monthly payments required hereunder (and once such Annual Budget has been approved (or deemed approved pursuant to the terms of this Section 6.3.5) by Lender, such operating expense budget shall be referred to herein as the "**Approved Operating Budget**"), and (ii) a Capital Expense budget showing, on a month-by-month basis, in reasonable detail, each line item of anticipated Capital Expenses (and once such Annual Budget has been approved (or deemed approved pursuant to the terms of this Section 6.3.5) by Lender, such Capital Expense budget shall be referred to herein as the "**Approved Capital Budget**"). Until such time that any Annual Budget has been approved (or deemed to have been approved) by Lender, the prior Approved Annual Budget shall apply for all purposes hereunder (with such adjustments as reasonably determined by Lender (including increases for any non-discretionary expenses)).

6.3.6 Breach. If any Borrower fails to provide to Lender or its designee any of the financial statements, certificates, reports or information (the "**Required Records**") required by this Section 6.3.6 within 30 days after the date upon which such Required Record is due, Borrowers shall pay to Lender, at Lender's option and in its discretion, an amount equal to \$2,500 for each Required Record that is not delivered; provided Lender has given Borrowers at least 30 days prior notice of such failure. In addition, 30 days after any Borrower's failure to deliver any Required Records, Lender shall have the option, upon 15 days notice to Borrowers to gain access to such Borrower's books and records and prepare or have prepared at Borrowers' expense, any Required Records not delivered by such Borrower.

6.3.7 Hotel Accounting. All monthly and other operating statements to be delivered by Borrowers hereunder shall be (and all accompanying Officer's Certificates shall state that they have been) prepared based upon USALI.

7. INSURANCE; CASUALTY; AND CONDEMNATION

7.1 Insurance.

7.1.1 Coverage. Each Borrower, at its sole cost, for the mutual benefit of each Borrower and Lender, shall obtain and maintain during the Term the following policies of insurance with respect to the Property or Properties owned by such Borrower:

(a) Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies including fire, lightning, vandalism, and malicious mischief, boiler and machinery and, if required by Lender, flood and/or earthquake coverage and subject to subsection (j) below, coverage for damage or destruction caused by the acts of "Terrorists" (or such policies shall have no exclusion from coverage with respect thereto) and such other insurable hazards as, under good insurance practices, from time to time are insured against for other property and buildings similar to the premises in nature, use, location, height, and type of construction. Such insurance policy shall also insure costs of demolition and increased cost of construction in amounts satisfactory to Lender. Each such insurance policy shall (i) be in an amount equal to 100% of the then replacement cost of the Improvements without deduction for physical depreciation, (ii) have deductibles no greater than \$25,000 per occurrence, (iii) be paid annually in advance and (iv) be on a replacement cost basis and contain either no coinsurance or, if coinsurance, an agreed amount endorsement, and shall cover, without limitation, all tenant improvements and betterments that Borrowers are required to insure on a replacement cost basis. Lender shall be named Mortgagee and Loss Payee on a Standard Mortgagee Endorsement.

(b) Flood insurance if such Property is in an area now or hereafter designated by the Federal Emergency Management Agency as a Zone "A" & "V" Special Hazard Area, or such other Special Hazard Area if Lender so requires in its reasonable discretion. Such policy shall (i) be in an amount equal to (A) 100% of the full replacement cost of the Improvements on such Property (without any deduction for depreciation) or (B) such other amount as agreed to by Lender and (ii) have a maximum permissible deductible of \$25,000 per occurrence.

(c) Public liability insurance, including (i) "Commercial General Liability Insurance", (ii) "Owned", "Hired" and "Non Owned Auto Liability"; and (iii) umbrella liability coverage for personal injury, bodily injury, death, accident and property damage, such insurance providing in combination no less than containing minimum limits per occurrence of \$1,000,000 and \$2,000,000 in the aggregate for any policy year with (x) a deductible of no more than \$25,000 per occurrence; together with at least \$30,000,000 excess and/or umbrella liability insurance for any and all claims. The policies described in this subsection shall also include coverage for elevators, escalators, independent contractors, "Contractual Liability" (covering, to the maximum extent permitted by law, Borrower's obligation to indemnify Lender as required under this Agreement and the other Loan Documents), "Products" and "Completed Operations Liability" coverage.

(d) Rental loss and/or business interruption insurance (i) with Lender being named as "Lender Loss Payee", (ii) in an amount equal to one hundred percent (100%) of the projected Rents from such Property during a 12 month period of restoration; and (iii) containing

an extended period of indemnity endorsement which provides that after the physical loss to such Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of 360 days from the date that such Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such insurance shall be increased from time to time during the Term as and when the estimated or actual Rents increase.

(e) Comprehensive boiler and machinery insurance covering all mechanical and electrical equipment against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Borrower is required to insure pursuant to the lease on a replacement cost basis and in an amount equal to the lesser of (i) \$2,000,000 and (ii) 100% of the full replacement cost of the Improvements on such Property (without any deduction for depreciation).

(f) Worker's compensation and disability insurance with respect to any employees of Borrower, as required by any Legal Requirement.

(g) During any period of repair or restoration, builder's "all-risk" insurance on the so called completed value basis in an amount equal to not less than the full insurable value of such Property, against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may reasonably request, in form and substance acceptable to Lender.

(h) Coverage to compensate for ordinance of law, the cost of demolition and the increased cost of construction in an amount satisfactory to Lender.

(i) Such other insurance (including environmental liability insurance, earthquake insurance, mine subsidence insurance and windstorm insurance) as may from time to time be reasonably required by Lender in order to protect its interests.

(j) Notwithstanding anything in subsection (a) above to the contrary, Borrowers shall be required to obtain and maintain coverage in their respective property insurance Policy (or by a separate Policy) against loss or damage by terrorist acts provided that such coverage is available. Borrowers shall obtain such coverage from a carrier which otherwise satisfies the rating criteria specified in Section 7.1.2 (a "*Qualified Carrier*") or in the event that such coverage is not available from a Qualified Carrier, Borrowers shall obtain such coverage from the highest rated insurance company providing such coverage. If such coverage with respect to terrorist acts is available as aforesaid, Borrowers shall obtain and maintain such coverage in an amount equal to 100% of the "Full Replacement Cost" of such Borrower's Property. To the extent that the terrorism coverage required under this Section 7.1.1(j) is not commercially available for the premium currently being paid for such coverage, Borrowers shall nonetheless be required to obtain such required terrorism coverage, provided that in no event shall Borrowers be required to pay any Insurance Premiums with respect to the insurance coverage required under this Section 7.1.1(j) in excess of the Terrorism Premium Cap (hereinafter defined), provided further that, if the Insurance Premiums payable with respect to such insurance coverage (or to the extent the required coverage is part of a comprehensive all

risk policy, the portion of the Insurance Premiums allocable to such required coverage), exceeds the Terrorism Premium Cap, Lender may, at its option (1) purchase such Policy, with Borrowers paying such portion of the Insurance Premiums equal to the Terrorism Premium Cap and the Lender paying such portion of the Insurance Premiums in excess of the Terrorism Premium Cap or (2) modify the deductible amounts, policy limits and other required policy terms to reduce the Insurance Premiums payable with respect to such Policy (or to the extent the required coverage is part of a comprehensive all risk policy, the portion of the Insurance Premiums allocable to such required coverage) to the Terrorism Premium Cap. As used herein, (i) "***Terrorism Premium Cap***" means an amount which is equal to 150% of the Insurance Premiums presently being paid for the terrorism coverage required under this Section 7.1.1(j), adjusted annually by a percentage equal to the increase in the Consumer Price Index (hereinafter defined) in years subsequent to the date of this Agreement and (ii) "***Consumer Price Index***" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York Metropolitan Statistical Area, All Items (1982-84 = 100), or any successor index thereto, approximately adjusted, and in the event that the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of adjustments provided for herein shall be made with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc., or any other nationally recognized publisher of similar statistical information; and if the Consumer Price Index ceases to be published, and there is no successor thereto (i) such other index as Lender and Borrowers shall agree upon in writing or (ii) if Lender and Borrowers cannot agree on a substitute index, such other index, as reasonably selected by Lender.

7.1.2 Policies. All policies of insurance (the "***Policies***") required pursuant to Section 7.1.1 shall (i) be issued by companies approved by Lender and licensed to do business in the State, with a claims paying ability rating of "A" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A:X or better in the current Best's Insurance Reports; (ii) name Lender and its successors and/or assigns as their interest may appear as the mortgagee (in the case of property insurance) or an additional insured (in the case of liability insurance); (iii) contain (in the case of property insurance) a Non-Contributory Standard Mortgagee Clause and a Lender's Loss Payable Endorsement, or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) contain a waiver of subrogation against Lender; (v) be assigned and duplicate originals thereof delivered to Lender; (vi) contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including (A) endorsements providing that neither any Borrower, Lender nor any other party shall be a co-insurer under the Policies, (B) that Lender shall receive at least 30 days' prior written notice of any modification, reduction or cancellation of any of the Policies, (C) an agreement whereby the insurer waives any right to claim any premiums and commissions against Lender, provided that the policy need not waive the requirement that the premium be paid in order for a claim to be paid to the insured and (D) providing that Lender is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums; (vii) in the event any insurance policy (except for general public and other liability and workers compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Lender, such insurance policy shall not be invalidated by and shall insure Lender regardless of (A) any act, failure to act or

negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Loan Documents; and (viii) be satisfactory in form and substance to Lender and approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Borrowers shall pay the premiums for such Policies (the “*Insurance Premiums*”) as the same become due and payable and furnish to Lender evidence of the renewal of each of the Policies together with (unless such Insurance Premiums have been paid by Lender pursuant to Section 3.3) receipts for or other evidence of the payment of the Insurance Premiums reasonably satisfactory to Lender. If Borrowers do not furnish such evidence and receipts at least 30 days prior to the expiration of any expiring Policy, then Lender may, but shall not be obligated to, procure such insurance and pay the Insurance Premiums therefor, and Borrowers shall reimburse Lender for the cost of such Insurance Premiums promptly on demand, with interest accruing at the Default Rate. Borrowers shall deliver to Lender a certified copy of each Policy within 30 days after its effective date. Within 30 days after request by Lender, Borrowers shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

7.2 Casualty.

7.2.1 Notice; Restoration. If any Property is damaged or destroyed, in whole or in part, by fire or other casualty (a “*Casualty*”), Borrowers shall give prompt notice thereof to Lender. Following the occurrence of a Casualty, Borrowers, regardless of whether insurance proceeds are available from the insurance company, shall promptly proceed to restore, repair, replace or rebuild the affected Property in accordance with Legal Requirements to be of at least equal value and of substantially the same character as prior to such damage or destruction.

7.2.2 Settlement of Proceeds. If a Casualty covered by any of the Policies (an “*Insured Casualty*”) occurs where the loss does not exceed \$250,000, provided no Default or Event of Default has occurred and is continuing, Borrowers may settle and adjust any claim without the prior consent of Lender; provided such adjustment is carried out in a competent and timely manner, and Borrowers are hereby authorized to collect and receipt for the insurance proceeds (the “*Proceeds*”). In the event of an Insured Casualty where the loss equals or exceeds \$250,000 (a “*Significant Casualty*”), Lender may, in its reasonable discretion, settle and adjust any claim without the consent of any Borrower and agree with the insurer(s) on the amount to be paid on the loss, and the Proceeds shall be due and payable solely to Lender and held by Lender in the Casualty/Condemnation Subaccount and disbursed in accordance herewith. If any Borrower or any party other than Lender is a payee on any check representing Proceeds with respect to a Significant Casualty, such Borrower shall immediately endorse, and cause all such third parties to endorse, such check payable to the order of Lender. Each Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to endorse such check payable to the order of Lender. The expenses incurred by Lender in the settlement, adjustment and collection of the Proceeds shall become part of the Debt and shall be reimbursed by Borrowers to Lender upon demand. Notwithstanding anything to the contrary contained herein, if in connection with a Casualty any insurance carrier makes a payment under a property insurance Policy that Borrowers propose be treated as business or rental interruption insurance,

then, notwithstanding any designation (or lack of designation) by the insurance carrier as to the purpose of such payment, as between Lender and Borrowers, such payment shall not be treated as business or rental interruption insurance proceeds unless Borrowers have demonstrated to Lender's satisfaction that the remaining net Proceeds that will be received from the property insurance carriers are sufficient to pay 100% of the cost of fully restoring the Improvements.

7.3 Condemnation.

7.3.1 Notice; Restoration. Borrowers shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting any Property (a "**Condemnation**") and shall deliver to Lender copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrowers, regardless of whether an Award is available from the governmental authority, shall promptly proceed to restore, repair, replace or rebuild the affected Property in accordance with Legal Requirements to the extent practicable to be of at least equal value and of substantially the same character (and to have the same utility) as prior to such Condemnation.

7.3.2 Collection of Award. Lender is hereby irrevocably appointed as each Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment in respect of a Condemnation (an "**Award**") and to make any compromise, adjustment or settlement in connection with such Condemnation. Notwithstanding any Condemnation (or any transfer made in lieu of or in anticipation of such Condemnation), Borrowers shall continue to pay the Debt at the time and in the manner provided for in the Loan Documents, and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Lender to expenses of collecting the Award and to discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. If any Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of the Award sufficient to pay the Debt. Borrowers shall cause any Award that is payable to Borrower to be paid directly to Lender. Lender shall hold such Award in the Casualty/Condemnation Subaccount and disburse such Award in accordance with the terms hereof.

7.4 Application of Proceeds or Award.

7.4.1 Application to Restoration. If an Insured Casualty or Condemnation occurs where (i) the loss is in an aggregate amount less than the 35% of the Allocated Loan Amount for the affected Property, (ii) in the reasonable judgment of Lender, the affected Property can be restored within nine months, and prior to six months before the Stated Maturity Date and prior to the expiration of the rental or business interruption insurance with respect thereto, to the affected Property's pre-existing condition and utility as existed immediately prior to such Insured Casualty or Condemnation and to an economic unit not less valuable and not less useful than the same was immediately prior to the Insured Casualty or Condemnation, and after such restoration will adequately secure the Debt and (iii) no Default or Event of Default shall have occurred and be then continuing, then the Proceeds or the Award, as the case may be (after

reimbursement of any expenses incurred by Lender), shall be applied to reimburse Borrowers for the cost of restoring, repairing, replacing or rebuilding the affected Property (the "**Restoration**"), in the manner set forth herein. Borrowers shall commence and diligently prosecute such Restoration. Notwithstanding the foregoing, in no event shall Lender be obligated to apply the Proceeds or Award to reimburse any Borrower for the cost of Restoration unless, in addition to satisfaction of the foregoing conditions, both (x) Borrowers shall pay (and if required by Lender, Borrowers shall deposit with Lender in advance) all costs of such Restoration in excess of the net amount of the Proceeds or the Award made available pursuant to the terms hereof; and (y) Lender shall have received evidence reasonably satisfactory to it that during the period of the Restoration, the Rents (including proceeds from business interruption insurance) for all of the Properties will be at least equal to the sum of the operating expenses and Debt Service for all the Properties, as reasonably determined by Lender.

7.4.2 Application to Debt. Except as provided in Section 7.4.1, any Proceeds and/or Award may, at the option of Lender in its discretion, be applied to the payment of (i) accrued but unpaid interest on the Note, (ii) the unpaid Principal and (iii) other charges due under the Note and/or any of the other Loan Documents, or applied to reimburse Borrowers for the cost of any Restoration, in the manner set forth in Section 7.4.3. Any such prepayment of the Loan shall be without any Yield Maintenance Premium, unless an Event of Default has occurred and is continuing at the time the Proceeds are received from the insurance company or the Award is received from the condemning authority, as the case may be, in which event Borrowers shall pay to Lender an additional amount equal to the Yield Maintenance Premium, if any, that may be required with respect to the amount of the Proceeds or Award applied to the unpaid Principal. Notwithstanding anything to the contrary contained herein, if any Proceeds or Award are not required to be made available for a Restoration and are retained and applied by Lender toward the payment of the Debt, Borrowers may prepay the entire outstanding Principal without payment of any Yield Maintenance Premium provided that (x) such prepayment is made within 120 days after Lender applies such Proceeds or Award to the Debt and (y) together with such prepayment, Borrowers pay to Lender all accrued and unpaid interest and all other sums payable under the Loan Documents.

7.4.3 Procedure for Application to Restoration. If any Borrower is entitled to reimbursement out of the Proceeds or an Award held by Lender, such Proceeds or Award shall be disbursed from time to time from the Casualty/Condemnation Subaccount upon Lender being furnished with (i) evidence satisfactory to Lender of the estimated cost of completion of the Restoration, (ii) a fixed price or guaranteed maximum cost construction contract for Restoration satisfactory to Lender, (iii) prior to the commencement of Restoration, all immediately available funds in addition to the Proceeds or Award that in Lender's judgment are required to complete the proposed Restoration, (iv) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey, permits, approvals, licenses and such other documents and items as Lender may reasonably require and approve in Lender's discretion, and (v) all plans and specifications for such Restoration, such plans and specifications to be approved by Lender prior to commencement of any work. Lender may, at Borrowers' expense, retain a consultant to review and approve all requests for disbursements, which approval shall also be a condition precedent to any disbursement. No payment made prior to the final completion of the Restoration shall exceed 90% of the value of the work performed from time to time; funds other than the Proceeds or Award shall be disbursed prior to disbursement of

such Proceeds or Award; and at all times, the undisbursed balance of such Proceeds or Award remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrowers for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Restoration, free and clear of all Liens or claims for Lien (other than those constituting Permitted Encumbrances). Provided no Default or Event of Default then exists, any surplus that remains out of the Proceeds held by Lender after payment of such costs of Restoration shall be paid to Borrowers. Any surplus that remains out of the Award received by Lender after payment of such costs of Restoration shall, in the discretion of Lender, be retained by Lender and applied to payment of the Debt or returned to Borrowers.

8. DEFAULTS

8.1 Events of Default. An "Event of Default" shall exist with respect to the Loan only if any of the following shall occur:

(a) (i) any portion of any regularly scheduled payment constituting a portion of the Debt is not paid when due or any other amount under Section 3.13(a)(i) through (v), (vi)(A) and (vi)(B) is not paid in full to the extent due on any Payment Date or (ii) any portion of the Debt which is not a regularly scheduled payment is not paid within 10 days following the date such payment is due (which 10-day period shall include (and shall not be in addition to) any grace period already contained in any Loan Document with respect thereto), provided, in each case, however, no such Event of Default shall occur if adequate funds are available in the Deposit Account for such payments;

(b) any of the Taxes are not paid prior to delinquency (unless Lender is paying such Taxes pursuant to Section 3.3), subject to Borrowers' right to contest Taxes in accordance with Section 5.2;

(c) the Policies are not kept in full force and effect, or are not delivered to Lender upon request;

(d) a Transfer other than a Permitted Transfer occurs;

(e) any representation or warranty made by any Borrower or Guarantor or in any Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender by any Borrower or Guarantor in connection with any Loan Document, shall be false or misleading in any material respect as of the date the representation or warranty was made (but only if the breach of such representation and warranty could, in Lender's good faith judgment, have a material adverse effect on Lender, a Property, any other collateral securing the Loan or Borrowers' ability to repay the Loan when due); provided that if such breach is reasonably susceptible of cure, then no Event of Default shall exist so long as Borrowers shall cause such breach or its adverse consequences to be cured within 30 days after notice from Lender;

(f) any Borrower or any Borrower Representative or Guarantor (i) shall make an assignment for the benefit of creditors, or (ii) shall generally not be paying its debts as they become due; provided, however, to the extent the events described in subsection (i) or (ii) above

occur solely with respect to Guarantor, then no Event of Default shall exist with respect to such Guarantor event provided, within thirty (30) days of such event, Guarantor is replaced with a new guarantor in accordance with the last paragraph of the definition of "Permitted Transfers" and the managing member of RECP/Windsor II, LLC is replaced with a new managing member reasonably acceptable to Lender.

