

Agreement, and repayment thereof, together with interest thereon at the Applicable Interest Rate and shall be secured by the Security Instrument and other Collateral given for the Loan. Lender will make Project Future Advances to Borrower in accordance with the procedures, terms and conditions set forth in the Master Disbursement Agreement. In the event that the Master Disbursement Agreement is terminated during the term of the Loan, Lender shall continue to make Project Future Advances in accordance with the same procedures, terms and conditions contained in the Master Disbursement Agreement.

(d) Debt Service Advance.

(i) Debt Service Advance Amount and Use. \$44,600,000 of the Loan (the "Maximum Debt Service Advance Amount") will not be disbursed as of the Closing Date, but thereafter shall, subject to the conditions set forth in this Section 2.1.2(d) and Article 3 hereof, be advanced by Lender from time to time prior to the Maturity Date (each, a "Debt Service Advance") for the purpose of the payment of Monthly Debt Service Payment Amounts in the event of a shortfall between revenue and expenses at the Property for a specific month (a "Shortfall"). Each Debt Service Advance shall be considered an advance of the Loan, shall be added to the unpaid principal balance of the Loan as of the day such Debt Service Advance is made for purposes of Borrower's payment obligations under this Agreement, and repayment thereof, together with interest thereon at the Applicable Interest Rate and shall be secured by the Security Instrument and other Collateral given for the Loan.

(ii) Debt Service Advance on Payment Date. Lender shall, provided Lender receives written request in the form of Exhibit A (an "Advance Request") from Borrower (together with such evidence of compliance of this Section 2.1.2(d) and 2.1.2(e) hereof as Lender may reasonably request) delivered not later than five (5) Business Days prior to the pending Payment Date, make a Debt Service Advance to Borrower on such Payment Date in the amount requested by Borrower, not exceeding the actual shortfall in revenues generated by the Property in such month, for Borrower to pay, in full, the Monthly Debt Service Payment Amount due from Borrower under the Loan on such Payment Date in accordance with this Agreement. Borrower hereby authorizes Lender to, and Lender agrees that it shall (unless prohibited by applicable laws, rules or regulations), apply any and all Debt Service Advances made by Lender on the applicable Payment Date towards the payment of the Monthly Debt Service Payment Amount then due from Borrower. Lender's failure to make a Debt Service Advance shall not relieve Borrower of its obligation to pay all amounts due Lender in accordance with this Agreement on any Payment Date. Notwithstanding the foregoing, Lender acknowledges that so long as (A) Borrower has timely requested a Debt Service Advance in an amount sufficient to pay the applicable Monthly Debt Service Payment Amount due from Borrower, (B) the terms and conditions set forth in this Section 2.1.2(d) and Section 2.1.2(e) have been satisfied and (C) Borrower is otherwise entitled to the requested Debt Service Advance, it shall not be a default or an Event of Default (and no late charge or default interest shall be due in connection therewith) in the event Lender fails to make such a Debt Service

Advance or to apply the same as required pursuant to this Section 2.1.2(d). Borrower acknowledges that Lender has no obligation to advance more than the remaining balance of the Maximum Debt Service Advance Amount if such amount is less than the full payment due or requested.

(iii) Reconciliation of Debt Service Advances. To evidence the Debt Service Advances made by Lender and the application thereof to Monthly Debt Service Payment Amounts due from Borrower on a Payment Date, Lender shall make appropriate entries on Lender's books and records.

(iv) Debt Service Advances. Provided no Event of Default shall exist on the date of the request for the Debt Service Advance or on the date the disbursement is actually made and subject to the additional conditions set forth in Section 2.1.2(e), Lender shall, upon written request made in accordance with Section 2.1.2(d)(ii), make Debt Service Advances upon the satisfaction by Borrower of the following conditions:

(A) Absence of Liens. With respect to each Debt Service Advance, Borrower shall deliver to Lender CLTA 122 endorsement to the Title Insurance Policy in form and substance reasonably acceptable to Lender insuring the priority of the lien of the Security Instrument (subject only to Permitted Encumbrances) in the amount of the then outstanding principal balance of the Loan (after giving effect to the funding of the applicable Debt Service Advance).

(B) Responsible Officer Certificate. Borrower shall deliver an Officer's Certificate certifying that:

(1) the requirements of this Section 2.1.2(d) have been satisfied; and

(2) all information stated in the Advance Request is true and correct in all material respects, each attachment to the Advance Request is correct and complete, and if the attachment is a copy of the original, that it is a true and an accurate reproduction of the original.

(C) Borrower shall not submit a request for, and Lender shall not be required to make, (x) more than one (1) Debt Service Advance during any calendar month and (y) any Debt Service Advance for less than \$250,000.

(e) Additional Conditions with Respect to Future Advances

(i) If the date of any Future Advance is a day other than a Payment Date, Borrower shall make a payment to Lender on the next succeeding Payment Date in an amount equal to the sum of (A) the interest accruing on the Future Advance from and after the date of the making of the Future Advance through and

including the end of the Interest Period in which the Future Advance is made and (B) the monthly payment of interest that would have been due on such next succeeding Payment Date had the Future Advance not been made. If the date of the Future Advance is a Payment Date, Borrower shall make a payment to Lender on the next succeeding Payment Date in an amount equal to the interest accruing on the outstanding principal balance of the Loan (after giving effect to the Future Advance) from and after the date of the making of the Future Advance through and including the end of the Interest Period in which the Future Advance is made.

(ii) Lender's obligations to perform in accordance with this Section 2.1.2 and to make any Future Advance in accordance with the terms and provisions of this Agreement or the Master Disbursement Agreement are an independent contract made by Lender to Borrower separate and apart from any other obligation of Lender to Borrower under the other provisions of this Agreement and the other Loan Documents. The obligations of Borrower under this Agreement and the other Loan Documents shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Borrower, or any other party, against Lender by reason of Lender's failure to perform its obligations under this Section 2.1.2.

(iii) Subject to the terms of Section 3.5.1 of the Master Disbursement Agreement with respect to Future Advances for Shared Costs, Lender shall have no obligation to advance any Future Advance at any time during which an Event of Default exists. The making of any advance by Lender at the time when a default or Event of Default has occurred and is then continuing shall not be deemed a waiver or cure by Lender of that default or Event of Default, nor shall Lender's rights and remedies be prejudiced in any manner thereby.

2.1.3 The Note, Security Instrument and Loan Documents.

The Loan shall be evidenced by the Note and secured by the Security Instrument, the Assignment of Leases and the other Loan Documents.

2.1.4 Use of Proceeds.

Borrower shall use the proceeds of the Initial Advance to (a) repay and discharge any existing loans relating to the Property (if any), (b) pay all past-due Basic Carrying Costs, if any, with respect to the Property, (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, or (d) fund any working capital requirements of the Property, including with respect to Basic Carrying Costs and (e) fund any Shared Costs or costs incurred with respect to tenant improvement work or leasing commissions and (f) fund any required equity contributions. The balance of the Initial Advance, if any, shall be distributed to Borrower. Borrower shall use the proceeds of each Future Advance in accordance with the terms of this Agreement.

Section 2.2 Interest; Loan Payments; Late Payment Charge.

2.2.1 Payments.

(a) Interest. Interest on the outstanding principal balance of the Loan shall accrue from the Closing Date to the end of the Interest Period in which the Maturity Date occurs at the Applicable Interest Rate. Monthly installments of interest only shall be paid on each Payment Date commencing on July 9, 2007 and on each subsequent Payment Date thereafter up to and including the Maturity Date. Interest on the outstanding principal amount of the Loan from and including the Closing Date through June 8, 2007 shall be paid by Borrower on the Closing Date. The outstanding principal balance of the Loan together with all accrued and unpaid interest thereon shall be due and payable on the Maturity Date.

(b) Reserved.

(c) Extension of the Maturity Date. Borrower shall have the option to extend the term of the Loan beyond the initial Maturity Date for two (2) successive terms (each, an "Extension Option") of ten months each (each, an "Extension Period") to (x) the Payment Date occurring in August, 2011, and (y) the Payment Date occurring in June, 2012 (each such date, the "Extended Maturity Date"), respectively, and, as to each Extension Option, upon satisfaction of the following terms and conditions:

(i) no Event of Default shall have occurred and be continuing at the time the applicable Extension Option is exercised and on the date that the applicable Extension Period is commenced;

(ii) Borrower shall notify Lender of its irrevocable election to extend the Maturity Date as aforesaid not earlier than one hundred twenty (120) days and no later than thirty (30) days prior to the then applicable Maturity Date;

(iii) Borrower shall obtain and deliver to Lender prior to exercise of such Extension Option, one or more Replacement Interest Rate Cap Agreements, which Replacement Interest Rate Cap Agreements shall be effective commencing on the first day of such Extension Option and shall have a maturity date not earlier than the next succeeding Extended Maturity Date;