(g) a receiver, liquidator or trustee shall be appointed for any Borrower or any Borrower Representative or Guarantor; or any Borrower or any Borrower Representative or Guarantor shall be adjudicated bankrupt; or any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, any Borrower or any Borrower Representative or Guarantor, as the case may be; or any proceeding for the dissolution or liquidation of any Borrower or any Borrower Representative or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Borrower or any Borrower Representative or Guarantor, as the case may be, only upon the same not being discharged, stayed or dismissed within 60 days; provided, however, to the extent the preceding occurs with respect to Guarantor only, then no Event of Default shall exist with respect to such Guarantor event; provided, within thirty (30) days of such event (or, if such event was involuntarily, within the sixty (60) day period permitted herein), Guarantor is replaced with a new guarantor in accordance with the last paragraph of the definition of "Permitted Transfers" and the managing member of RECP/Windsor II, LLC is replaced with a new managing member reasonably acceptable to Lender.

(h) any Borrower (or any Borrower Representative with respect to Section 5.22) breaches any covenant contained in Sections 5.12.1 (a) - (f), 5.13, 5.15, 5.22, 5.25 or 5.28;

(i) a breach of any covenant contained in Section 5.35 which continues for 30 days after notice from Lender;

(j) Intentionally Omitted;

(k) except as expressly permitted hereunder, the actual material adverse alteration, improvement, demolition or removal of all or any of portion of any of the Improvements without the prior written consent of Lender;

(l) a default occurs under any term, covenant or provision set forth herein or in any other Loan Document which specifically contains a notice requirement or grace period and such notice has been given and such grace period has expired;

(m) any of the assumptions contained in any substantive non-consolidation opinion, delivered to Lender by Borrowers' counsel in connection with the Loan or otherwise hereunder, were not true and correct as of the date of such opinion or thereafter became untrue or incorrect; provided that in either case, no Event of Default shall be deemed to have occurred if such counsel reaffirms its substantive non-consolidation opinion;

(n) (i) a default has occurred after the date hereof and continues beyond any applicable cure period under any Franchise Agreement (or any successor franchise agreement) if such default permits the franchisor to terminate or cancel such Franchise Agreement (or any

successor franchise agreement) or (ii) any Borrower allows or permits the term of its Franchise Agreement to expire or lapse (unless a successor franchise agreement has been entered into pursuant to Section 5.31 with respect to such property);

(o) Intentionally Omitted; or

(p) a default shall be continuing under any of the other terms, covenants or conditions of this Agreement or any other Loan Document not otherwise specified in this Section 8.1, for ten days after notice to Borrowers (and Guarantor, if applicable) from Lender, in the case of any default which can be cured by the payment of a sum of money, or for 30 days after notice from Lender in the case of any other default; provided, however, that if such non-monetary default is susceptible of cure but cannot reasonably be cured within such 30-day period, and Borrowers (or Guarantor, if applicable) shall have commenced to cure such default within such 30-day period and thereafter diligently and expeditiously proceeds to cure the same, such 30-day period shall be extended for an additional period of time as is reasonably necessary for Borrowers (or Guarantor, if applicable) in the exercise of due diligence to cure such default, such additional period not to exceed 60 days.

8.2 Remedies.

8.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (f) or (g) of Section 8.1) and at any time and from time to time thereafter, in addition to any other rights or remedies available to it pursuant to the Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against any or all Borrowers and in and to the Properties; including declaring the Debt to be immediately due and payable (including unpaid interest), Default Rate interest, Late Payment Charges, Yield Maintenance Premium and any other amounts owing by Borrowers), without notice or demand; and upon any Event of Default described in paragraph (f) or (g) of Section 8.1, the Debt (including unpaid interest, Default Rate interest, Late Payment Charges, Yield Maintenance Premium and any other amounts owing by Borrowers) shall immediately and automatically become due and payable, without notice or demand, and each Borrower hereby expressly waives any such notice or demand, anything contained in any Loan Document to the contrary notwithstanding.

8.2.2 Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrowers under the Loan Documents or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared, or be automatically, due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth in the Loan Documents. Without limiting the generality of the foregoing, each Borrower agrees that if an Event of Default is continuing, (i) to the extent permitted by applicable law, Lender is not subject to any "one action" or "election of remedies"

law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Properties, the Mortgages have been foreclosed, the Properties have been sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full. To the extent permitted by applicable law, nothing contained in any Loan Document shall be construed as requiring Lender to resort to any particular Property or any portion of any Property for the satisfaction of any of the Debt in preference or priority to any other portion, and Lender may seek satisfaction out of all or less than all of the Properties or any part of any Property, in its discretion. Notwithstanding the foregoing, Lender agrees that no UCC sale shall occur except in connection with the sale or other disposition of the Properties, unless a Borrower has taken action to prevent the sale or other disposition of the Properties or a Borrower or any of its Affiliates has taken any other action, which in Lender's judgment is intended or is reasonably likely to hinder, delay, impair or prevent Lender from enforcing any of its rights or remedies under or pursuant to the Loan Documents or at law or in equity.

8.2.3 Severance. After the occurrence of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents in such denominations and priorities of payment and liens as Lender shall determine in its discretion for purposes of evidencing and enforcing its rights and remedies. Each Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Each Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect such severance, each Borrower ratifying all that such attorney shall do by virtue thereof.

8.2.4 Delay. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default, or the granting of any indulgence or compromise by Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Agreement, Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim in connection with the foreclosure of any Mortgage to the extent necessary to foreclose on all or less than all of any portion of any Property, the Rents, the Cash Management Accounts or any other collateral.

8.2.5 Lender's Right to Perform. If any Borrower fails to perform any covenant or obligation contained herein and such failure shall continue for a period of five Business Days after Borrowers' receipt of written notice thereof from Lender, without in any way limiting Lender's right to exercise any of its rights, powers or remedies as provided hereunder, or under any of the other Loan Documents, Lender may, but shall have no obligation to, perform, or cause performance of, such covenant or obligation, and all costs, expenses, liabilities, penalties and fines of Lender incurred or paid in connection therewith shall be payable by Borrowers to Lender upon demand and if not paid shall be added to the Debt (and to the extent permitted under applicable laws, secured by the Mortgage and other Loan

Documents) and shall bear interest thereafter at the Default Rate. Notwithstanding the foregoing, Lender shall have no obligation to send notice to any Borrower of any such failure.

9. SPECIAL PROVISIONS

9.1 Sale of Note and Secondary Market Transaction.

9.1.1 General; Borrower Cooperation. Lender shall have the right at any time and from time to time (i) to sell or otherwise transfer the Loan or any portion thereof or the Loan Documents or any interest therein to one or more investors, (ii) to sell participation interests in the Loan to one or more investors or (iii) to securitize the Loan or any portion thereof in a single asset securitization or a pooled loan securitization of rated single or multi-class securities (the "*Securities*") secured by or evidencing ownership interests in the Note and the Mortgages (each such sale, assignment, participation and/or securitization is referred to herein as a "*Secondary Market Transaction*"). In connection with any Secondary Market Transaction, Borrowers shall cooperate reasonably to assist Lender in satisfying the market standards to which Lender customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with any such Secondary Market Transactions, including: (a) to (i) provide such financial and other information with respect to the Properties, Borrowers, Borrower Representatives, Manager and any tenants of the Properties, (ii) provide business plans and budgets relating to the Properties and (iii) perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports, engineering reports and other due diligence investigations of the Properties, as may be reasonably requested from time to time by Lender or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items prepared by Borrowers or their Affiliates and provided by Borrowers to Lender pursuant to this paragraph (a) being called the "*Borrower Provided Information*"; and the items otherwise provided to Lender pursuant to this paragraph (a), together with the Borrower Provided Information, collectively, the "*Provided Information*"), together, if reasonable and customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to Lender and the Rating Agencies; (b) cause counsel to render opinions to the extent reasonably available as to non-consolidation and any other opinion customary in securitization transactions with respect to the Properties, Borrowers and their Affiliates, which counsel and opinions shall be reasonably satisfactory to Lender and the Rating Agencies; (c) provide current certificates of good standing and qualification with respect to Borrowers and Borrower Representatives from appropriate Governmental Authorities; and (d) execute such amendments to the Loan Documents and Borrowers' organizational documents, as may be requested by Lender or the Rating Agencies in connection with such Secondary Market Transaction, provided, however, that Borrowers shall not be required to modify or amend any Loan Document or organizational document of Borrowers in a manner that would be adverse to Borrowers. Borrowers' cooperation obligations set forth herein shall continue until the Loan has been paid in full.

9.1.2 Use of Information. Borrowers understand that all or any portion of the Provided Information and the Required Records regarding Borrowers, Borrower Representatives and Manager may be included in disclosure documents in connection with a Secondary Market

Transaction, including a prospectus or private placement memorandum (each, a “*Disclosure Document*”) and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the “*Securities Act*”), or the Securities and Exchange Act of 1934, as amended (the “*Exchange Act*”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers or other parties relating to the Secondary Market Transaction. If the Disclosure Document is required to be revised, Borrowers shall cooperate with Lender in updating the Provided Information or Required Records for inclusion or summary in the Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to Borrowers, Manager and the Properties necessary to keep the Disclosure Document accurate and complete in all material respects with respect to such matters.

9.1.3 Borrower Obligations Regarding Disclosure Documents. In connection with a Disclosure Document, Borrowers shall: (a) if requested by Lender, certify in writing that Borrowers have carefully examined those portions of such Disclosure Document, pertaining to Borrowers, the Properties, Manager and the Loan, and that to Borrowers’ knowledge and except as then disclosed, such portions do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (b) indemnify (in a separate instrument of indemnity, if so requested by Lender) Lender and its officers and directors for any losses, damages or liabilities (the “*Liabilities*”) to which Lender or its officers and directors may become subject (including reimbursing all of them for any legal or other expenses actually incurred in connection with investigating or defending the Liabilities) to the extent and only to the extent any such loss, damage or liability is based upon any untrue statement of any material fact contained in such sections reviewed and certified by Borrowers and contained in any of the Borrower Provided Information; provided, however, that Borrowers will be liable in any such case under the preceding indemnification only to the extent that any such loss, damage or liability is based upon any such untrue statement in reliance upon and in conformity with information furnished to Lender by or on behalf of Borrowers related to the Properties or Borrowers specifically for inclusion in such memorandum or prospectus or in connection with the underwriting of the Loan. Nothing contained herein shall impose liability upon Borrowers for any losses, damages or liability arising out of or based upon an untrue statement of any material fact contained in any statement, report or document provided to Lender on behalf of Borrowers by a party who is not an Affiliate of Borrowers (a “*Third Party Report*”), unless Borrowers had actual knowledge at the time Borrowers provided such statement, report or document to Lender that such Third Party Report contains such untrue statement. The term “actual knowledge” when used in the preceding sentence shall not imply or require Borrowers to make any independent investigations of any facts or circumstances.

9.1.4 Intentionally Omitted.

9.1.5 Indemnification Procedure. Promptly after receipt by an indemnified party under Section 9.1.3 or 9.1.4 of notice of the commencement of any action for which a claim for indemnification is to be made against Borrowers, such indemnified party shall notify Borrowers in writing of such commencement, but the omission to so notify Borrowers will not relieve Borrowers from any liability that they may have to any indemnified party hereunder

except to the extent that failure to notify causes prejudice to Borrowers. If any action is brought against any indemnified party, and it notifies Borrowers of the commencement thereof, Borrowers will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel satisfactory to such indemnified party in its discretion. After notice from Borrowers to such indemnified party under this Section 9.1.5, Borrowers shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, if the defendants in any such action include both Borrowers and an indemnified party, and any indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or additional to those available to Borrowers, then the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Borrowers shall not be liable for the expenses of more than one separate counsel unless there are legal defenses available to it that are different from or additional to those available to another indemnified party.

9.1.6 Intentionally Omitted.

9.1.7 Intentionally Omitted.

9.1.8 Severance of Loan. Lender shall have the right, at any time (whether prior to, in connection with, or after any Secondary Market Transaction), with respect to all or any portion of the Loan, to modify, split and/or sever all or any portion of the Loan as hereinafter provided. Without limiting the foregoing, Lender may (i) cause the Note and the Mortgages to be split into a first and second mortgage loan, (ii) create one more senior and subordinate notes (*i.e.*, an A/B or A/B/C structure), (iii) create multiple components of the Note or Notes (and allocate or reallocate the principal balance of the Loan among such components) or (iv) otherwise sever the Loan into two or more loans secured by mortgages and by a pledge of partnership or membership interests (directly or indirectly) in Borrowers (*i.e.*, a senior loan/mezzanine loan structure), in each such case, in whatever proportion and whatever priority Lender determines; provided, however, in each such instance the outstanding principal balance of all the Notes evidencing the Loan (or components of such Notes) immediately after the effective date of such modification equals the outstanding principal balance of the Loan immediately prior to such modification and the weighted average of the interest rates for all such Notes (or components of such Notes) immediately after the effective date of such modification equals the interest rate of the original Note immediately prior to such modification. If requested by Lender, Borrowers (and Borrowers' constituent members, if applicable, and Guarantor) shall execute promptly after such request, such documentation as Lender may reasonably request to evidence and/or effectuate any such modification or severance.

9.2 Costs and Expenses. Notwithstanding anything to the contrary contained in this Article 9, Borrowers shall not be required to incur out-of-pocket expenses in the performance of their obligations under Sections 9.1.1, 9.1.2, clause (a) of Section 9.1.3 and 9.1.8.

10. MISCELLANEOUS

10.1 Exculpation. Subject to the qualifications below, Lender shall not enforce the liability and obligation of any Borrower to perform and observe the obligations contained in the Loan Documents by any action or proceeding wherein a money judgment shall be sought against such Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest and rights under the Loan Documents, or in all or any of the Properties, the Rents or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against a Borrower only to the extent of such Borrower's interest in the Properties, in the Rents and in any other collateral given to Lender, and Lender shall not sue for, seek or demand any deficiency judgment against a Borrower in any such action or proceeding under or by reason of or under or in connection with any Loan Document. The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any Loan Document (except to the extent of the foregoing limitation on remedies); (ii) impair the right of Lender to name one or more Borrowers as a party defendant in any action or suit for foreclosure and sale under any Mortgage; (iii) affect the validity or enforceability of any of the Loan Documents or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder (except to the extent of the foregoing limitation on remedies); (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Leases (except to the extent of the foregoing limitation on remedies); (vi) constitute a prohibition against Lender to commence any other appropriate action or proceeding in order for Lender to fully realize the security granted by any Mortgage or to exercise its remedies against all or any of the Properties; or (vii) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrowers, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following (all such liability and obligation of Borrower for any or all of the following being referred to herein as "***Borrowers' Recourse Liabilities***"): (a) fraud or intentional misrepresentation by any Borrower, any Borrower Representatives or Guarantor in connection with obtaining the Loan; (b) physical waste of any Property or any portion thereof, or after an Event of Default the removal or disposal of any portion of any Property except in accordance with the Loan Documents; (c) any Proceeds paid by reason of any Insured Casualty or any Award received in connection with a Condemnation or other sums or payments attributable to any Property not applied in accordance with the provisions of the Loan Documents (except to the extent that a Borrower did not have the legal right, because of a bankruptcy, receivership or similar judicial proceeding, to direct disbursement of such sums or payments); (d) all Rents of any Property received or collected by or on behalf of any Borrower after an Event of Default and not applied to payment of Principal and interest due under the Note, and to the payment of actual and reasonable operating expenses of such Property, as they become due or payable or otherwise in accordance with the Loan Documents (except to the extent that such application of such funds is prevented by bankruptcy, receivership, or similar judicial proceeding in which such Borrower is legally prevented from directing the disbursement of such sums); (e) misappropriation (including failure to turn over to Lender on demand following an Event of Default) of tenant security deposits and rents collected in advance, or of funds held by any Borrower for the benefit of another party; (f) the failure to pay Taxes,

provided Borrowers shall not be liable to the extent funds to pay such amounts are available in the Tax and Insurance Subaccount and Lender failed to pay same; (g) the breach of any representation, warranty, covenant or indemnification in any Loan Document concerning Environmental Laws or Hazardous Substances, including Sections 4.21 and 5.8, and clauses (viii) through (xi) of Section 5.30 or (h) a Borrower's entering into one or more Leases not permitted pursuant to the terms of the Loan Documents.

Notwithstanding anything to the contrary in this Agreement or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt in accordance with the Loan Documents, and (B) Lender's agreement not to pursue personal liability of Borrowers as set forth above SHALL BECOME NULL AND VOID and shall be of no further force and effect, and the Debt shall be fully recourse to Borrowers in the event that one or more of the following occurs (each, a "*Springing Recourse Event*"): (1) an Event of Default described in Section 8.1(d) (other than with respect to the entering into of Leases not permitted pursuant to the terms of the Loan Documents) shall have occurred or (2) a material uncured breach of the covenants set forth in Section 5.13 (provided, however, with respect to a breach of any of the covenants described in clauses (xi) - (xx), clause (xxiv), clause (xxvi), clause (xxix) and clause (xxxii) set forth on Schedule 5), the foregoing recourse shall only be triggered if in connection with a pending bankruptcy proceeding a court of competent jurisdiction has ordered (other than on motion brought or actively supported by Lender) the substantive consolidation of the assets and liabilities of Borrower with any other Person (other than Borrowers or Borrower Representatives)); and provided further that no recourse shall occur under this clause (2) by reason of trade payables in excess of the applicable limits set forth in this Agreement, judgments which are not for borrowed money, or involuntary Liens, or (3) the occurrence of any condition or event described in either Section 8.1(f)(i) or Section 8.1(g) and, with respect to such condition or event described in Section 8.1(g), either any Borrower, any Borrower Representative, Guarantor or any Person owning an equity interest (directly or indirectly) in any Borrower, any Borrower Representative or Guarantor actively and intentionally consents to, aids, solicits, supports, or otherwise colludes to cause such condition or event, or if such event occurs as to such Person, such Person fails to contest such condition or event.

10.2 Brokers and Financial Advisors.

(a) Each Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Loan (each, a "*Broker*"). Borrowers shall indemnify and hold Lender harmless from and against any and all claims, liabilities, costs and expenses (including attorneys' fees, whether incurred in connection with enforcing this indemnity or defending claims of third parties) of any kind in any way relating to or arising from a claim by any Person (including a Broker) that such Person acted on behalf of Borrowers in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Agreement and the repayment of the Debt.

(b) Notwithstanding anything in Section 10.2(a) above to the contrary, each Borrower hereby acknowledges that (i) at Lender's sole discretion, a Broker may receive further

consideration from Lender relating to the Loan or any other matter for which Lender may elect to compensate a Broker pursuant to a separate agreement between Lender and a Broker and (ii) Lender shall have no obligation to disclose to any Borrower the existence of any such agreement or the amount of any such additional consideration paid or to be paid to a Broker whether in connection with the Loan or otherwise.

10.3 Retention of Servicer. Lender reserves the right to retain the Servicer to act as its agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement, any pooling and servicing agreement or similar agreement entered into as a result of a Secondary Market Transaction, the Deposit Account Agreement or otherwise, together with such other powers as are reasonably incidental thereto. Borrowers shall pay any reasonable fees and expenses of the Servicer in connection with a release of any Property, assumption or modification of the Loan at Borrower's request, enforcement of the Loan Documents or any other action taken by Servicer hereunder on behalf of Lender, to the extent such actions are permitted to be taken pursuant to the terms of the Loan Documents, but only to the extent that Borrowers are expressly required to pay such expenses pursuant to the terms of this Agreement (other than this Section 10.3).