(iv) in connection with each Extension Option, Borrower shall have delivered to Lender together with its notice pursuant to subsection (c)(ii) of this Section 2.2.1 and as of the commencement of the applicable Extension Option, an Officer's Certificate in form reasonably acceptable to the Lender certifying that each of the representations and warranties of Borrower contained in the Loan Documents is true, complete and correct in all material respects as of the date of such Officer's Certificate except to the extent such representations and warranties are matters which by their nature can no longer be true and correct as a result of the passage of time and/or except to the extent the failure of such representation or warranty to be true and correct would not result in a Material Adverse Effect;

(v) in connection with the exercise of each Extension Option, Borrower shall have paid to Lender the Extension Fee; and

(vi) the Mezzanine Extension Option corresponding to the applicable Extension Period shall have been exercised in accordance with the terms of the Mezzanine Loan Agreement; and

(vii) Borrower shall deposit into an account with Lender (the "Debt Service Reserve Account") such amount (after giving credit to (A) income determined by Lender to be derived, during the applicable Extension Period, from Leases that were executed in accordance with the terms of this Agreement or which were otherwise approved by Lender, in each case, prior to the applicable Extension Period and (B) any excess amounts that will exist in such Debt Service Reserve Account, if any, on the date immediately preceding the commencement of the applicable Extension Period) that Lender reasonably estimates (using an interest rate equal to the Strike Rate plus the Eurodollar Rate Margin) will be required to pay all Monthly Debt Service Payment Amounts ensuing over the applicable Extension Period.

(d) All references in this Agreement and in the other Loan Documents to the Maturity Date shall mean the applicable Extended Maturity Date in the event the applicable Extension Option is exercised.

(e) All payments and other amounts due under the Note, this Agreement and the other Loan Documents shall be made without any setoff, defense or irrespective of, and without deduction for, counterclaims.

2.2.2 Interest Calculation.

Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate equal to the Applicable Interest Rate divided by three hundred sixty (360) by (c) the outstanding principal balance.

2.2.3 Eurodollar Rate Unascertainable; Illegality; Increased Costs.

(a) (i) In the event that Lender shall have determined (which determination shall be conclusive and binding upon Borrower absent manifest error) that by reason of circumstances affecting the interbank eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, then Lender shall forthwith give notice by telephone of such determination, to Borrower at least one (1) Business Day prior to the last day of the related Interest Period, with a written confirmation of such determination promptly thereafter. If such notice is given, the Loan shall bear interest at the Adjusted Prime Rate beginning on the first day of the next succeeding Interest Period. (ii) If, pursuant to the terms of this Section 2.2.3(a), the Loan is bearing interest at the Adjusted Prime Rate and Lender shall determine (which determination shall be conclusive and binding upon Borrower absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion shall no longer be applicable, Lender shall give notice thereof to Borrower by telephone of such determination, confirmed in writing, to Borrower as soon as reasonably practical, but in no event later than one (1) Business Day prior to the last

day of the then current Interest Period. If such notice is given, the Loan shall bear interest at the Eurodollar Rate beginning on the first day of the next succeeding Interest Period. Notwithstanding any provision of this Agreement to the contrary, in no event shall Borrower have the right to elect to have the Loan bear interest at either the Eurodollar Rate or the Adjusted Prime Rate.

(b) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Lender or any Co-Lender in good faith to make or maintain the portion of the Loan bearing interest at the Eurodollar Rate and such requirement or change is generally applicable to all similarly situated lenders, (I) the obligation of Lender or such Co-Lender hereunder to make the Loan bearing interest at the Eurodollar Rate shall be canceled forthwith and (II) the Loan shall automatically bear interest at the Adjusted Prime Rate on the first day of the immediately succeeding Interest Period or within such earlier period as required by Applicable Law. Borrower hereby agrees promptly to pay Lender or any Co-Lender (within ten (10) days of Lender's or any Co-Lender's written demand therefor), any additional amounts necessary to compensate Lender or any Co-Lender for any reasonable costs incurred by Lender or such Co-Lender in making any conversion in accordance with this Agreement, including, without limitation, any interest or fees payable by Lender or such Co-Lender to lenders of funds obtained by it in order to make or maintain the Loan hereunder. Upon written demand from Borrower, Lender or the applicable Co-Lender shall demonstrate in reasonable detail the circumstances giving rise to Lender's or such Co-Lender's determination and the calculation substantiating the Adjusted Prime Rate and any additional costs incurred by Lender or such Co-Lender in making the conversion. Lender's or Co-Lender's written notice of such costs, as certified to Borrower, shall be conclusive absent manifest error.

(c) In the event that any change in any requirement of any Applicable Law or in the interpretation or application thereof, or compliance in good faith by Lender or any Co-Lender with any request or directive (whether or not having the force of law) hereafter issued from any Governmental Authority which is generally applicable to all Lenders subject to such Governmental Authority's jurisdiction:

(i) shall hereafter impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of Lender or any Co-Lender which is not otherwise included in the determination of LIBOR hereunder;

(ii) shall, if the Loan is then bearing interest at the Eurodollar Rate, hereafter have the effect of reducing the rate of return on Lender's or any Co-Lender's capital as a consequence of its obligations hereunder to a level below that which Lender or any Co-Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's or any Co-Lender's policies with respect to capital adequacy) by any amount deemed by Lender or any Co-Lender to be material; or

(iii) shall, if the Loan is then bearing interest at the Eurodollar Rate, hereafter impose on Lender or any Co-Lender any other condition, the result of which is to increase the cost to Lender or such Co-Lender of making, renewing or maintaining loans or extensions of credit or to reduce any amount receivable hereunder;

then, in any such case, Borrower shall promptly pay Lender or such Co-Lender (within ten (10) days of Lender's or such Co-Lender's written demand therefor), any additional amounts necessary to compensate Lender or such Co-Lender for such additional cost or reduced amount receivable which Lender or such Co-Lender deems to be material. If Lender or any Co-Lender becomes entitled to claim any additional amounts pursuant to this Section 2.2.3(c), Lender and such Co-Lender shall provide Borrower with written notice specifying in reasonable detail the event or circumstance by reason of which it has become so entitled and the additional amount required to fully compensate Lender and such Co-Lender for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence submitted by Lender or such Co-Lender to Borrower shall be conclusive absent manifest error. This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under the Note, this Agreement and the other Loan Documents.

(d) Borrower agrees to indemnify Lender and the Co-Lenders and to hold Lender and the Co-Lenders harmless from any loss or expense which Lender or any Co-Lender actually sustains or incurs as a consequence of (I) any default by Borrower in payment of the principal of or interest on the Loan beyond applicable notice and cure periods (if any) while bearing interest at the Eurodollar Rate, including, without limitation, any such loss or expense arising from interest or fees payable by Lender or any Co-Lenders to lenders of funds obtained by it in order to maintain the Eurodollar Rate, (II) any prepayment (whether voluntary or mandatory) of the Loan on a day that is not the day immediately following the last day of an Interest Period with respect thereto and (III) the conversion (for any reason whatsoever, whether voluntary or involuntary) of the Applicable Interest Rate from the Eurodollar Rate to the Adjusted Prime Rate with respect to any portion of the outstanding principal amount of the Loan then bearing interest at the Eurodollar Rate on a date other than the Payment Date immediately following the last day of an Interest Period, including, without limitation, such loss or expenses arising from interest or fees payable by Lender or any Co-Lender to lenders of funds obtained by it in order to maintain the Eurodollar Rate hereunder (the amounts referred to in clauses (I), (II) and (III) are herein referred to collectively as the "Breakage Costs"). This provision shall survive payment of the Note and the satisfaction of all other obligations of Borrower under this Agreement and the other Loan Documents. Anything to the contrary contained herein notwithstanding, Borrower shall not be obligated to pay any Breakage Costs in connection with a prepayment resulting from casualty or condemnation.

2.2.4 Payment on Maturity Date.

Borrower shall pay to Lender on the Maturity Date the outstanding principal balance, all accrued and unpaid interest thereon and all other amounts due hereunder and under the Note, the Security Instruments and the other Loan Documents, including, without limitation, all interest

that would accrue on the outstanding principal balance of the Loan through and including the Maturity Date.

2.2.5 Payments after Default.

Upon the occurrence and during the continuance of an Event of Default, (a) interest on the outstanding principal balance of the Loan and, to the extent permitted by Applicable Law, overdue interest and other amounts due in respect of the Loan, shall accrue at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein and (b) Lender shall be entitled to receive and Borrower shall pay to Lender on each Payment Date an amount equal to the Net Cash Flow After Debt Service for the prior month, such amount to be applied by Lender to the payment of the Debt in such order as Lender shall determine in its sole discretion, including, without limitation, alternating applications thereof between interest and principal. Interest at the Default Rate and Net Cash Flow After Debt Service shall both be computed from the occurrence of the default until the actual receipt and collection of the Debt (or that portion thereof that is then due). To the extent permitted by Applicable Law, interest at the Default Rate shall be added to the Debt, shall itself accrue interest at the same rate as the Loan and shall be secured by the Security Instrument. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default; the acceptance of any payment of Net Cash Flow After Debt Service shall not be deemed to cure or constitute a waiver of any Event of Default; and Lender retains its rights under the Note to accelerate and to continue to demand payment of the Debt upon the happening of any Event of Default, despite any payment of Net Cash Flow After Debt Service.