10.4 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as any of the Debt is unpaid or such longer period if expressly set forth in this Agreement. All Borrowers' covenants and agreements in this Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of Lender.

10.5 Lender's Discretion. Whenever pursuant to this Agreement or any other Loan Document, Lender exercises any right given to it to approve or disapprove, or consent or withhold consent, or any arrangement or term is to be satisfactory to Lender or is to be in Lender's discretion, the decision of Lender to approve or disapprove, to consent or withhold consent, or to decide whether arrangements or terms are satisfactory or not satisfactory, or acceptable or unacceptable or in Lender's discretion shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender, exercised in good faith.

10.6 Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THE LOAN DOCUMENTS SHALL BE

GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY AND THE ENFORCEABILITY OF ALL LOAN DOCUMENTS AND THE DEBT. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR ANY BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK COUNTY, NEW YORK AND EACH BORROWER WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. EACH BORROWER DOES HEREBY DESIGNATE AND APPOINT NATIONAL CORPORATE RESEARCH, LTD. AT 225 WEST 34TH STREET, SUITE 910, NEW YORK, NEW YORK 10122, AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE OF SUCH BORROWER MAILED OR DELIVERED TO SUCH BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON SUCH BORROWER (UNLESS LOCAL LAW REQUIRES ANOTHER METHOD OF SERVICE), IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. EACH BORROWER (i) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (ii) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND (iii) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

10.7 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by any Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on any Borrower shall entitle any Borrower to any other or future notice or demand in the same, similar or other circumstances. Neither any failure nor any delay on the part of Lender

in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under any other Loan Document, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under any Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under the Loan Documents, or to declare an Event of Default for failure to effect prompt payment of any such other amount.

10.8 Trial by Jury. EACH BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EITHER PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER.

10.9 Headings/Exhibits. The Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. The Exhibits attached hereto, are hereby incorporated by reference as a part of the Agreement with the same force and effect as if set forth in the body hereof.

10.10 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

10.11 Preferences. Upon the occurrence and continuance of an Event of Default, Lender shall have the continuing and exclusive right to apply any and all payments by Borrowers to any portion of the Debt. To the extent Borrowers make a payment to Lender, or Lender receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Debt or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender. This provision shall survive the expiration or termination of this Agreement and the repayment of the Debt.

10.12 Waiver of Notice. No Borrower shall be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or any other Loan Document specifically and expressly requires the giving of notice by Lender to such Borrower and except with respect to matters for which such Borrower is not, pursuant to

applicable Legal Requirements, permitted to waive the giving of notice. Each Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which no Loan Document specifically and expressly requires the giving of notice by Lender to such Borrower.

10.13 Remedies of Borrower. If a claim or adjudication is made that Lender or any of its agents, including Servicer, has acted unreasonably or unreasonably delayed acting in any case where by law or under any Loan Document, Lender or any such agent, as the case may be, has an obligation to act reasonably or promptly, Borrowers agree that neither Lender nor its agents, including Servicer, shall be liable for any monetary damages, and Borrowers' sole remedy shall be to commence an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Each Borrower specifically waives any claim against Lender and its agents, including Servicer, with respect to actions taken by Lender or its agents on Borrowers' behalf.

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

10.15 Offsets, Counterclaims and Defenses. Each Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against one or more Borrowers by Lender or its agents, including Servicer, or otherwise offset any obligations to make payments required under the Loan Documents.

10.16 Publicity. All news releases, publicity or advertising by any Borrower or its Affiliates through any media intended to reach the general public, which refers to the Loan Documents, the Loan, Lender or any member of the GCM Group, a Loan purchaser, the Servicer or the trustee in a Secondary Market Transaction, shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld. Additionally, Lender shall not have the right to issue any of the foregoing without Borrowers' approval, which approval shall not be unreasonably withheld.

10.17 No Usury. Borrowers and Lender intend at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under state law) and that this Section 10.17 shall control every other agreement in the Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or any other Loan Document, or contracted for, charged, taken, reserved or received with respect to the Debt, or if Lender's exercise of the option to accelerate the maturity of the Loan or any prepayment by Borrowers results in Borrowers having paid any interest in excess of that permitted by applicable law, then it is Borrowers' and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited against the unpaid Principal and all other Debt (or, if the Debt has been or would thereby be paid in full, refunded to Borrowers), and the provisions of the Loan Documents immediately be deemed reformed and the

amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new document, so as to comply with applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained in any Loan Document, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

10.18 Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that each is represented by separate counsel in connection with the negotiation and drafting of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

10.19 No Third Party Beneficiaries. The Loan Documents are solely for the benefit of Lender and Borrowers and nothing contained in any Loan Document shall be deemed to confer upon anyone other than the Lender and Borrowers any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

10.20 Yield Maintenance Premium. Borrowers acknowledge that (a) Lender is making the Loan in consideration of the receipt by Lender of all interest and other benefits intended to be conferred by the Loan Documents and (b) if payments of Principal are made to Lender prior to the Permitted Prepayment Date, for any reason whatsoever, whether voluntary, as a result of Lender's acceleration of the Loan after an Event of Default, by operation of law or otherwise, Lender will not receive all such interest and other benefits and may, in addition, incur costs. For these reasons, and to induce Lender to make the Loan, Borrowers agree that, except as expressly provided in Section 7.4.2, all prepayments made prior to the Permitted Prepayment Date other than at Lender's election in the absence of an Event of Default, if any, whether voluntary or involuntary, will be accompanied by the Yield Maintenance Premium. Such Yield Maintenance Premium shall be required whether payment is made by one or more Borrowers, by a Person on behalf of one or more Borrowers, or by the purchaser at any foreclosure sale, and may be included in any bid by Lender at such sale. Borrowers further acknowledge that (A) they are knowledgeable real estate developers and/or investors; (B) they fully understand the effect of the provisions of this Section 10.20, as well as the other provisions of the Loan Documents; (C) the making of the Loan by Lender at the Interest Rate and other terms set forth in the Loan Documents are sufficient consideration for Borrowers' obligation to pay a Yield Maintenance Premium (if required); and (D) Lender would not make the Loan on the terms set forth herein without the inclusion of such provisions. Borrowers also acknowledge that the provisions of this Agreement limiting the right of prepayment and providing for the payment of the Yield Maintenance Premium and other charges specified herein were independently negotiated and bargained for, and constitute a specific material part of the consideration given by Borrowers to Lender for the making of the Loan except as expressly permitted hereunder. Defeasance shall

not constitute prepayment for purposes of determining whether Yield Maintenance Premium is due, notwithstanding re-documentation and substitution of borrowers in connection therewith.

10.21 Assignment. The Loan, the Note, the Loan Documents and/or Lender's rights, title, obligations and interests therein may be assigned by Lender and any of its successors and assigns to any Person at any time in its discretion, in whole or in part, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise. Upon such assignment, all references to Lender in this Loan Agreement and in any Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of Lender. No Borrower may assign its rights, title, interests or obligations under this Loan Agreement or under any of the Loan Documents.

10.22 Cross Default; Cross Collateralization. Each Borrower acknowledges that Lender has made the Loan to Borrowers upon the security of its collective interest in the Properties and in reliance upon the aggregate of the Properties taken together being of greater value as collateral security than the sum of the Properties taken separately. Each Borrower agrees that the Mortgages are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under any of the Mortgages shall constitute an Event of Default under each of the other Mortgages which secure the Note; (ii) an Event of Default under the Note or this Agreement shall constitute an Event of Default under each Mortgage; and (iii) each Mortgage shall constitute security for the Note as if a single blanket lien were placed on all of the Properties as security for the Note.

10.23 Contribution Among Borrowers. Notwithstanding that the Borrowers are jointly and severally liable to Lender for payment of the Loan, as among the Borrowers, each shall be liable only for such Borrower's Allocated Amount (as hereinafter defined) and, accordingly, each Borrower whose Property or other assets are, from time to time, utilized to satisfy a portion of the Debt in excess of such Borrower's Allocated Loan Amount, shall be entitled, commencing 95 days after payment in full of the Debt, to contribution from each of the other Borrowers pro-rata in accordance with their respective liabilities in accordance with this Agreement. This Allocated Amount for each Borrower shall equal the allocated Loan Amount for the Property owned by such Borrower.

10.24 Joint and Several. Each of the Borrowers shall be jointly and severally liable for payment of the Debt and performance of all other obligations of Borrowers (or any of them) under this Agreement or any other Loan Document.

10.25 Certain Additional Rights of Lender. As and to the extent set forth in this Loan Agreement, Lender shall have:

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

(ii) the right, in accordance with the terms of this Loan Agreement, to examine the books and records of Borrowers at any time upon reasonable notice;

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

(iv) the right, in accordance with the terms of this Loan Agreement, to restrict financing to be obtained with respect to the Properties so long as any portion of the Debt remains outstanding;

(v) the right, in accordance with the terms of this Loan Agreement, to restrict, upon the occurrence of an Event of Default, Borrowers' payments of management, consulting, director or similar fees to Affiliates of Borrowers from the Rents in accordance with the subordination of the comfort letter agreement delivered by Manager;

(vi) the right to approve any operating budget and/or capital budget of Borrowers, in accordance with the terms of this Loan Agreement;

(vii) the right to approve any acquisition by any Borrower of any other significant property (other than personal property or other assets required for the management and operation of Properties); and

(viii) the right, in accordance with the terms of this Loan Agreement, to restrict the transfer of interests in any Borrower held by its members, and the right to restrict the transfer of interests in such member, except for any transfer that is a Permitted Transfer.

The provisions of this Section are intended to satisfy the requirement of management rights for purposes of the Department of Labor "plan assets" regulation 29 C.F.R., Section 2510.3-101.

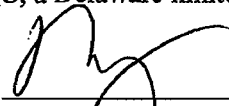
10.26 Set-Off. In addition to any rights and remedies of Lender provided by this Loan Agreement and by law, Lender shall have the right, without prior notice to any Borrower, any such notice being expressly waived by each Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by any Borrower hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate thereof to or for the credit or the account of Borrowers. Lender agrees promptly to notify Borrowers after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

10.27 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.


[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

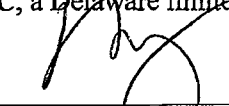
**NESBITT LYNNWOOD PROPERTY
LLC, a Delaware limited liability company**

By: 
Name: _____
Title: Authorized Representative

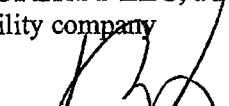
**NESBITT BELLEVUE PROPERTY
LLC, a Delaware limited liability company**

By: 
Name: _____
Title: Authorized Representative

**NESBITT PORTLAND PROPERTY
LLC, a Delaware limited liability company**

By: 
Name: _____
Title: Authorized Representative

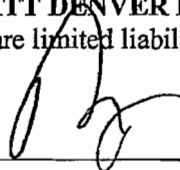
**NESBITT COLORADO SPRINGS
PROPERTY LLC, a Delaware limited
liability company**

By: 
Name: _____
Title: Authorized Representative

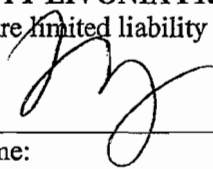
[Signatures Continue on Next Page]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

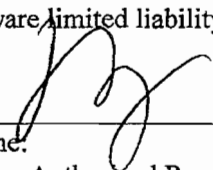
NESBITT DENVER PROPERTY LLC, a
Delaware limited liability company

By: 
Name: _____
Title: Authorized Representative

NESBITT LIVONIA PROPERTY LLC, a
Delaware limited liability company

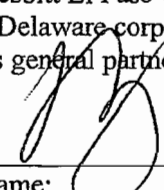
By: 
Name: _____
Title: Authorized Representative

NESBITT BLUE ASH PROPERTY LLC,
a Delaware limited liability company

By: 
Name: _____
Title: Authorized Representative

NESBITT EL PASO PROPERTY L.P., a
Delaware limited partnership

By: Nesbitt El Paso GP, Inc.,
a Delaware corporation,
its general partner

By: 
Name: _____
Title: Authorized Representative

[Signatures Continue on Next Page]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**GREENWICH CAPITAL FINANCIAL
PRODUCTS, INC.**, a Delaware corporation

By: 

Name:

Brian Sullivan

Title:

Vice President

Schedule 1

Location of Properties

1. Lynnwood, Washington (Lynnwood Embassy Suites Hotel) (“*Lynnwood Property*”)
2. Bellevue, Washington (Bellevue Embassy Suites Hotel) (“*Bellevue Property*”)
3. Portland, Oregon (Portland Embassy Suites Hotel) (“*Portland Property*”)
4. Colorado Springs, Colorado (Colorado Springs Embassy Suites Hotel) (“*Colorado Springs Property*”)
5. Denver, Colorado (Denver Embassy Suites Hotel) (“*Denver Property*”)
6. Livonia, Michigan (Livonia Embassy Suites Hotel) (“*Livonia Property*”)
7. Blue Ash, Ohio (Blue Ash Embassy Suites Hotel) (“*Blue Ash Property*”)
8. El Paso, Texas (El Paso Embassy Suites Hotel) (“*El Paso Property*”)

Schedule 2**Required Repairs**

BELLEVUE PROPERTY	
Repair Item	Total Estimated Cost
ADA Accessibility	\$17,950
Concrete Paver Repairs (full depth repair and paver re-setting (trip hazard)	\$1,000
Compactor enclosure (replace gates, roof and paint)	\$2,500
Sheet vinyl (replace all)	\$1,500
Carpet (replace common area carpet)	\$32,400
Wall covering (replace all common area wall covering)	\$24,500
Walls and ceilings (paint interior painted walls and ceilings)	\$3,750
Boilers, gas-fired, steel (replace damaged boiler)	\$9,000
Carpet (replace guestroom carpet)	\$120,000
Wall covering (replace room wallcoverings)	\$84,000
Soft goods (replace)	\$84,000

BLUE ASH PROPERTY	
Repair Item	Total Estimated Cost
ADA Accessibility	\$12,000
Concrete walkways. Repair (correct tripping hazard at displace sidewalk on southeast)	\$1,000
EIFS. Repair (repair minor cracks and water damage throughout)	\$2,250
Caulking and sealant (recaulk at failed EIFS joints)	\$2,500

DENVER PROPERTY	
Repair Item	Total Estimated Cost
ADA Accessibility	\$39,855
Wall. Rubble rock (repair damaged areas)	\$2,500
Boiler, gas-fired, steel	\$25,000

COLORADO SPRINGS PROPERTY	
Repair Item	Total Estimated Cost
ADA Accessibility	\$26,755
Curbs (repair at west entry)	\$1,500

EL PASO PROPERTY	
Repair Item	Total Estimated Cost
ADA Accessibility	\$5,360
Parapet coping (replace missing aluminum panel)	\$750
Roof flashing (repair localized area of sagging flashing)	\$2,063

LIVONIA PROPERTY	
Repair Item	Total Estimated Cost
ADA Accessibility	\$5,500

LYNNWOOD PROPERTY	
Repair Item	Total Estimated Cost
ADA Accessibility	\$17,170
Compactor Enclosure (repair gates, walls and paint)	\$1,000
Sheet vinyl (replace all)	\$3,150
Carpet (Replace common area carpet)	\$52,500
Floor tile (replace stone tile)	\$6,000
Wall covering (replace all wall covering)	\$33,000

PORTLAND PROPERTY	
Repair Item	Total Estimated Cost
ADA Accessibility	\$13,220
Asphalt pavement. Full depth repair. (fix all pavement)	\$12,500
Pool room light and duct (replace)	\$1,000
Pool room dehumidifier (replace/upgrade)	\$4,500
Sauna (replace equipment and replace interior)	\$10,000
Boilers, gas-fired, steel (replace damaged boiler)	\$9,000

Schedule 3

Exceptions to Representations and Warranties

4.4. The following ongoing litigation relates to the Blue Ash Property, which litigation is disclosed for information purposes as such litigation, if adversely determined, is not likely to materially adversely affect the condition (financial or otherwise) or business of any Borrower, any Borrower Representative, Manager or the condition or ownership of any Property:

Tascha Robinson vs. Hilton Hospitality, Inc., Blue Ash Embassy Associates, L.P., and Windsor Capital Group, Inc. ("Windsor"), Case No. 1:04CV092, United States District Court, Southern District of Ohio, Western Division

Windsor has filed a motion for summary judgment, which is pending as of the date hereof, and expects this matter to be resolved in its favor.

4.11. Except as otherwise disclosed in those certain Zoning and Site Requirements Summary reports prepared by The Planning & Zoning Resource Corporation for the Properties in connection with the Loan.

4.12. The contracts listed on the schedule attached hereto are not terminable on one month's notice.

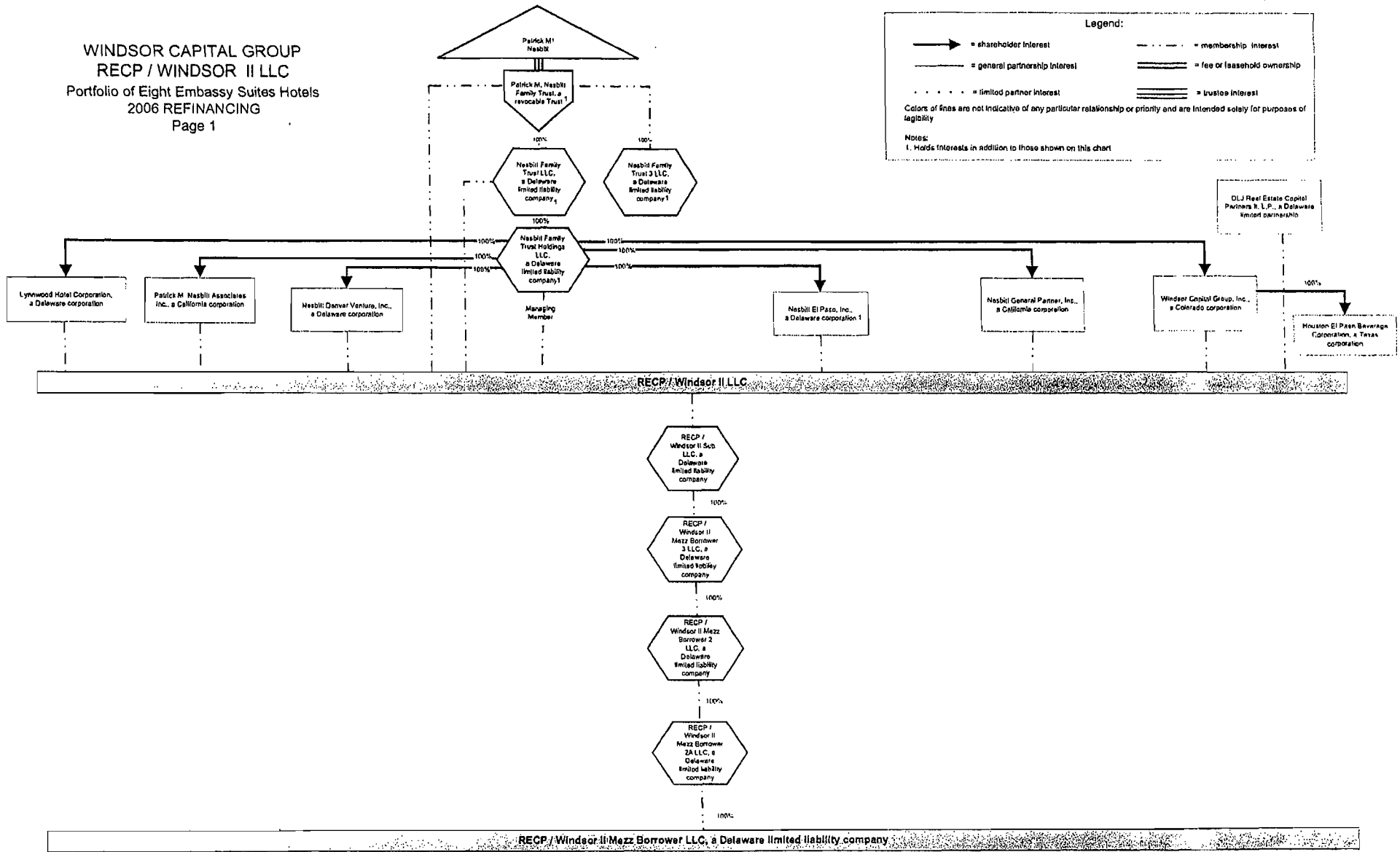
4.16. The Leases listed on Schedule 8 are not subordinate to the Loan Documents by their terms.

Schedule 4

Organization of Borrower

(Attached)

WINDSOR CAPITAL GROUP
 RECP / WINDSOR II LLC
 Portfolio of Eight Embassy Suites Hotels
 2006 REFINANCING
 Page 1



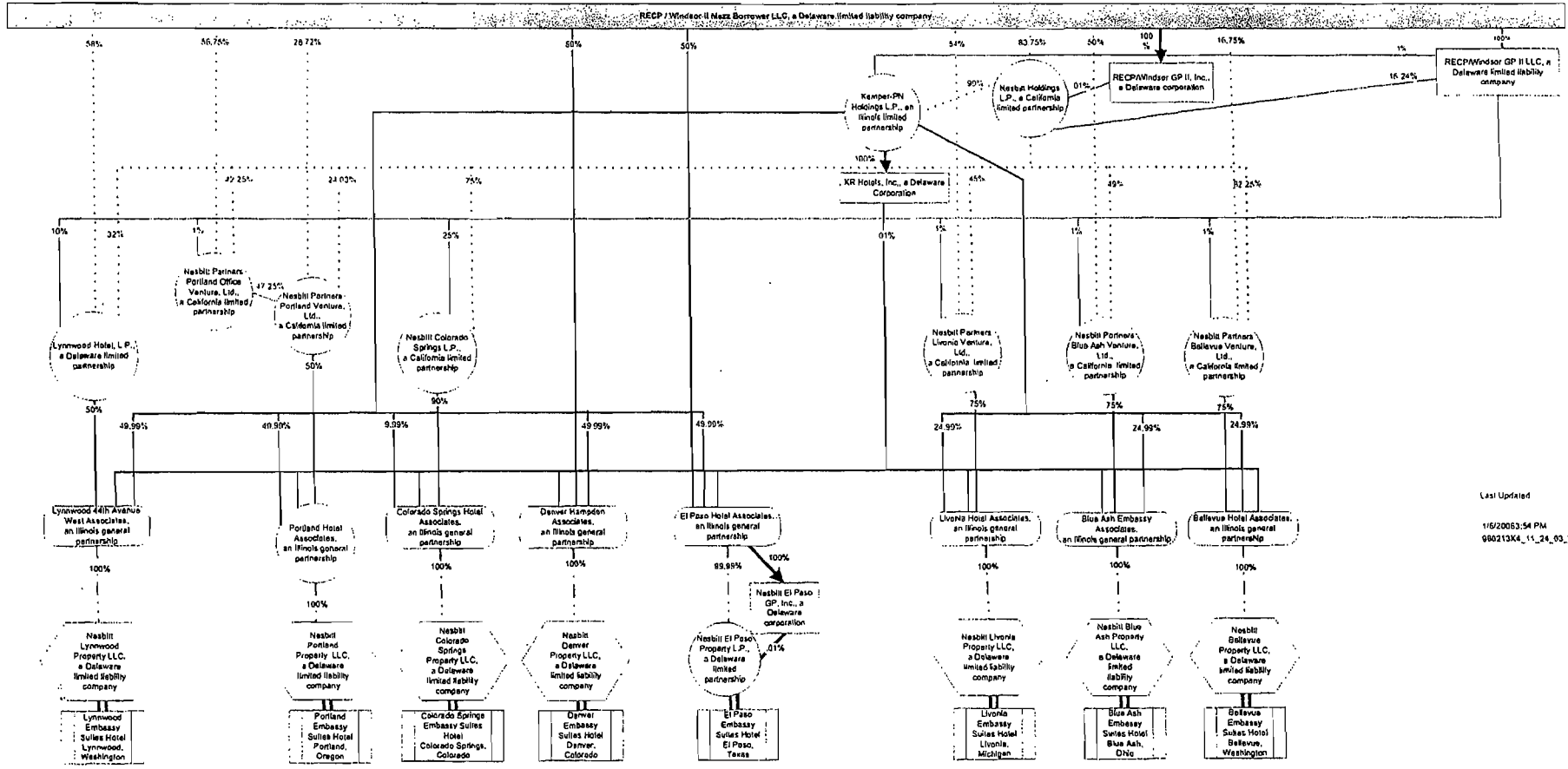
WINDSOR CAPITAL GROUP
 RECP / WINDSOR II LLC
 Portfolio of Eight Embassy Suites Hotels
 2006 REFINANCING
 Page 2

Legend:

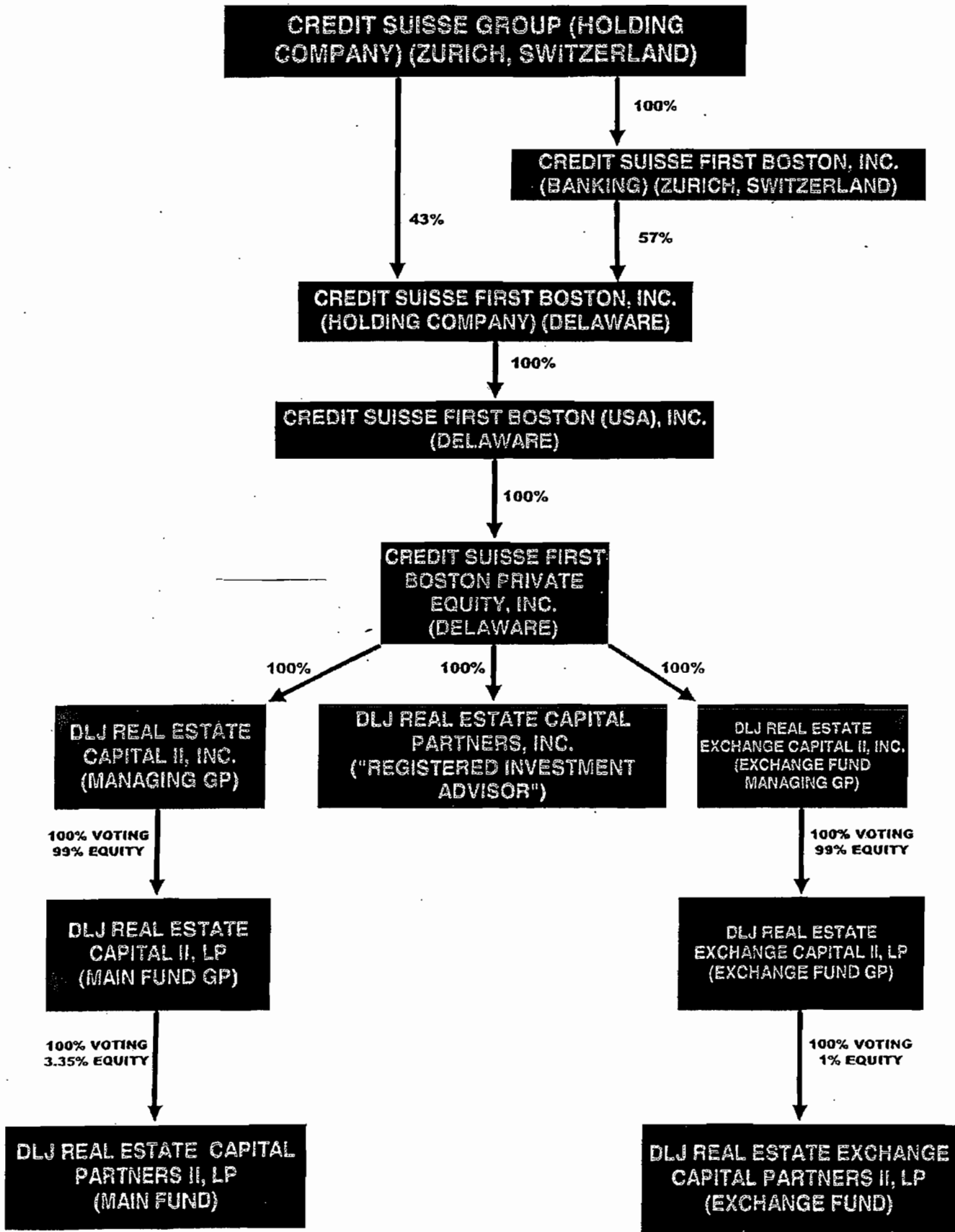
- = shareholder interest
- = general partnership interest
- ⋯ = limited partner interest
- = membership interest
- ==== = fee or leasehold ownership
- ===== = license interest

Colors of lines are not indicative of any particular relationship or priority and are intended solely for purposes of legibility.

Notes:
 1. Holds interests in addition to those shown on this chart



DLJ REAL ESTATE CAPITAL PARTNERS II, LP & DLJ REAL ESTATE EXCHANGE CAPITAL PARTNERS II, LP



Schedule 5

Definition of Special Purpose Bankruptcy Remote Entity

A “*Special Purpose Bankruptcy Remote Entity*” means (x) a limited liability company that is a Single Member Bankruptcy Remote LLC or (y) a corporation, limited partnership or limited liability company which at all times since its formation and at all times thereafter

(i) was and will be organized solely for the purpose of (A) owning the Property or (B) acting as a general partner of the limited partnership that owns the Property or member of the limited liability company that owns the Property;

(ii) has not engaged and will not engage in any business unrelated to (A) the ownership of the Property, (B) acting as general partner of the limited partnership that owns the Property or (C) acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not had and will not have any assets other than those related to the Property or its partnership or member interest in the limited partnership or limited liability company that owns the Property, as applicable;

(iv) has not engaged, sought or consented to and, to the fullest extent permitted by law, will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by this Agreement), transfer of partnership or membership interests or the like, or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) (in each case, except as expressly permitted by this Agreement or required or consented to by Lender);

(v) if such entity is a limited partnership, has and will have, as its only general partners, (A) Special Purpose Bankruptcy Remote Entities that are corporations and/or (B) Single Member Bankruptcy Remote LLCs;

(vi) if such entity is a corporation, has and will have at least one Independent Director, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of its board of directors unless all of the directors and all Independent Directors shall have participated in such vote;

(vii) if such entity is a limited liability company, has and will have at least one member that has been and will be a Special Purpose Bankruptcy Remote Entity that has been and will be a corporation and such corporation is the managing member of such limited liability company;

(viii) if such entity is a limited liability company, has and will have articles of organization, a certificate of formation and/or an operating agreement, as applicable, providing that (A) to the fullest extent permitted by law, such entity will

dissolve only upon the bankruptcy of the managing member, (B) to the fullest extent permitted by law, the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the limited liability company in the event of such bankruptcy of the managing member and (C) if the vote of a majority-in-interest of the remaining members to continue the life of the limited liability company following the bankruptcy of the managing member is not obtained, the limited liability company may not liquidate the Property without the consent of the applicable Rating Agencies for as long as the Loan is outstanding;

(ix) has not, and without the unanimous consent of all of its partners, directors or members (including all Independent Directors), as applicable, will not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action with the intent of causing such entity to become insolvent;

(x) has remained and intends to remain solvent and has maintained and intends to maintain adequate capital in light of its contemplated business operations;

(xi) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(xii) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns;

(xiii) has maintained and will maintain its books, records, resolutions and agreements as official records;

(xiv) has not commingled and will not commingle its funds or assets with those of any other Person (other than other Borrowers);

(xv) has held and will hold its assets in its own name;

(xvi) has conducted and will conduct its business in its name,

(xvii) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

(xviii) has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

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

(xx) has maintained and will maintain an arm's-length relationship with its Affiliates;

(xxi) (a) if such entity owns a Property, will have no indebtedness other than the Loan and liabilities incurred in the ordinary course of business relating to the ownership and operation of such Property, or (b) if such entity acts as the general partner of a limited partnership which owns a Property, will have no indebtedness other than legal liabilities incurred in its capacity as general partner of such limited partnerships, or (c) if such entity acts as a managing member of one or more of the limited liability companies each of which owns a Property, will have no indebtedness other than liabilities in the ordinary course of business relating to acting as a member of the limited liability company which owns such Property;

(xxii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan;

(xxiii) has not and will not acquire obligations or securities of its constituent partners, members or shareholders;

(xxiv) has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

(xxv) except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;

(xxvi) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

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

(xxviii) has not made and will not make loans to any Person;

(xxix) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it;

(xxx) has not entered into or been a party to, and will not enter into or be a party to, any material transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are not materially less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(xxxix) has and will have no obligation to indemnify its partners, officers, directors, members or Special Members, as the case may be, or has such an obligation

that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation; and

(xxxii) to the fullest extent permitted by law, will consider the interests of its creditors in connection with bankruptcy and insolvency actions.

“Independent Director” means (x) in the case of a Single Member Bankruptcy Remote LLC: a natural person selected by Borrower and reasonably satisfactory to Lender who shall not have been at the time of such individual’s appointment as an Independent Director of the Single Member Bankruptcy Remote LLC, does not thereafter become while serving as an Independent Director (except pursuant to an express provision in the Single Member Bankruptcy Remote LLC’s limited liability company agreement providing for the Independent Director to become a Special Member (defined below) upon the sole member of such Single Member Bankruptcy Remote LLC ceasing to be a member in such Single Member Bankruptcy Remote LLC) and shall not have been at any time during the preceding five years (except in his or her capacity as an Independent Director of the Borrower or of any Person that does not own any direct equity interest in Borrower) (i) a shareholder/partner/member of, or an officer or employee of, Borrower or any of its shareholders, subsidiaries or Affiliates, (ii) a director (other than as an Independent Director of the Borrower or of any Person that does not own any direct equity interest in Borrower) of any shareholder, subsidiary or Affiliate of Borrower, (iii) a customer of, or supplier to, Borrower or any of its shareholders, subsidiaries or Affiliates (except for revenues derived from services as Independent Director or similar capacity of Borrower or its Affiliates or from related corporate services, such as registered officer or registered agent), (iv) a Person who Controls any such shareholder, supplier or customer, or (v) a member of the immediate family of any such shareholder/ director/partner/member, officer, employee, supplier or customer or of any director of Borrower (other than as an Independent Director of the Borrower or of any Person that does not own any direct equity interest in Borrower, including a person who satisfies the foregoing definition who is referred to as an “Independent Manager”);

and (y) in the case of a corporation, an individual selected by Borrower and reasonably satisfactory to Lender who shall not have been at the time of such individual’s appointment as a director, does not thereafter become while serving as an Independent Director (except pursuant to an express provision in the limited liability company agreement of an Affiliate that does not own any direct equity interest in the Company which is a Single Member Bankruptcy Remote LLC, providing for the Independent Director to become a Special Member (defined below) upon the sole member of such Single Member Bankruptcy Remote LLC ceasing to be a member in such Single Member Bankruptcy Remote LLC) and shall not have been at any time during the preceding five years (except in his or her capacity as an Independent Director of the Borrower or of any Person that does not own any direct equity interest in Borrower) (i) a shareholder/partner/member of, or an officer, employee, consultant, agent or advisor of, Borrower or any of its shareholders, subsidiaries, members or Affiliates, (ii) a director of any shareholder, subsidiary, member, or Affiliate of Borrower other than Borrower’s general partner or managing member, (iii) a customer of, or supplier to, Borrower or any of its shareholders, subsidiaries or Affiliates that derives more than 10% of its purchases or income from its activities with Borrower or any Affiliate of Borrower, (iv) a Person who Controls any such shareholder, supplier or customer, or (v) a member of the immediate family (including a

grandchild or sibling) of any such shareholder/director/partner/member, officer, employee, supplier or customer or of any other director of Borrower's general partner or managing member.

"Single Member Bankruptcy Remote LLC" means a limited liability company organized under the laws of the State of Delaware which at all times since its formation and at all times thereafter (i) complies with the following clauses of paragraph (y) of the definition of Special Purpose Bankruptcy Remote Entity above: (i)(A), (ii)(A), (iii), (iv), (ix), (x), (xi) and (xiii) through (xxxii); (ii) will maintain its accounts, books and records separate from any other person; (iii) will have an operating agreement which provides that the business and affairs of Borrower shall be managed by its sole member (the **"Sole Member"**) or a board of directors appointed by the Sole Member, and at all times there shall be at least one duly appointed Independent Director, and the Sole Member or board of directors, as the case may be, will not, without the written consent of its Independent Director (1) take any action affecting its status as a "Special Purpose Bankruptcy Remote Entity" (as set forth in this Schedule 5) or (2) take any other "Material Action" (which for purposes hereof means any action to consolidate or merge the Borrower with or into any Person, or sell all or substantially all of the assets of the Borrower, or to institute proceedings to have the Borrower be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Borrower or file a petition seeking, or consent to, reorganization or relief with respect to the Borrower under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Borrower or a substantial part of its property, or make any assignment for the benefit of creditors of the Borrower, or admit in writing the Borrower's inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Borrower); (iv) has and will have an operating agreement which provides that, as long as any portion of the Debt remains outstanding, (A) upon the occurrence of any event that causes Sole Member to cease to be a member of Borrower (other than (x) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), the person acting as an Independent Director of Borrower shall, without any action of any Person and simultaneously with Sole Member ceasing to be a member of Borrower, automatically be admitted as the sole member of Borrower (the **"Special Member"**) and shall preserve and continue the existence of Borrower without dissolution, (B) no Special Member may resign or transfer its rights as Special Member unless (x) a successor Special Member has been admitted to Borrower as a Special Member, and (y) such successor Special Member has also accepted its appointment as an Independent Director and (C) except as expressly permitted pursuant to the terms of this Agreement, Sole Member may not resign and no additional member shall be admitted to Borrower; (v) has and will have an operating agreement which provides that, as long as any portion of the Debt remains outstanding, (A) Borrower shall be dissolved, and its affairs shall be wound up only upon the first to occur of the following: (x) the termination of the legal existence of the last remaining member of Borrower or the occurrence of any other event which terminates the continued membership of the last remaining member of Borrower in Borrower unless the business of Borrower is continued in a manner permitted by its operating agreement or the Delaware Limited Liability Company Act (the **"Act"**) or (y) the entry of a decree of judicial dissolution under Section 18-802 of the Act; (B) upon the occurrence of any

event that causes the last remaining member of Borrower to cease to be a member of Borrower or that causes Sole Member to cease to be a member of Borrower (other than (x) upon an assignment by Sole Member of all of its limited liability company interest in Borrower and the admission of the transferee, if permitted pursuant to the organizational documents of Borrower and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the organizational documents of Borrower and the Loan Documents), to the fullest extent permitted by law, the personal representative of such member shall be authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in Borrower, agree in writing to continue the existence of Borrower and to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of such member in Borrower; (C) the bankruptcy of Sole Member or a Special Member shall not cause such member or Special Member, respectively, to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution; (D) in the event of dissolution of Borrower, Borrower shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of Borrower in an orderly manner), and the assets of Borrower shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (E) to the fullest extent permitted by law, each of Sole Member and the Special Members shall irrevocably waive any right or power that they might have to cause Borrower or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of Borrower, to compel any sale of all or any portion of the assets of Borrower pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of Borrower.

Notwithstanding anything to the contrary contained in this Schedule or in the Loan Agreement, the occurrence or continuance of one or more of the following facts or conditions will not cause an entity to fail to be a Special Purpose Bankruptcy Remote Entity or a Single Member Bankruptcy Remote LLC, cause an entity to fail to comply with the definition of Special Purpose Bankruptcy Remote Entity or Single Member Bankruptcy Remote LLC, or constitute a breach of any covenant or representation that entity will be or remain a Special Purpose Bankruptcy Remote Entity or a Single Member Bankruptcy Remote LLC:

(a) The fact that the business operated by an entity, or by a limited partnership or limited liability company of which the entity is a general partner or a manager, may be known or identified by the name or brand of, and/or conducted in or under the name or brand of, a franchisor or licensor (such as "Embassy Suites" or "Marriott"), and/or the fact that an entity may have failed to hold itself out as an entity separate from its franchisor or licensor, or may have failed to correct any misunderstanding regarding the separateness of its identity from that of a franchisor or licensor;

(b) The fact that, by reason of the cash management arrangements provided for in connection with the Loan, funds or other assets of an entity will be commingled with the funds and other assets of other Borrowers, and will not be held by the entity in its own name, and that such commingled funds or other assets of an entity and other Borrowers will be used to pay liabilities incurred by the entity and liabilities incurred by other Borrowers, and that, among such

commingled funds and assets, it may be costly or difficult to segregate, ascertain or identify the individual funds and assets of such entity;

(c) The fact that an entity may amend its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable), or other organizational documents, or take any other action, provided that such amendment or other action was made or taken at the request of, or with the consent of, Lender or the Rating Agencies;

(d) The failure of an entity to have an Independent Director at all times, provided that the Board of Directors/Managers of such entity did not take any action requiring the unanimous affirmative vote of 100% of the members of its Board of Directors/Managers at any time when it failed to have an Independent Director as a member of its Board of Directors/Managers;

(e) The failure of a Single Member Bankruptcy Remote LLC to have an Independent Director at all times, provided that the Sole Member of such LLC did not take any action requiring the written consent of the Independent Director at any time when the LLC failed to have an Independent Director;

(f) The fact that a single member limited liability company that is disregarded as an entity separate from its owner within the meaning of the Code does not file separate tax returns;

(g) The fact that the general partner of a limited partnership is liable for the obligations of the limited partnership;

(h) The fact that a Borrower files consolidated tax returns or has consolidated financial statements with other Borrowers (or with its parent), provided that any such consolidated financial statements specifically indicate that the assets of the applicable Borrower are not available to the creditors of any other Person;

(i) The fact that an entity may grant forbearances or similar extensions of credit to third parties in the ordinary course of its business.

Schedule 6**Allocated Loan Amounts**

Property	Allocated Loan Amount
Lynnwood, Washington	\$30,900,000
Bellevue, Washington	\$43,400,000
Portland, Oregon	\$27,600,000
Colorado Springs, Colorado	\$17,400,000
Denver, Colorado	\$10,000,000
Livonia, Michigan	\$19,000,000
Blue Ash, Ohio	\$23,700,000
El Paso, Texas	\$15,500,000
Total:	\$187,500,000

Schedule 7Franchise Agreements

Name	Address	City	State	Franchise Agreement
Nesbitt Lynnwood Property LLC	20610 44 th Avenue West	Lynnwood	Washington	License Agreement dated July 8, 1992 by and between Lynnwood 44 th Avenue West Associates and Promus Hotels, Inc., successor-in-interest to Embassy Suites, Inc., as assigned and amended by that certain Assignment and Assumption of, and Amendment to, License Agreement dated June 25, 2004 by and between Lynnwood 44 th Avenue West Associates, as assignor, and Nesbitt Lynnwood Property LLC, as assignee.
Nesbitt Bellevue Property LLC	3225 158 th Avenue S.E.	Bellevue	Washington	License Agreement dated August 27, 1990 by and between Bellevue Hotel Associates and Promus Hotels, Inc., successor-in-interest to Embassy Suites, Inc., as assigned and amended by that certain Assignment and Assumption of, and Amendment to, License Agreement dated June 25, 2004 by and between Bellevue Hotel Associates, as assignor, and Nesbitt Bellevue Property LLC, as assignee.
Nesbitt Portland Property LLC	9000 S.W. Washington Square Road	Portland (Tigard)	Oregon	License Agreement dated January 19, 1987 by and between Portland Hotel Associates and Promus Hotels, Inc., successor-in-interest to Embassy Suites, Inc., as assigned and amended by that certain Assignment and Assumption of, and Amendment to, License Agreement dated June 25, 2004 by and between Portland Hotel Associates, as assignor, and Nesbitt Portland Property LLC, as assignee.
Nesbitt Colorado Springs Property LLC	7290 Commerce Center Drive	Colorado Springs	Colorado	Amended and Re-stated Franchise License Agreement dated March 3, 2005 by and between Promus Hotels, Inc. and Nesbitt Colorado Springs Property LLC.
Nesbitt Denver Property LLC	7525 E. Hampden Avenue	Denver	Colorado	License Agreement dated November 6, 1990 by and between Denver Hampden Associates and Promus Hotels, Inc.,

				successor-in-interest to Embassy Suites, Inc., as assigned and amended by that certain Assignment and Assumption of, and Amendment to, License Agreement dated June 25, 2004 by and between Denver Hampden Associates, as assignor, and Nesbitt Denver Property LLC, as assignee.
Nesbitt Livonia Property LLC	19525 Victor Parkway	Livonia	Michigan	License Agreement dated December 18, 1989 by and between Livonia Hotel Associates and Promus Hotels, Inc., successor-in-interest to Embassy Suites, Inc., as assigned and amended by that certain Assignment and Assumption of, and Amendment to, License Agreement dated June 25, 2004 by and between Livonia Hotel Associates, as assignor, and Nesbitt Livonia Property LLC, as assignee.
Nesbitt Blue Ash Property LLC	4554 Lake Forest Drive	Blue Ash	Ohio	License Agreement dated February 17, 1989 by and between Blue Ash Embassy Associates and Promus Hotels, Inc., successor-in-interest to Embassy Suites, Inc., as assigned and amended by that certain Assignment and Assumption of, and Amendment to, License Agreement dated June 25, 2004 by and between Blue Ash Embassy Associates, as assignor, and Nesbitt Blue Ash Property LLC, as assignee.
Nesbitt El Paso Property L.P.	6100 Gateway East	El Paso	Texas	License Agreement dated August 16, 1993 by and between El Paso Hotel Associates and Promus Hotels, Inc., successor-in-interest to Embassy Suites, Inc., as assigned and amended by that certain Assignment and Assumption of, and Amendment to, License Agreement dated June 25, 2004 by and between El Paso Hotel Associates, as assignor, and Nesbitt El Paso Property L.P., as assignee.

Schedule 8

List of Leases

Denver Embassy Suites Hotel:

- Gift Shop Lease Agreement, dated as of May 4, 2005, between Denver Hampden Associates, as landlord, and In Duk Park, as tenant
- Fixed Rent: \$300 per month
- Security Deposit: none

Blue Ash Embassy Suites Hotel:

- Gift Shop Lease, dated as of January 1, 2004, between Windsor Capital Group, as landlord, and Karen Kerns, as tenant, which lease expired January 1, 2005 (occupancy is month-to-month)
- Fixed Rent: \$300 per month
- Security Deposit: none

Bellevue Embassy Suites Hotel:

- Lease Agreement, dated as of November 1, 1998, between Embassy Suites Hotel – Bellevue, as landlord, and Seattle Unique, Inc., dba Choi and Sons, as tenant, as extended by (i) Addendum to Lease Agreement – Amendment of Term, dated as of November 1, 2001, (ii) Addendum to Lease Agreement – Amendment of Term, dated as of November 1, 2003, and (iii) Addendum to Lease Agreement – Amendment of Term, dated as of November 1, 2005
- Fixed Rent: \$625 per month
- Security Deposit: none

Lynnwood Embassy Suites Hotel:

- Lease, dated as of September 12, 2002, between Embassy Suites – Lynnwood, as landlord, and Kyung Min, as tenant
- Fixed Rent: \$600 per month
- Security Deposit: none

El Paso Embassy Suites Hotel:

- Hotel Gift Shop Lease Agreement, dated as of October 15, 2005, between Nesbitt El Paso Property LP, as landlord, and Marty's Gift Shop, as tenant
- Fixed Rent: \$400 per month
- Security Deposit: \$400

Livonia Embassy Suites Hotel:

- Gift Shop Lease, dated as of May 17, 1996, between Embassy Suites Hotel – Livonia, as landlord, and Cosmos Gift Shop, as tenant, as extended by Letter dated as of March 6, 2001
- Fixed Rent: \$500 per month
- Security Deposit: none

Portland Embassy Suites Hotel:

- Lease, dated as of January 1996, between Nesbitt Partners Portland Venture, Ltd., as landlord, and Chris Henderson Gifts, as tenant, as assigned by Assignment of Lease, dated as of September 23, 1997, between Chris Henderson Gifts, as assignor, and Sunita Rikhi Gifts, as assignee, and as extended by Addendum of Lease, dated as of December 25, 2001, and as further assigned by Assignment of Lease, dated as of September 6, 2002, between Sunita Rikhi Gifts, as assignor, and Kim Jenkins Gifts, as assignee, as amended by Assignment of Lease/Addendum of Lease, undated, and as ratified by Letter Agreement, dated as of May 25, 2005, between Portland Hotel Associates and Kim Jenkins Gifts
- Fixed Rent: \$600 per month
- Security Deposit: none

Colorado Springs Embassy Suites Hotel:

- Lease, dated as of September 1, 1988, between Patrick M. Nesbitt, as landlord, and Oriental Princess, as landlord, which lease expired August 31, 1993 (occupancy is month-to-month)
- Fixed Rent: \$500 per month
- Security Deposit: none

EXHIBIT

2

PROMISSORY NOTE

\$187,500,000

January 9, 2006

FOR VALUE RECEIVED, each of **NESBITT LYNNWOOD PROPERTY LLC**, a Delaware limited liability company, **NESBITT BELLEVUE PROPERTY LLC**, a Delaware limited liability company, **NESBITT PORTLAND PROPERTY LLC**, a Delaware limited liability company, **NESBITT COLORADO SPRINGS PROPERTY LLC**, a Delaware limited liability company, **NESBITT DENVER PROPERTY LLC**, a Delaware limited liability company, **NESBITT LIVONIA PROPERTY LLC**, a Delaware limited liability company, **NESBITT BLUE ASH PROPERTY LLC**, a Delaware limited liability company, and **NESBITT EL PASO PROPERTY L.P.**, a Delaware limited partnership, each having an address at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405 (each a "**Maker**" and collectively together with their respective permitted successors and assigns, "**Makers**"), hereby promises to pay to the order of **GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.**, a Delaware corporation, at its principal place of business at 600 Steamboat Road, Greenwich, Connecticut 06830 (together with its successors and assigns "**Payee**") or at such place as the holder hereof may from time to time designate in writing, the principal sum of **ONE HUNDRED EIGHTY-SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$187,500,000)** (the "**Principal**"), in lawful money of the United States of America, with interest on the unpaid principal balance from time to time outstanding at the Interest Rate, in installments as follows:

A. A payment of **\$895,416.67** on the date hereof, representing interest from the date of funding through February 5, 2006.

B. On March 6, 2006 (which shall be the first Payment Date hereunder) and each Payment Date thereafter through and including the Payment Date immediately preceding the Amortization Commencement Date, Makers shall pay interest on the unpaid Principal accrued at the Interest Rate during the immediately preceding Interest Period (the "**Monthly Interest Payment Amount**"). On the Amortization Commencement Date and each Payment Date thereafter through and including January 6, 2011 (as such date may be changed in accordance with Section 2.2.4 of the Loan Agreement), the Principal and interest thereon at the Interest Rate shall be payable in equal monthly installments of **\$1,224,161.92** (the "**Monthly Debt Service Payment Amount**"; it being understood that any proportionate payments received under any Defeased Note shall also be attributed to such amount); which is based on the Interest Rate and a 25-year amortization schedule; each of such payments, subject to the provisions of Section 3.13 of the Loan Agreement (hereinafter defined), to be applied (a) to the payment of interest computed at the rate aforesaid; and (b) the balance applied toward the reduction of the principal sum.

C. The balance of the principal sum of this Note together with all accrued and unpaid interest thereon shall be due and payable on the Maturity Date.

1. **Definitions.** Capitalized terms used but not otherwise defined herein shall have the meanings given in that certain Loan Agreement (the "*Loan Agreement*") dated the date hereof between Makers and Payee. The following terms have the meanings set forth below:

Amortization Commencement Date: March 6, 2008, as such date may be changed in accordance with Section 2.2.4 of the Loan Agreement.

Business Day: any day other than a Saturday, Sunday or any day on which commercial banks in New York, New York are authorized or required to close.

Default Rate: a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) 5% above the Interest Rate, compounded monthly.

Interest Period: (i) the period from the date hereof through the first day thereafter that is the 5th day of a calendar month and (ii) each period thereafter from the 6th day of each calendar month through the 5th day of the following calendar month; except that the Interest Period, if any, that would otherwise commence before and end after the Maturity Date shall end on the Maturity Date. Notwithstanding the foregoing, if Payee exercises its right to change the Payment Date to a New Payment Date in accordance with Section 2.2.4 of the Loan Agreement, then from and after such election, each Interest Period shall be the period from the New Payment Date in each calendar month through the day in the next succeeding calendar month immediately preceding the New Payment Date in such calendar month.

Interest Rate: a rate of interest equal to 6.14% per annum (or, when applicable pursuant to this Note or any other Loan Document, the Default Rate).

Maturity Date: the date on which the final payment of principal of this Note (or the Defeased Note, if applicable) becomes due and payable as therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

Payment Date: the 6th day of each calendar month or, upon Payee's exercise of its right to change the Payment Date in accordance with Section 2.2.4 of the Loan Agreement, the New Payment Date (in either case, if such day is not a Business Day, the Payment Date shall be the first Business Day thereafter). The first Payment Date hereunder shall be March 6, 2006.

Stated Maturity Date: February 6, 2011 as such date may be changed in accordance with Section 2.2.4 of the Loan Agreement.

Yield Maintenance Premium: an amount which, when added to the outstanding Principal, would be sufficient to purchase U.S. Obligations which provide payments (a) on or prior to, but as close as possible to, all successive scheduled payment dates under this Note through the Stated Maturity Date and (b) in amounts equal to the Monthly Debt Service Payment Amount and/or Monthly Interest Payment Amount, as the case may be, required under this Note through the Stated Maturity Date together with the outstanding principal balance of this Note as of the Stated Maturity Date assuming payments of all such Monthly Debt Service Payment Amounts and/or Monthly Interest Payment Amounts, as the case may be, are made (including any servicing costs associated therewith). In no event shall the Yield Maintenance Premium be less than zero.

2. **Payments and Computations.** Interest on the unpaid Principal shall be computed on the basis of the actual number of days elapsed over a 360-day year. All amounts due under this Note shall be payable without setoff, counterclaim or any other deduction whatsoever and are payable without relief from valuation and appraisal laws and with all costs and charges incurred in the collection or enforcement hereof, including, attorneys' fees and court costs.

3. **Loan Documents.** This Note is evidence of that certain loan made by Payee to Makers contemporaneously herewith and is executed pursuant to the terms and conditions of the Loan Agreement. This Note is secured by and entitled to the benefits of, among other things, the Mortgages and the other Loan Documents. Reference is made to the Loan Documents for a description of the nature and extent of the security afforded thereby, the rights of the holder hereof in respect of such security, the terms and conditions upon which this Note is secured and the rights and duties of the holder of this Note. No reference herein to and no provision of any other Loan Document shall alter or impair the obligation of Makers, which is absolute and unconditional (except for Section 10.1 of the Loan Agreement), to pay the principal of and interest on this Note at the time and place and at the rates and in the monies and funds described herein. All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Documents to be kept and performed by Makers are by this reference hereby made part of this Note to the same extent and with the same force and effect as if they were fully set forth in this Note, and Makers covenant and agree to keep and perform the same, or cause the same to be kept and performed, in accordance with their terms.

4. **Loan Acceleration; Prepayment.** The Debt, shall without notice become immediately due and payable at the option of Payee if any payment required in this Note is not paid on the date on which it is due or upon the happening of any other Event of Default. Makers shall have no right to prepay or defease all or any portion of the Principal except in accordance with the applicable provisions of the Loan Agreement. The principal balance of this Note is subject to mandatory prepayment, without premium or penalty, in certain instances of Insured Casualty or Condemnation, as more particularly set forth in Sections 2.3.2 and 7.4.2 of the Loan Agreement. Except during the continuance of an Event of Default, all proceeds of any repayment, including permitted prepayments, of Principal shall be applied in accordance with Section 2.3.1 of the Loan Agreement. During the continuance of an Event of Default, all proceeds of repayment, including any payment or recovery on any Property (whether through foreclosure, deed-in-lieu of foreclosure, or otherwise) shall, unless otherwise provided in the Loan Documents, be applied in such order and in such manner as Payee shall elect in Payee's discretion.

5. **Default Rate.** After the occurrence and during the continuance of an Event of Default, the entire unpaid Debt shall bear interest at the Default Rate, and shall be payable upon demand from time to time, to the extent permitted by applicable law.

6. **Late Payment Charge.** If any Monthly Debt Service Payment Amount or Monthly Interest Payment Amount, as the case may be, is not paid by Makers on the date on which it is due, Makers shall pay to Payee upon demand an amount equal to the lesser of 5% of such unpaid sum or the maximum amount permitted by applicable law, in order to defray the

expense incurred by Payee in handling and processing such delinquent payment and to compensate Payee for the loss of the use of such delinquent payment.

7. **Amendments.** This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Makers or Payee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought. Whenever used, the singular number shall include the plural, the plural the singular, and the words "***Payee***" and "***Maker***" and "***Makers***" shall include their respective successors, assigns, heirs, executors and administrators. If Makers consist of more than one person or party, the obligations and liabilities of each such person or party shall be joint and several.

8. **Waiver.** Makers and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest, notice of protest, notice of nonpayment, notice of intent to accelerate the maturity hereof and of acceleration. No release of any security for the Debt or any person liable for payment of the Debt, no extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of the Loan Documents made by agreement between Payee and any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Makers, and any other person or party who may become liable under the Loan Documents, for the payment of all or any part of the Debt.

9. **Exculpation.** It is expressly agreed that recourse against Makers for failure to perform and observe its obligations contained in this Note shall be limited as and to the extent provided in Section 10.1 of the Loan Agreement.

10. **Notices.** All notices or other communications required or permitted to be given pursuant hereto shall be given in the manner specified in the Loan Agreement directed to the parties at their respective addresses as *provided* therein.

11. **Joint and Several.** Each Person constituting Makers hereunder shall have joint and several liability for the obligations of Makers hereunder.

12. **Counterparts.** This Note may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

13. **No Conflicts.** In the event of any conflict between the provisions of this Note and any provision of the Loan Agreement, then the provisions of the Loan Agreement shall control.

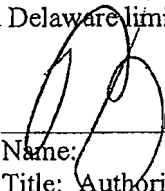
14. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

[Signature Page Follows]

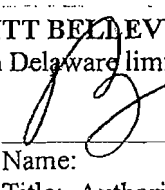
IN WITNESS WHEREOF, each Maker has executed this Promissory Note as of the day and year first written.

MAKER:

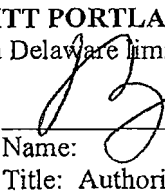
NESBITT LYNNWOOD PROPERTY LLC, a Delaware limited liability company

By:  _____
Name:
Title: Authorized Representative

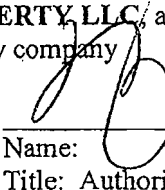
NESBITT BELLEVUE PROPERTY LLC, a Delaware limited liability company

By:  _____
Name:
Title: Authorized Representative

NESBITT PORTLAND PROPERTY LLC, a Delaware limited liability company

By:  _____
Name:
Title: Authorized Representative

NESBITT COLORADO SPRINGS PROPERTY LLC, a Delaware limited liability company

By:  _____
Name:
Title: Authorized Representative

[Signatures Continue on Next Page]

IN WITNESS WHEREOF, each Maker has executed this Promissory Note as of the day and year first written.

MAKER:

NESBITT DENVER PROPERTY LLC, a Delaware limited liability company

By: _____

Name: _____

Title: Authorized Representative

NESBITT LIVONIA PROPERTY LLC, a Delaware limited liability company

By: _____

Name: _____

Title: Authorized Representative

NESBITT BLUE ASH PROPERTY LLC, a Delaware limited liability company

By: _____

Name: _____

Title: Authorized Representative

NESBITT EL PASO PROPERTY L.P., a Delaware limited partnership

By: Nesbitt El Paso GP Inc., a Delaware corporation, its general partner

By: _____

Name: _____

Title: Authorized Representative

EXHIBIT

3

AFTER RECORDING,
RETURN TO:
Kaye Scholer LLP
425 Park Avenue
New York, New York 10022-3598
Attention: Stephen Gliatta, Esq.
File Matter No. 27764.0172



NESBITT BELLEVUE PROPERTY LLC
(Grantor)

to

1ST AM ⁽²⁴⁾
199703A

FIRST AMERICAN TITLE INSURANCE COMPANY
(Trustee/Grantee)

for the Benefit of

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.
(Beneficiary/ Grantee)

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

Dated: As of January 9, 2006

Abbreviated Legal Description: Lot 4, SP No. 85-33, Rec 8612039001
and Ptn Lot 1 & All of Lot 3, CC&F I-90 Bellevue Business Park No. 4,
Vol. 128, P. 86-88

Tax Parcel Number: 128362-0080-04

Full Legal Description in Exhibit A

Washington

31185108.DOC

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Deed of Trust*"), made as of January 9, 2006, by **NESBITT BELLEVUE PROPERTY LLC**, a Delaware limited liability company, having an office at 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405 ("*Grantor*"), to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a California corporation, having an address at 2101 Fourth Avenue, Suite 800, Seattle, Washington 98121 ("*Trustee*"), as Trustee, for the benefit of **GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.**, a Delaware corporation (together with its successors and assigns, hereinafter referred to as "*Beneficiary*"); having an address at 600 Steamboat Road, Greenwich, Connecticut 06830.

Grantor and certain affiliates of Grantor (together with Grantor, collectively, "*Borrowers*") and Beneficiary have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "*Loan Agreement*") pursuant to which Beneficiary is making a secured loan to Borrowers in the aggregate original principal amount of \$187,500,000 (the "*Loan*"). Capitalized terms used herein without definition are used as defined in the Loan Agreement. The Loan is evidenced by a note or notes dated the date hereof made by Borrowers to Beneficiary in such principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, collectively, the "*Note*").

To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Note, this Deed of Trust, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the "*Loan Documents*"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Grantor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "*Bankruptcy Code*"), and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "*Debt*"), Grantor has given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated and by these presents does hereby give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Trustee, in trust for the benefit of Beneficiary, **WITH POWER OF SALE**, the land described in Exhibit A (the "*Premises*"), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the "*Improvements*");

TOGETHER WITH: all right, title, interest and estate of Grantor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "*Trust Property*");

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor (including, without limitation, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, facsimile machines, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary hotel equipment, and other property of every kind and nature, tangible or intangible, owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "*Equipment*"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Grantor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Trust Property is located (the "*UCC*"), superior in lien to the lien of this Deed of Trust;

(c) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in

anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements relating thereto, including any guarantees, extensions, renewals, modifications or amendments thereof and all additional remainders, reversions, and other rights and estates appurtenant thereunder (hereinafter collectively referred to as the "**Leases**"); as used herein, the term "**Leases**" shall not include occupancy arrangements for customary hotel transactions in the ordinary course of Grantor's business conducted at the hotel located on the Trust Property, including nightly rentals of individual hotel rooms or suites, banquet room use and food and beverage services, and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, parking charges, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Grantor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as the "**Rents**"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Trust Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Trust Property;

(f) the right, in the name and on behalf of Grantor, to appear in and defend any action or proceeding brought with respect to the Trust Property and to commence any action or proceeding to protect the interest of Beneficiary in the Trust Property;

(g) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books,

records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, franchise agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Trust Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Trust Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Trust Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "*Intangibles*"); and

(h) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Grantor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Deed of Trust shall automatically extend to all Rents acquired by the Grantor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

TO HAVE AND TO HOLD the Trust Property unto and to the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to Beneficiary the Debt at the time and in the manner provided in the Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Grantor represents and warrants to and covenants and agrees with Beneficiary as follows:

PART I - GENERAL PROVISIONS

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Grantor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Grantor (i) agrees to insure, repair, maintain and restore damage to the Trust Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the Proceeds of Insurance and Awards for Condemnation shall be settled, held and applied in accordance with the Loan Agreement.

2. Leases and Rents.

(a) Grantor does hereby absolutely and unconditionally assign to Beneficiary all of Grantor's right, title and interest in all current and future Leases and Rents, it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment shall not be construed to bind Beneficiary to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Beneficiary. Nevertheless, subject to the terms of this paragraph, Beneficiary grants to Grantor a revocable license to operate and manage the Trust Property and to collect the Rents subject to the requirements of the Loan Agreement (including the deposit of Rents into the Clearing Account). Upon an Event of Default, without the need for notice or demand, the license granted to Grantor herein shall automatically be revoked, and Beneficiary shall immediately be entitled to possession of all Rents in the Clearing Account, the Deposit Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Beneficiary enters upon or takes control of the Trust Property. Grantor hereby grants and assigns to Beneficiary the right, at its option, upon revocation of the license granted herein, to enter upon the Trust Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of such license may be applied toward payment of the Debt in such priority and proportions as Beneficiary in its sole discretion shall deem proper.

(b) Grantor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.10 of the Loan Agreement.

3. **Use of Trust Property.** Grantor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Trust Property. If under applicable zoning provisions the use of the Trust Property as a hotel is or shall become a nonconforming use, Grantor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Beneficiary. Grantor shall not (i) change the use of the Trust Property as a hotel, (ii) permit or suffer to occur any waste on or to the Trust Property or (iii) take any steps to convert the Trust Property to a condominium or cooperative form of ownership.

4. **Transfer or Encumbrance of the Trust Property.**

(a) Grantor acknowledges that (i) Beneficiary has examined and relied on the creditworthiness and experience of the principals of Grantor in owning and operating properties such as the Trust Property in agreeing to make the Loan, (ii) Beneficiary will continue to rely on Grantor's ownership of the Trust Property as a means of maintaining the value of the Trust Property as security for the Debt, and (iii) Beneficiary has a valid interest in maintaining the value of the Trust Property so as to ensure that, should Grantor default in the repayment of the Debt, Beneficiary can recover the Debt by a sale of the Trust Property. Grantor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Trust Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer or a Permitted Encumbrance.

(b) Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Transfer in violation of this Paragraph 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Trust Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Grantor agrees to bear and shall pay or reimburse Beneficiary on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Beneficiary in connection with the review, approval and documentation of any Permitted Transfer.

5. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Deed of Trust which imposes a tax, either directly or indirectly, on the Debt or Beneficiary's interest in the Trust Property, Grantor will pay such tax, with interest and penalties thereon, if any. If Beneficiary is advised by its counsel that the payment of such tax or interest and penalties by Grantor would be unlawful, taxable to Beneficiary or unenforceable, or would provide the basis for a defense of usury, then Beneficiary shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable. Provided no Event of Default has occurred and is continuing, any prepayment with respect to this Section 5 shall be without payment of the Yield Maintenance Premium.

6. **No Credits on Account of the Debt.** Grantor shall not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes or Other Charges assessed against the Trust Property, and no deduction shall otherwise be made or claimed from the assessed value of the Trust Property for real estate tax purposes by reason of this Deed of Trust or the Debt. If such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable. Provided no Event of Default has occurred and is continuing, any prepayment with respect to this Section 6 shall be without payment of the Yield Maintenance Premium.

7. **Further Acts, Etc.** Grantor shall, at its sole cost, do execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Beneficiary shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Beneficiary, or for filing, registering or recording this Deed of Trust. Upon foreclosure, the appointment of a receiver or any other relevant action, Grantor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Trust Property. Grantor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary pursuant to this paragraph. Notwithstanding anything to the contrary in the immediately preceding sentence,

Beneficiary shall not execute any document as attorney-in-fact of Grantor unless (x) Grantor shall have failed or refused to execute the same within five (5) Business Days after Beneficiary's request therefor, or (y) in Beneficiary's good faith determination it would be materially prejudiced by the delay involved in making such a request. Beneficiary shall give prompt notice to Grantor of any exercise of the power of attorney as provided for in this Paragraph 7, along with copies of all documents executed in connection therewith.

8. **Recording of Deed of Trust, Etc.** Grantor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, shall cause this Deed of Trust, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Trust Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Beneficiary in, the Trust Property. Grantor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Deed of Trust, any Deed of Trust supplemental hereto, any security instrument with respect to the Trust Property or any instrument of further assurance, except where prohibited by law so to do. Grantor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Deed of Trust.

9. **Right to Cure Defaults.** Upon the occurrence of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Trust Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Trust Property or to foreclose this Deed of Trust or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary, shall constitute a portion of the Debt, shall be secured by this Deed of Trust and the other Loan Documents and shall be due and payable to Beneficiary upon demand.

10. **Remedies.**

(a) Upon the occurrence of any Event of Default, Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Trust Property, by Beneficiary itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) to the extent not prohibited by law, give such notice of default and of election to cause the Trust Property to be sold as may be required by law or as may be necessary to cause Trustee to exercise the power of sale granted herein; Trustee shall then record and give such notice of Trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Trust Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Grantor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Trustee, from time to time, may postpone or continue the sale of all or any portion of the Trust Property by public declaration at the time and place last appointed for the sale and no other notice of the postponed sale shall be required unless provided by applicable law. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, expressed or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof;
- (iii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Deed of Trust, in which case the Trust Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iv) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Debt then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Debt not then due;
- (v) sell for cash or upon credit the Trust Property and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (vi) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;
- (vii) recover judgment on the Note either before, during or after any proceeding for the enforcement of this Deed of Trust;
- (viii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Trust Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Grantor or of any person, firm or other entity liable for the payment of the Debt;

(ix) enforce Beneficiary's interest in the Leases and Rents and enter into or upon the Trust Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and employees therefrom, and thereupon Beneficiary may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Trust Property and conduct the business thereat; (B) complete any construction on the Trust Property in such manner and form as Beneficiary deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Trust Property; (D) exercise all rights and powers of Grantor with respect to the Trust Property, whether in the name of Grantor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Trust Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with the Trust Property, as well as just and reasonable compensation for the services of Beneficiary, and its counsel, agents and employees;

(x) require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Trust Property occupied by Grantor, and require Grantor to vacate and surrender possession of the Trust Property to Beneficiary or to such receiver, and, in default thereof, evict Grantor by summary proceedings or otherwise; or

(xi) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Grantor relating to the Trust Property; provided that no UCC sale shall occur except in connection with the sale or other disposition of the Trust Property, unless Grantor has taken action to prevent the sale or other disposition of the Trust Property or Grantor or any of its Affiliates has taken any other action, which in Beneficiary's judgment is intended or is reasonably likely to hinder, delay, impair or prevent Beneficiary from enforcing any of its rights or remedies under or pursuant to the Loan Documents or at law or in equity.

In the event of a sale, by foreclosure or otherwise, of less than all of the Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of the Trust Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 10, together with any other sums which then may be held by Beneficiary under this Deed of Trust, whether under the provisions of this paragraph or otherwise, shall be applied by Beneficiary to the payment of the Debt in such priority and proportion as Beneficiary in its sole discretion shall deem proper.

(c) Beneficiary may adjourn from time to time any sale by it to be made under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale

or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Beneficiary, without further notice or publication, may make such sale at the time and place which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Beneficiary, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Beneficiary is hereby irrevocably appointed the true and lawful attorney of Grantor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Trust Property and rights so sold and for that purpose Beneficiary may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Paragraph 10, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Grantor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Grantor.

(e) Upon any sale made under or by virtue of this Paragraph 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Trust Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust or any other Loan Document.

(f) No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Trust Property or upon any other property of Grantor shall affect in any manner or to any extent the lien of this Deed of Trust upon the Trust Property or any part thereof, or any liens, rights, powers or remedies of Beneficiary hereunder, but such liens, rights, powers and remedies of Beneficiary shall continue unimpaired as before.

(g) Beneficiary may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 10 at any time before the conclusion thereof, as determined in Beneficiary's sole discretion and without prejudice to Beneficiary.

(h) Beneficiary may resort to any remedies and the security given by this Deed of Trust or in any other Loan Document in whole or in part, and in such portions and in such order as determined by Beneficiary's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Beneficiary to exercise any right, remedy or option provided in any

Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Beneficiary of any payment after the occurrence of any Event of Default and no payment by Beneficiary of any obligation for which Grantor is liable hereunder shall be deemed to waive or cure any Event of Default, or Grantor's liability to pay such obligation. No sale of all or any portion of the Trust Property, no forbearance on the part of Beneficiary, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Beneficiary to Grantor, shall operate to release or in any manner affect the interest of Beneficiary in the remaining Trust Property or the liability of Grantor to pay the Debt. No waiver by Beneficiary shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Beneficiary in exercising its rights and remedies under this Paragraph 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Grantor immediately upon notice from Beneficiary, with interest at the Default Rate for the period after notice from Beneficiary, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Deed of Trust.

(i) The interests and rights of Beneficiary under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Beneficiary may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant with respect to the Trust Property or any portion thereof or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

11. Right of Entry. In addition to any other rights or remedies granted under this Deed of Trust, Beneficiary and its agents shall have the right to enter and inspect the Trust Property at any reasonable time during the term of this Deed of Trust. The cost of such inspections or audits shall be borne by Grantor should Beneficiary determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Beneficiary. The cost of such inspections, if not paid for by Grantor following demand, may be added to the principal balance of the sums due under the Note and this Deed of Trust and shall bear interest thereafter until paid at the Default Rate.

12. Security Agreement. This Deed of Trust is both a real property deed of trust and a "security agreement" within the meaning of the UCC. The Trust Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Trust Property. Grantor by executing and delivering this Deed of Trust has granted and hereby grants to Beneficiary, as security for the Debt, a security interest in the Trust Property to the full extent that the Trust Property may be subject to the UCC (such portion of the Trust Property so subject to the UCC being called in this paragraph the "*Collateral*"). This Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC. As such, this Deed of Trust covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Deed of Trust. If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it

may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral; provided that no UCC sale shall occur except in connection with the sale or other disposition of the Trust Property, unless Grantor has taken action to prevent the sale or other disposition of the Trust Property or Grantor or any of its Affiliates has taken any other action, which in Beneficiary's judgment is intended or is reasonably likely to hinder, delay, impair or prevent Beneficiary from enforcing any of its rights or remedies under or pursuant to the Loan Documents or at law or in equity. Upon request or demand of Beneficiary, Grantor shall at its expense assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Grantor shall pay to Beneficiary on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Beneficiary in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral, sent to Grantor in accordance with the provisions hereof at least ten days prior to such action, shall constitute commercially reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Beneficiary to the payment of the Debt in such priority and proportions as Beneficiary in its sole discretion shall deem proper. In the event of any change in name, identity or structure of Grantor, Grantor shall notify Beneficiary thereof and promptly after request shall execute, file and record such UCC forms as are necessary to maintain the priority of Beneficiary's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Beneficiary shall require the filing or recording of additional UCC forms or continuation statements, Grantor shall, promptly after request, execute, file and record such UCC forms or continuation statements as Beneficiary shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Grantor's obligations under the Loan Documents.

13. **Actions and Proceedings.** Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Trust Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its sole discretion, decides should be brought to protect its or their interest in the Trust Property. Beneficiary shall, at its option, be subrogated to the lien of any deed of trust or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

14. **Marshalling and Other Matters.** Grantor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Trust Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Grantor, and on behalf of each and every person

acquiring any interest in or title to the Trust Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law. The lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Beneficiary of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Beneficiary to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Beneficiary may foreclose, or exercise any other remedy available to Beneficiary under other Loan Documents without first exercising or enforcing any of its remedies under this Deed of Trust, and any exercise of the rights and remedies of Beneficiary hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Beneficiary's rights and remedies thereunder.

15. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

16. **Inapplicable Provisions.** If any term, covenant or condition of this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, this Deed of Trust shall be construed without such provision.

17. **Headings.** The paragraph headings in this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. **Duplicate Originals.** This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

19. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in singular or plural form; and the word "***Grantor***" shall mean "each Grantor and any subsequent owner or owners of the Trust Property or any part thereof or any interest therein," the word "***Beneficiary***" shall mean "Beneficiary and any subsequent holder of the Note," the words "***Trust Property***" shall include any portion of the Trust Property and any interest therein, the word "***including***" means "including but not limited to" and the words "***attorneys' fees***" shall include any and all attorneys' fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Trust Property and Collateral and enforcing its rights hereunder.

20. **Homestead.** Grantor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Trust Property as against the collection of the Debt, or any part thereof.

21. **Assignments.** Beneficiary shall have the right to assign or transfer its rights under this Deed of Trust without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Beneficiary under this Deed of Trust.

22. **Waiver of Jury Trial.** GRANTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BENEFICIARY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GRANTOR.

23. **Consents.** Any consent or approval by Beneficiary in any single instance shall not be deemed or construed to be Beneficiary's consent or approval in any like matter arising at a subsequent date, and the failure of Beneficiary to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Beneficiary be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Beneficiary pursuant hereto shall be narrowly construed to be applicable only to Grantor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Beneficiary a venturer or partner with Grantor nor shall privity of contract be presumed to have been established with any such third party. If Beneficiary deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Grantor shall reimburse Beneficiary for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

24. **Loan Repayment and Defeasance.** Provided no Event of Default exists, the Lien of this Deed of Trust shall be terminated, released and reconveyed of record by Beneficiary (and the Trustee, to the extent required by law to effect a full and proper termination, release and reconveyance) prior to the Maturity Date only in accordance with the terms and provisions set forth in the Loan Agreement.

25. **Other Mortgages; No Election of Remedies.**

(a) The Debt is now or may hereafter be secured by one or more other mortgages, deeds of trust and other security agreements (collectively, as the same may be amended and in effect from time to time, are herein collectively called the "***Other Mortgages***"), which cover or will hereafter cover other properties that are or may be located in various states

(the “*Other Collateral*”). The Other Mortgages will secure the Debt and the performance of the other covenants and agreements of Borrowers set forth in the Loan Documents. Upon the occurrence of an Event of Default, Beneficiary may proceed under this Deed of Trust and/or any or all the Other Mortgages against either the Trust Property and/or any or all the Other Collateral in one or more parcels and in such manner and order as Beneficiary shall elect. Grantor hereby irrevocably waives and releases, to the extent permitted by law, and whether now or hereafter in force, any right to have the Trust Property and/or the Other Collateral marshaled upon any foreclosure of this Deed of Trust or any Other Mortgage.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Beneficiary in this Deed of Trust or the other Loan Documents, in the case of an Event of Default (i) Beneficiary shall have the right to pursue all of its rights and remedies under this Deed of Trust and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Beneficiary, in its sole and absolute discretion, shall determine from time to time, (ii) Beneficiary shall not be required to either marshal assets, sell the Trust Property and/or any Other Collateral in any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any “one action” or “election of remedies” law or rule with respect to the Trust Property and/or any Other Collateral, (iii) the exercise by Beneficiary of any remedies against any one item of Trust Property and/or any Other Collateral will not impede Beneficiary from subsequently or simultaneously exercising remedies against any other item of Trust Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to Beneficiary herein shall remain in full force and effect until Beneficiary has exhausted all of its remedies against the Trust Property and all Trust Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt, and (v) Beneficiary may resort for the payment of the Debt to any security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect and Beneficiary may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust.

(c) Without notice to or consent of Grantor and without impairment of the lien and rights created by this Deed of Trust, Beneficiary may, at any time (in its sole and absolute discretion, but Beneficiary shall have no obligation to), execute and deliver to Grantor a written instrument releasing all or a portion of the lien of this Deed of Trust as security for any or all of the obligations of Grantor now existing or hereafter arising under or in respect of the Note, the Loan Agreement and each of the other Loan Documents, whereupon following the execution and delivery by Beneficiary to Grantor of any such written instrument of release, this Deed of Trust shall no longer secure such obligations of Grantor so released.

26. Governing Law. This Deed of Trust shall be governed by, and be construed in accordance with, the laws of the state in which the Trust Property is located without regard to conflict of law provisions thereof.

27. **Exculpation.** The liability of Grantor hereunder is limited pursuant to Section 10.1 of the Loan Agreement.

28. **Trustee; Successor Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Trustee's gross negligence or willful misconduct. Trustee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers herein granted him upon the Trust Property for debts contracted or liability or damages or damages incurred in the management or operation of the Trust Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law). Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Beneficiary or if for any or no reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall, without any formality or notice to Grantor or any other person, have full power to appoint a substitute trustee and, if Beneficiary so elects, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Each appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Deed of Trust, and the description of the real property herein described, which instrument, executed and acknowledged by Beneficiary, shall (i) be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, (ii) duly assign and transfer all the estates, properties, rights, powers and trusts of Trustee so ceasing to act and (iii) be notice of such proper substitution and appointment to all parties in interest. In addition, such Trustee ceasing to act shall duly assign, transfer, and deliver any of the property and monies held by Trustee to the successor Trustee so appointed in its or his place. The Trustee may act in the execution of this trust and may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder, including without limitation, the transmittal and posting of any notices and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

PART II - STATE-SPECIFIC PROVISIONS

29. **Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Part II and the other terms and conditions of this Deed of Trust, the terms and conditions of this Part II shall control and be binding.

30. **Non-Agricultural Use.** None of the Trust Property is presently, or will during the term of this Deed of Trust, be used principally, or at all, for agricultural or farming purposes.

31. **Statutory Notice. PLEASE BE ADVISED THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

32. **Remedies.** In addition to all rights and remedies contained in Section 10 of this Deed of Trust, Beneficiary may, upon the occurrence of an Event of Default: (i) foreclose this Deed of Trust judicially, in the same manner as a mortgage; (ii) cause Trustee to exercise its power of sale in accordance with the provisions of this Deed of Trust and the Deed of Trust Act of the State of Washington, RCW Ch. 61.24, as now existing or hereafter amended; or (iii) sue on the Note in accordance with applicable law. To the extent permitted by law, including, without limitation, RCW Ch. 61.24.100, Beneficiary shall have the right to seek and obtain a deficiency judgment following the completion of a judicial foreclosure or a trustee's sale of all or part of the Trust Property. The procedure for exercise of the Trustee's power of sale shall be as follows: upon written request therefore by Beneficiary specifying the nature of the Event of Default, or the nature of the several Events of Default, and the amount or amounts due and owing, Trustee shall execute a written notice of breach and of its election to cause the Trust Property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to law. Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, Trustee, without demand on Grantor, shall sell the Trust Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Grantor agrees that such sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Trust Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Trust Property which may be personal property, Trustee shall have and exercise, at Beneficiary's sole election, all the rights and remedies of a secured party under the UCC. Whatever notice is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Trust Property, and from time to time thereafter may postpone such sale, as provided by statute. Trustee shall deliver to the purchaser its deed and bill of sale conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person other than Trustee, including Grantor or Beneficiary, may purchase at such sale. After deducting all costs, fees and expenses of Trustee, and of this Deed of Trust, including the cost of evidence of title search and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof not then repaid, with accrued interest at the Default Rate; all other sums then secured hereby; and the remainder, if any, to the clerk of the superior court of the county in which the sale took place, as provided in RCW 61.24.080.

33. **No “Mortgagee-in-Possession” Status.** Neither the assignment of Leases and Rents contained in this Deed of Trust, nor the exercise by Beneficiary of any of its rights or remedies under this Deed of Trust shall be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Trust Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Trust Property by any court at the request of Beneficiary or by agreement with Grantor, or the entering into possession of the Trust Property by such receiver, be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Trust Property.

34. **Reconveyance.** If the Debt is paid and all obligations secured by this Deed of Trust are fully performed in accordance with the terms of this Deed of Trust, the Note and the other Loan Documents, then Beneficiary agrees to request Trustee to reconvey the Trust Property and upon payment by Grantor of Trustee’s fees and all other sums owing to it under this Deed of Trust, Trustee will reconvey the Trust Property without warranty to the person or persons legally entitled thereto. The grantee in the reconveyance may be described as “the person or persons legally entitled thereto.” No reconveyance hereof shall impair Grantor’s warranties and indemnities contained herein.

35. **Obligations Not Personal.** The obligations evidenced hereby were not incurred primarily for personal, family or household purposes.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Grantor has executed this instrument as of the day and year first above written.

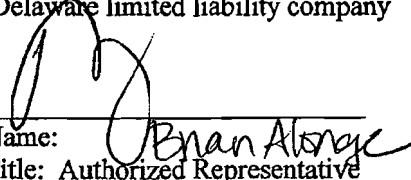
Grantor:

**NESBITT BELLEVUE PROPERTY
LLC, a Delaware limited liability company**

By:

Name:

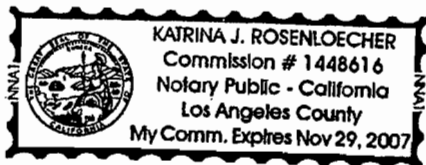
Title: Authorized Representative

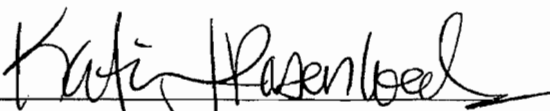
A handwritten signature in black ink, appearing to read "Brian Alonzo", is written over a horizontal line. The signature is cursive and somewhat stylized.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On December 22, 2005 before me, Katrina J. Rosenloecher, a notary public in and for said state, personally appeared Brian Alonge, personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS WHEREOF my hand and official seal.




Katrina J. Rosenloecher, notary public

My Commission Expires: 11-29-07

EXHIBIT A

Legal Description

PARCEL A:

LOT 4, CITY OF BELLEVUE SHORT PLAT NO. 85-33 RECORDED DECEMBER 3, 1986 UNDER RECORDING NO. 8612039001, IN KING COUNTY, WASHINGTON.

PARCEL B:

ALL OF LOT 3 AND THAT PORTION OF LOT 1, BLOCK IV, PLAT OF CC&F 1-90 BELLEVUE BUSINESS PARK DIVISION 4, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 128 OF PLATS, PAGES 86 THROUGH 88 INCLUSIVE, IN KING COUNTY, WASHINGTON, LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE.

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID LOT 1, SAID CORNER BEING ON THE SOUTHEASTERLY MARGIN OF 156TH AVENUE SOUTHEAST; THENCE ALONG SAID SOUTHEASTERLY MARGIN THE FOLLOWING DISTANCES; SOUTH 37°24'18" WEST A DISTANCE OF 0.55 FEET; SOUTH 40°38"00" WEST A DISTANCE OF 198.57 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF A 1525.50 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 4°15'39", AN ARC DISTANCE OF 113.44 FEET TO THE POINT OF BEGINNING; THENCE LEAVING SAID SOUTHEASTERLY MARGIN SOUTH 43°54'12" EAST A DISTANCE OF 127.50 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 1 AND THE TERMINUS OF SAID LINE.

(ALSO SHOWN AS LOT 3 OF CITY OF BELLEVUE BOUNDARY LINE ADJUSTMENT NO. 85-34, RECORDED AUGUST 12, 1986 UNDER RECORDING NO. 8608129008).

PARCEL C:

A SIGN EASEMENT OVER THAT PORTION OF LOT 2 BLOCK IV CC&F I-90 BELLEVUE BUSINESS PARK DIVISION 4, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 128 OF PLATS, PAGES 86 THROUGH 88, INCLUSIVE IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 2, SAID POINT BEING ON THE NORTHEASTERLY MARGIN OF THE FR-2 LINE OF PRIMARY STATE HIGHWAY NO. 2;

THENCE NORTH 10°23'49" EAST 35.40 FEET ALONG THE WESTERLY LINE OF SAID LOT 2;

THENCE SOUTH 36°02'08" EAST 24.45 FEET;

THENCE SOUTH 53°57'52" WEST 25.71 FEET TO THE POINT OF BEGINNING

PARCEL D:

AN EASEMENT FOR ELECTRICAL LINES 5 FEET IN WIDTH OVER LOT 2, BLOCK IV, CC&F I-90 BELLEVUE BUSINESS PARK DIVISION 4, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 128 OF PLATS PAGES 86 THROUGH 88 INCLUSIVE IN KING COUNTY, WASHINGTON, HAVING THE ENTIRE FEET OF SUCH WIDTH LYING TO THE LEFT OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 2;
THENCE ALONG THE NORTHERLY LINE OF SAID LOT 2 THE FOLLOWING COURSES:

1. SOUTH 46°05'48" WEST 3.00 FEET;
2. SOUTH 06°41'34" WEST 77.65 FEET;
3. SOUTH 53°57'53" WEST 142.78 FEET;
4. NORTH 42°08'56" WEST 150.86 FEET TO THE SOUTHEASTERLY MARGIN OF 156TH AVENUE SOUTHEAST;

THENCE SOUTH 53°57'52" WEST 171.07 FEET ALONG SAID SOUTHEASTERLY MARGIN TO THE TERMINUS OF SAID LINE.

THE SIDELINES OF THIS EASEMENT SHALL BE SHORTENED OR LENGTHENED AS NECESSARY TO INTERSECT THE NORTHEASTERLY LINE OF SAID LOT 2.

PARCEL E:

A SANITARY SEWER EASEMENT 10 FEET IN WIDTH OVER LOT 2, BLOCK IV, CC&F I-90 BELLEVUE BUSINESS PARK DIVISION 4, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 128 OF PLATS. PAGES 86 THROUGH 88, INCLUSIVE, IN KING COUNTY, WASHINGTON HAVING 5 FEET OF SUCH WIDTH LYING ON EACH SIDE OF THE FOLLOWING DESCRIBED EASEMENT CENTERLINE.

COMMENCING AT THE MOST NORTHEASTERLY CORNER OF THE ABOVE-DESCRIBED PARCEL;

THENCE NORTH 49°32'19" WEST 36.87 FEET ALONG THE NORTH LINE OF THE ABOVE-DESCRIBED PARCEL TO THE TRUE POINT OF BEGINNING FOR THIS EASEMENT;

THENCE SOUTH 03°41'44" EAST 29.25 FEET;

THENCE SOUTH 42°23'40" WEST 400.00 FEET;

THENCE SOUTH 15°32'47" WEST 39.26 FEET TO THE NORTHERLY MARGIN OF EASTGATE WAY AND THE TERMINUS OF SAID EASEMENT CENTERLINE.

THE SIDELINES OF THIS EASEMENT SHALL BE SHORTENED OR LENGTHENED AS NECESSARY TO INTERSECT AT ANGLE POINTS AND THE BOUNDARY LINE OF THE DESCRIBED PARCEL.

PARCEL F:

A NON-EXCLUSIVE PARKING EASEMENT AS CREATED BY RECIPROCAL PARKING AND EASEMENT AGREEMENT RECORDED FEBRUARY 10, 1989 UNDER RECORDING NUMBER 8902101139, IN KING COUNTY, WASHINGTON.

EXHIBIT

4

AFTER RECORDING,
RETURN TO:
Kaye Scholer LLP
425 Park Avenue
New York, New York 10022-3598
Attention: Stephen Gliatta, Esq.
File Matter No. 27764.0172

NESBITT LYNNWOOD PROPERTY LLC
(Grantor)

1ST AM ⁽²³⁾
199703G

to

FIRST AMERICAN TITLE INSURANCE COMPANY
(Trustee/Grantee)

for the Benefit of

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.
(Beneficiary/ Grantee)

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

Dated: As of January 9, 2006

Abbreviated Legal Description: Parcel 3, BSP Rec. 9102215001

SEC 21 TUN 27 N Rge 4E
Tax Parcel Number: 27-0421-004-058-00

Full Legal Description in Exhibit A

Washington

31185225.DOC

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Deed of Trust*"), made as of January 9, 2006, by **NESBITT LYNNWOOD PROPERTY LLC**, a Delaware limited liability company, having an office at 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405 ("*Grantor*"), to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a California corporation, having an address at 2101 Fourth Avenue, Suite 800, Seattle, Washington 98121 ("*Trustee*"), as Trustee, for the benefit of **GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.**, a Delaware corporation (together with its successors and assigns, hereinafter referred to as "*Beneficiary*"), having an address at 600 Steamboat Road, Greenwich, Connecticut 06830.

Grantor and certain affiliates of Grantor (together with Grantor, collectively, "*Borrowers*") and Beneficiary have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "*Loan Agreement*") pursuant to which Beneficiary is making a secured loan to Borrowers in the aggregate original principal amount of \$187,500,000 (the "*Loan*"). Capitalized terms used herein without definition are used as defined in the Loan Agreement. The Loan is evidenced by a note or notes dated the date hereof made by Borrowers to Beneficiary in such principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, collectively, the "*Note*").

To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Note, this Deed of Trust, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the "*Loan Documents*"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Grantor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "*Bankruptcy Code*"), and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "*Debt*"), Grantor has given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated and by these presents does hereby give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Trustee, in trust for the benefit of Beneficiary, **WITH POWER OF SALE**, the land described in Exhibit A (the "*Premises*"), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the "*Improvements*");

TOGETHER WITH: all right, title, interest and estate of Grantor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises,

the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "*Trust Property*"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor (including, without limitation, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, facsimile machines, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary hotel equipment, and other property of every kind and nature, tangible or intangible, owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "*Equipment*"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Grantor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Trust Property is located (the "*UCC*"), superior in lien to the lien of this Deed of Trust;

(c) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements relating thereto, including any guarantees, extensions, renewals, modifications or amendments thereof and all additional remainders, reversions, and other rights and estates appurtenant thereunder (hereinafter collectively referred to as the "*Leases*"); as used herein, the term "*Leases*" shall not include occupancy arrangements for customary hotel transactions in the ordinary course of Grantor's business conducted at the hotel located on the Trust Property, including nightly rentals of individual hotel rooms or suites, banquet room use and food and beverage services, and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, parking charges, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Grantor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as the "*Rents*"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Trust Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Trust Property;

(f) the right, in the name and on behalf of Grantor, to appear in and defend any action or proceeding brought with respect to the Trust Property and to commence any action or proceeding to protect the interest of Beneficiary in the Trust Property;

(g) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, franchise agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Trust Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Trust Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Trust Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "*Intangibles*"); and

(h) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Grantor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Deed of Trust shall automatically extend to all Rents acquired by the Grantor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

TO HAVE AND TO HOLD the Trust Property unto and to the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to Beneficiary the Debt at the time and in the manner provided in the Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Grantor represents and warrants to and covenants and agrees with Beneficiary as follows:

PART I - GENERAL PROVISIONS

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Grantor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Grantor (i) agrees to insure, repair, maintain and restore damage to the Trust Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the

Proceeds of Insurance and Awards for Condemnation shall be settled, held and applied in accordance with the Loan Agreement.

2. Leases and Rents.

(a) Grantor does hereby absolutely and unconditionally assign to Beneficiary all of Grantor's right, title and interest in all current and future Leases and Rents, it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment shall not be construed to bind Beneficiary to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Beneficiary. Nevertheless, subject to the terms of this paragraph, Beneficiary grants to Grantor a revocable license to operate and manage the Trust Property and to collect the Rents subject to the requirements of the Loan Agreement (including the deposit of Rents into the Clearing Account). Upon an Event of Default, without the need for notice or demand, the license granted to Grantor herein shall automatically be revoked, and Beneficiary shall immediately be entitled to possession of all Rents in the Clearing Account, the Deposit Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Beneficiary enters upon or takes control of the Trust Property. Grantor hereby grants and assigns to Beneficiary the right, at its option, upon revocation of the license granted herein, to enter upon the Trust Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of such license may be applied toward payment of the Debt in such priority and proportions as Beneficiary in its sole discretion shall deem proper.

(b) Grantor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.10 of the Loan Agreement.

3. Use of Trust Property. Grantor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Trust Property. If under applicable zoning provisions the use of the Trust Property as a hotel is or shall become a nonconforming use, Grantor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Beneficiary. Grantor shall not (i) change the use of the Trust Property as a hotel, (ii) permit or suffer to occur any waste on or to the Trust Property or (iii) take any steps to convert the Trust Property to a condominium or cooperative form of ownership.

4. Transfer or Encumbrance of the Trust Property.

(a) Grantor acknowledges that (i) Beneficiary has examined and relied on the creditworthiness and experience of the principals of Grantor in owning and operating properties such as the Trust Property in agreeing to make the Loan, (ii) Beneficiary will continue to rely on Grantor's ownership of the Trust Property as a means of maintaining the value of the Trust Property as security for the Debt, and (iii) Beneficiary has a valid interest in maintaining the

value of the Trust Property so as to ensure that, should Grantor default in the repayment of the Debt, Beneficiary can recover the Debt by a sale of the Trust Property. Grantor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Trust Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer or a Permitted Encumbrance.

(b) Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Transfer in violation of this Paragraph 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Trust Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Grantor agrees to bear and shall pay or reimburse Beneficiary on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Beneficiary in connection with the review, approval and documentation of any Permitted Transfer.

5. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Deed of Trust which imposes a tax, either directly or indirectly, on the Debt or Beneficiary's interest in the Trust Property, Grantor will pay such tax, with interest and penalties thereon, if any. If Beneficiary is advised by its counsel that the payment of such tax or interest and penalties by Grantor would be unlawful, taxable to Beneficiary or unenforceable, or would provide the basis for a defense of usury, then Beneficiary shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable. Provided no Event of Default has occurred and is continuing, any prepayment with respect to this Section 5 shall be without payment of the Yield Maintenance Premium.

6. **No Credits on Account of the Debt.** Grantor shall not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes or Other Charges assessed against the Trust Property, and no deduction shall otherwise be made or claimed from the assessed value of the Trust Property for real estate tax purposes by reason of this Deed of Trust or the Debt. If such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable. Provided no Event of Default has occurred and is continuing, any prepayment with respect to this Section 6 shall be without payment of the Yield Maintenance Premium.

7. **Further Acts, Etc.** Grantor shall, at its sole cost, do execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Beneficiary shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign

to Beneficiary, or for filing, registering or recording this Deed of Trust. Upon foreclosure, the appointment of a receiver or any other relevant action, Grantor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Trust Property. Grantor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary pursuant to this paragraph. Notwithstanding anything to the contrary in the immediately preceding sentence, Beneficiary shall not execute any document as attorney-in-fact of Grantor unless (x) Grantor shall have failed or refused to execute the same within five (5) Business Days after Beneficiary's request therefor, or (y) in Beneficiary's good faith determination it would be materially prejudiced by the delay involved in making such a request. Beneficiary shall give prompt notice to Grantor of any exercise of the power of attorney as provided for in this Paragraph 7, along with copies of all documents executed in connection therewith.

8. **Recording of Deed of Trust, Etc.** Grantor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, shall cause this Deed of Trust, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Trust Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Beneficiary in, the Trust Property. Grantor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Deed of Trust, any Deed of Trust supplemental hereto, any security instrument with respect to the Trust Property or any instrument of further assurance, except where prohibited by law so to do. Grantor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Deed of Trust.

9. **Right to Cure Defaults.** Upon the occurrence of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Trust Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Trust Property or to foreclose this Deed of Trust or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary, shall constitute a portion of the Debt, shall be secured by this Deed of Trust and the other Loan Documents and shall be due and payable to Beneficiary upon demand.

10. Remedies.

(a) Upon the occurrence of any Event of Default, Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Trust Property, by Beneficiary itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(i) declare the entire Debt to be immediately due and payable;

(ii) to the extent not prohibited by law, give such notice of default and of election to cause the Trust Property to be sold as may be required by law or as may be necessary to cause Trustee to exercise the power of sale granted herein; Trustee shall then record and give such notice of Trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Trust Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Grantor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Trustee, from time to time, may postpone or continue the sale of all or any portion of the Trust Property by public declaration at the time and place last appointed for the sale and no other notice of the postponed sale shall be required unless provided by applicable law. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, expressed or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof;

(iii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Deed of Trust, in which case the Trust Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iv) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Debt then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Debt not then due;

(v) sell for cash or upon credit the Trust Property and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(vi) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;

(vii) recover judgment on the Note either before, during or after any proceeding for the enforcement of this Deed of Trust;

(viii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Trust Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Grantor or of any person, firm or other entity liable for the payment of the Debt;

(ix) enforce Beneficiary's interest in the Leases and Rents and enter into or upon the Trust Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and employees therefrom, and thereupon Beneficiary may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Trust Property and conduct the business thereat; (B) complete any construction on the Trust Property in such manner and form as Beneficiary deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Trust Property; (D) exercise all rights and powers of Grantor with respect to the Trust Property, whether in the name of Grantor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Trust Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with the Trust Property, as well as just and reasonable compensation for the services of Beneficiary, and its counsel, agents and employees;

(x) require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Trust Property occupied by Grantor, and require Grantor to vacate and surrender possession of the Trust Property to Beneficiary or to such receiver, and, in default thereof, evict Grantor by summary proceedings or otherwise; or

(xi) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Grantor relating to the Trust Property; provided that no UCC sale shall occur except in connection with the sale or other disposition of the Trust Property, unless Grantor has taken action to prevent the sale or other disposition of the Trust Property or Grantor or any of its Affiliates has taken any other action, which in Beneficiary's judgment is intended or is reasonably likely to hinder, delay, impair or prevent

Beneficiary from enforcing any of its rights or remedies under or pursuant to the Loan Documents or at law or in equity.

In the event of a sale, by foreclosure or otherwise, of less than all of the Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of the Trust Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 10, together with any other sums which then may be held by Beneficiary under this Deed of Trust, whether under the provisions of this paragraph or otherwise, shall be applied by Beneficiary to the payment of the Debt in such priority and proportion as Beneficiary in its sole discretion shall deem proper.

(c) Beneficiary may adjourn from time to time any sale by it to be made under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Beneficiary, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Beneficiary, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Beneficiary is hereby irrevocably appointed the true and lawful attorney of Grantor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Trust Property and rights so sold and for that purpose Beneficiary may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Paragraph 10, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Grantor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Grantor.

(e) Upon any sale made under or by virtue of this Paragraph 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Trust Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust or any other Loan Document.

(f) No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Trust Property or upon any other property of Grantor shall affect in any manner or to any extent the lien of this Deed of Trust upon the Trust Property or any part thereof, or any liens, rights, powers or remedies of Beneficiary hereunder, but such liens, rights, powers and remedies of Beneficiary shall continue unimpaired as before.

(g) Beneficiary may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 10 at any time before the conclusion thereof, as determined in Beneficiary's sole discretion and without prejudice to Beneficiary.

(h) Beneficiary may resort to any remedies and the security given by this Deed of Trust or in any other Loan Document in whole or in part, and in such portions and in such order as determined by Beneficiary's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Beneficiary to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Beneficiary of any payment after the occurrence of any Event of Default and no payment by Beneficiary of any obligation for which Grantor is liable hereunder shall be deemed to waive or cure any Event of Default, or Grantor's liability to pay such obligation. No sale of all or any portion of the Trust Property, no forbearance on the part of Beneficiary, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Beneficiary to Grantor, shall operate to release or in any manner affect the interest of Beneficiary in the remaining Trust Property or the liability of Grantor to pay the Debt. No waiver by Beneficiary shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Beneficiary in exercising its rights and remedies under this Paragraph 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Grantor immediately upon notice from Beneficiary, with interest at the Default Rate for the period after notice from Beneficiary, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Deed of Trust.

(i) The interests and rights of Beneficiary under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Beneficiary may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant with respect to the Trust Property or any portion thereof or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

11. Right of Entry. In addition to any other rights or remedies granted under this Deed of Trust, Beneficiary and its agents shall have the right to enter and inspect the Trust Property at any reasonable time during the term of this Deed of Trust. The cost of such inspections or audits shall be borne by Grantor should Beneficiary determine that an Event of

Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Beneficiary. The cost of such inspections, if not paid for by Grantor following demand, may be added to the principal balance of the sums due under the Note and this Deed of Trust and shall bear interest thereafter until paid at the Default Rate.

12. **Security Agreement.** This Deed of Trust is both a real property deed of trust and a “security agreement” within the meaning of the UCC. The Trust Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Trust Property. Grantor by executing and delivering this Deed of Trust has granted and hereby grants to Beneficiary, as security for the Debt, a security interest in the Trust Property to the full extent that the Trust Property may be subject to the UCC (such portion of the Trust Property so subject to the UCC being called in this paragraph the “*Collateral*”). This Deed of Trust shall also constitute a “fixture filing” for the purposes of the UCC. As such, this Deed of Trust covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Deed of Trust. If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral; provided that no UCC sale shall occur except in connection with the sale or other disposition of the Trust Property, unless Grantor has taken action to prevent the sale or other disposition of the Trust Property or Grantor or any of its Affiliates has taken any other action, which in Beneficiary’s judgment is intended or is reasonably likely to hinder, delay, impair or prevent Beneficiary from enforcing any of its rights or remedies under or pursuant to the Loan Documents or at law or in equity. Upon request or demand of Beneficiary, Grantor shall at its expense assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Grantor shall pay to Beneficiary on demand any and all expenses, including reasonable attorneys’ fees and disbursements, incurred or paid by Beneficiary in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral, sent to Grantor in accordance with the provisions hereof at least ten days prior to such action, shall constitute commercially reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Beneficiary to the payment of the Debt in such priority and proportions as Beneficiary in its sole discretion shall deem proper. In the event of any change in name, identity or structure of Grantor, Grantor shall notify Beneficiary thereof and promptly after request shall execute, file and record such UCC forms as are necessary to maintain the priority of Beneficiary’s lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Beneficiary shall require the filing or recording of additional UCC forms or continuation statements, Grantor shall, promptly after request, execute, file and record such UCC forms or continuation statements as Beneficiary shall deem necessary, and shall pay all expenses

and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Grantor's obligations under the Loan Documents.

13. **Actions and Proceedings.** Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Trust Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its sole discretion, decides should be brought to protect its or their interest in the Trust Property. Beneficiary shall, at its option, be subrogated to the lien of any deed of trust or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

14. **Marshalling and Other Matters.** Grantor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Trust Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Trust Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law. The lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Beneficiary of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Beneficiary to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Beneficiary may foreclose, or exercise any other remedy available to Beneficiary under other Loan Documents without first exercising or enforcing any of its remedies under this Deed of Trust, and any exercise of the rights and remedies of Beneficiary hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Beneficiary's rights and remedies thereunder.

15. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

16. **Inapplicable Provisions.** If any term, covenant or condition of this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, this Deed of Trust shall be construed without such provision.

17. **Headings.** The paragraph headings in this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. **Duplicate Originals.** This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

19. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in singular or plural form; and the word "**Grantor**" shall mean "each Grantor and any subsequent owner or owners of the Trust Property or any part thereof or any interest therein," the word "**Beneficiary**" shall mean "Beneficiary and any subsequent holder of the Note," the words "**Trust Property**" shall include any portion of the Trust Property and any interest therein, the word "**including**" means "including but not limited to" and the words "**attorneys' fees**" shall include any and all attorneys' fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Trust Property and Collateral and enforcing its rights hereunder.

20. **Homestead.** Grantor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Trust Property as against the collection of the Debt, or any part thereof.

21. **Assignments.** Beneficiary shall have the right to assign or transfer its rights under this Deed of Trust without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Beneficiary under this Deed of Trust.

22. **Waiver of Jury Trial.** GRANTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BENEFICIARY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GRANTOR.

23. **Consents.** Any consent or approval by Beneficiary in any single instance shall not be deemed or construed to be Beneficiary's consent or approval in any like matter arising at a subsequent date, and the failure of Beneficiary to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Beneficiary be estopped from exercising such right,

power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Beneficiary pursuant hereto shall be narrowly construed to be applicable only to Grantor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Beneficiary a venturer or partner with Grantor nor shall privity of contract be presumed to have been established with any such third party. If Beneficiary deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Grantor shall reimburse Beneficiary for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

24. Loan Repayment and Defeasance. Provided no Event of Default exists, the Lien of this Deed of Trust shall be terminated, released and reconveyed of record by Beneficiary (and the Trustee, to the extent required by law to effect a full and proper termination, release and reconveyance) prior to the Maturity Date only in accordance with the terms and provisions set forth in the Loan Agreement.

25. Other Mortgages; No Election of Remedies.

(a) The Debt is now or may hereafter be secured by one or more other mortgages, deeds of trust and other security agreements (collectively, as the same may be amended and in effect from time to time, are herein collectively called the "***Other Mortgages***"), which cover or will hereafter cover other properties that are or may be located in various states (the "***Other Collateral***"). The Other Mortgages will secure the Debt and the performance of the other covenants and agreements of Borrowers set forth in the Loan Documents. Upon the occurrence of an Event of Default, Beneficiary may proceed under this Deed of Trust and/or any or all the Other Mortgages against either the Trust Property and/or any or all the Other Collateral in one or more parcels and in such manner and order as Beneficiary shall elect. Grantor hereby irrevocably waives and releases, to the extent permitted by law, and whether now or hereafter in force, any right to have the Trust Property and/or the Other Collateral marshaled upon any foreclosure of this Deed of Trust or any Other Mortgage.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Beneficiary in this Deed of Trust or the other Loan Documents, in the case of an Event of Default (i) Beneficiary shall have the right to pursue all of its rights and remedies under this Deed of Trust and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Beneficiary, in its sole and absolute discretion, shall determine from time to time, (ii) Beneficiary shall not be required to either marshal assets, sell the Trust Property and/or any Other Collateral in any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any "one action" or "election of remedies" law or rule with respect to the Trust Property and/or any Other Collateral, (iii) the exercise by Beneficiary of any remedies against any one item of Trust Property and/or any Other Collateral will not impede

Beneficiary from subsequently or simultaneously exercising remedies against any other item of Trust Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to Beneficiary herein shall remain in full force and effect until Beneficiary has exhausted all of its remedies against the Trust Property and all Trust Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt, and (v) Beneficiary may resort for the payment of the Debt to any security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect and Beneficiary may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust.

(c) Without notice to or consent of Grantor and without impairment of the lien and rights created by this Deed of Trust, Beneficiary may, at any time (in its sole and absolute discretion, but Beneficiary shall have no obligation to), execute and deliver to Grantor a written instrument releasing all or a portion of the lien of this Deed of Trust as security for any or all of the obligations of Grantor now existing or hereafter arising under or in respect of the Note, the Loan Agreement and each of the other Loan Documents, whereupon following the execution and delivery by Beneficiary to Grantor of any such written instrument of release, this Deed of Trust shall no longer secure such obligations of Grantor so released.

26. Governing Law. This Deed of Trust shall be governed by, and be construed in accordance with, the laws of the state in which the Trust Property is located without regard to conflict of law provisions thereof.

27. Exculpation. The liability of Grantor hereunder is limited pursuant to Section 10.1 of the Loan Agreement.

28. Trustee; Successor Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Trustee's gross negligence or willful misconduct. Trustee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers herein granted him upon the Trust Property for debts contracted or liability or damages or damages incurred in the management or operation of the Trust Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law). Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Beneficiary or if for any or no reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee

named herein, or any prior successor or substitute trustee, Beneficiary shall, without any formality or notice to Grantor or any other person, have full power to appoint a substitute trustee and, if Beneficiary so elects, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Each appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Deed of Trust, and the description of the real property herein described, which instrument, executed and acknowledged by Beneficiary, shall (i) be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, (ii) duly assign and transfer all the estates, properties, rights, powers and trusts of Trustee so ceasing to act and (iii) be notice of such proper substitution and appointment to all parties in interest. In addition, such Trustee ceasing to act shall duly assign, transfer, and deliver any of the property and monies held by Trustee to the successor Trustee so appointed in its or his place. The Trustee may act in the execution of this trust and may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder, including without limitation, the transmittal and posting of any notices and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

PART II - STATE-SPECIFIC PROVISIONS

29. **Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Part II and the other terms and conditions of this Deed of Trust, the terms and conditions of this Part II shall control and be binding.

30. **Non-Agricultural Use.** None of the Trust Property is presently, or will during the term of this Deed of Trust, be used principally, or at all, for agricultural or farming purposes.

31. **Statutory Notice. PLEASE BE ADVISED THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

32. **Remedies.** In addition to all rights and remedies contained in Section 10 of this Deed of Trust, Beneficiary may, upon the occurrence of an Event of Default: (i) foreclose this Deed of Trust judicially, in the same manner as a mortgage; (ii) cause Trustee to exercise its power of sale in accordance with the provisions of this Deed of Trust and the Deed of Trust Act of the State of Washington, RCW Ch. 61.24, as now existing or hereafter amended; or (iii) sue on the Note in accordance with applicable law. To the extent permitted by law, including, without limitation, RCW Ch. 61.24.100, Beneficiary shall have the right to seek and obtain a deficiency judgment following the completion of a judicial foreclosure or a trustee's sale of all or part of the Trust Property. The procedure for exercise of the Trustee's power of sale shall be as follows: upon written request therefore by Beneficiary specifying the nature of the Event of Default, or the nature of the several Events of Default, and the amount or amounts due and

owing, Trustee shall execute a written notice of breach and of its election to cause the Trust Property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to law. Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, Trustee, without demand on Grantor, shall sell the Trust Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Grantor agrees that such sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Trust Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Trust Property which may be personal property, Trustee shall have and exercise, at Beneficiary's sole election, all the rights and remedies of a secured party under the UCC. Whatever notice is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Trust Property, and from time to time thereafter may postpone such sale, as provided by statute. Trustee shall deliver to the purchaser its deed and bill of sale conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person other than Trustee, including Grantor or Beneficiary, may purchase at such sale. After deducting all costs, fees and expenses of Trustee, and of this Deed of Trust, including the cost of evidence of title search and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof not then repaid, with accrued interest at the Default Rate; all other sums then secured hereby; and the remainder, if any, to the clerk of the superior court of the county in which the sale took place, as provided in RCW 61.24.080.

33. **No "Mortgagee-in-Possession" Status.** Neither the assignment of Leases and Rents contained in this Deed of Trust, nor the exercise by Beneficiary of any of its rights or remedies under this Deed of Trust shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Trust Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Trust Property by any court at the request of Beneficiary or by agreement with Grantor, or the entering into possession of the Trust Property by such receiver, be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Trust Property.

34. **Reconveyance.** If the Debt is paid and all obligations secured by this Deed of Trust are fully performed in accordance with the terms of this Deed of Trust, the Note and the other Loan Documents, then Beneficiary agrees to request Trustee to reconvey the Trust Property and upon payment by Grantor of Trustee's fees and all other sums owing to it under this Deed of Trust, Trustee will reconvey the Trust Property without warranty to the person or persons legally entitled thereto. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto." No reconveyance hereof shall impair Grantor's warranties and indemnities contained herein.

35. **Obligations Not Personal.** The obligations evidenced hereby were not incurred primarily for personal, family or household purposes.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Grantor has executed this instrument as of the day and year first above written.

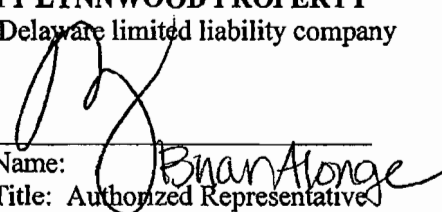
Grantor:

**NESBITT LYNNWOOD PROPERTY
LLC, a Delaware limited liability company**

By:

Name:

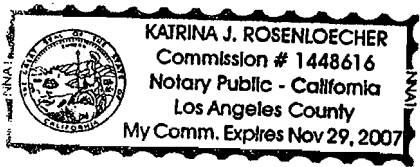
Title: Authorized Representative

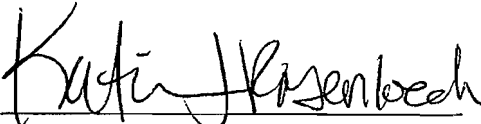
A handwritten signature in black ink, appearing to read "Brian Alonge", is written over a horizontal line. The signature is cursive and somewhat stylized.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On December 22, 2005 before me, Katrina J. Rosenloecheer, a notary public in and for said state, personally appeared Brian Alonge, personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS WHEREOF my hand and official seal.




Katrina J. Rosenloecheer, notary public

My Commission Expires: 11-29-07

EXHIBIT A

Legal Description

PARCEL A:

PARCEL 3 OF THAT CERTAIN BINDING SITE PLAN SURVEY RECORDED FEBRUARY 21, 1991, UNDER RECORDING NO. 9102215001, SNOHOMISH COUNTY, WASHINGTON;

PARCEL B:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS TRACT B OF SAID SURVEY AS ESTABLISHED BY DECLARATION OF EASEMENT RECORDED JANUARY 15, 1991 UNDER RECORDING NO. 9101150181, IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL C:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER AND UPON THE COMMON AREA AS ESTABLISHED AND DESCRIBED IN DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS RECORDED FEBRUARY 25, 1991 UNDER RECORDING NO. 9102250309, AND AS AMENDED BY INSTRUMENT RECORDED APRIL 23, 1992 UNDER RECORDING NO. 9204230640 AND BY INSTRUMENT RECORDED JUNE 25, 1992 UNDER RECORDING NO. 9206250231, IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL D:

A NON-EXCLUSIVE EASEMENT FOR PARKING NON COMMERCIAL AUTOMOBILES AND PEDESTRIAN AND VEHICULAR ACCESS ON A PORTION OF PARCEL 2 OF SAID BINDING SITE PLAN RECORDED FEBRUARY 21, 1991 UNDER RECORDING NO. 9102215001, AS ESTABLISHED BY RECIPROCAL PARKING AND EASEMENT AGREEMENT RECORDED FEBRUARY 25, 1991 UNDER RECORDING NO. 9102250317, IN SNOHOMISH COUNTY, WASHINGTON.