2.2.6 Late Payment Charge.

If any principal, interest or any other sums due under the Loan Documents (other than the payment of principal due on the Maturity Date) is not paid by Borrower on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of four percent (4%) of such unpaid sum or the maximum amount permitted by Applicable Law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Security Instrument and the other Loan Documents to the extent permitted by Applicable Law.

2.2.7 Usury Savings.

This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder,

provided, however, that in no event shall any Spread Maintenance Premium or Breakage Costs be due with respect to any such deemed prepayment of principal. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

2.2.8 Indemnified Taxes.

(a) All payments made by Borrower hereunder shall be made free and clear of, and without reduction for or on account of, Indemnified Taxes, excluding (i) Indemnified Taxes measured by Lender's or any Co-Lender's net income, and franchise taxes imposed on it, by the jurisdiction under the laws of which Lender or any Co-Lender is resident or organized, or any political subdivision thereof, (ii) taxes measured by Lender's or any Co-Lender's net income, and franchise taxes imposed on it, by the jurisdiction of Lender's or such Co-Lender's applicable lending office or any political subdivision thereof or in which Lender or such Co-Lender is resident or engaged in business, and (iii) withholding taxes imposed by the United States of America, any state, commonwealth, protectorate territory or any political subdivision or taxing authority thereof or therein as a result of the failure of Lender or any Co-Lender which is a Non-U.S. Entity to comply with the terms of paragraph (b) below (if applicable). If any non-excluded Indemnified Taxes are required to be withheld from any amounts payable to Lender or any Co-Lender hereunder, the amounts so payable to Lender or such Co-Lender shall be increased to the extent necessary to yield to Lender or such Co-Lender (after payment of all non-excluded Indemnified Taxes) interest or any such other amounts payable hereunder at the rate or in the amounts specified hereunder. Whenever any non-excluded Indemnified Tax is required to be withheld from amounts payable to Lender or any Co-Lender hereunder and is payable pursuant to Applicable Law by Borrower, Borrower shall send to Lender or the applicable Co-Lender an original official receipt or certified copy thereof showing payment of such non-excluded Indemnified Tax or other evidence of payment reasonably satisfactory to Lender or the applicable Co-Lender. Borrower hereby agrees to indemnify Lender and each Co-Lender for any incremental taxes, interest or penalties that may become payable by Lender or any Co-Lender which may result from any failure by Borrower to pay any such non-excluded Indemnified Tax when due to the appropriate taxing authority or any failure by Borrower to remit to Lender or any Co-Lender the required receipts or other required documentary evidence, except to the extent due to Lender's or any Co-Lender's, as applicable, failure to forward an invoice for such non-excluded Indemnified Tax. For the avoidance of doubt, Borrower shall not be obligated to pay any additional amounts or indemnification amounts under this paragraph (a) except to the extent such amounts are payable solely due to a change in applicable treaty, law or regulation effective after the date on which the applicable Non-U.S. Entity became a party to this Agreement.

(b) In the event that Lender or any Co-Lender or any successor and/or assign of Lender or any Co-Lender is a Non-U.S. Entity, each such Non-U.S. Entity agrees that, prior to the first date on which any payment is due such entity hereunder, it will deliver to

Borrower two duly completed copies of United States Internal Revenue Service Form W-8BEN, and/or Form W-8IMY or successor applicable form, as applicable (claiming complete exemption from deduction or withholding of any United States federal income taxes under an applicable treaty), or Form W-8ECI or successor applicable form, certifying that such entity is entitled to receive payments under the Note, without deduction or withholding of any United States federal income taxes, or, in the case of a Non-U.S. Entity claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," a statement substantially in the form of Exhibit K and a Form W8-BEN or successor applicable form. Each entity required to deliver to Borrower a Form W-8BEN or W-8ECI pursuant to the preceding sentence further undertakes to deliver to Borrower two further copies of such forms, or successor applicable forms, or other manner of certification, as the case may be, on or before the date that any such form expires (which, in the case of the Form W-8ECI, is the last day of each U.S. taxable year of the Non-U.S. Entity) or becomes obsolete or after the occurrence of any event requiring a change in the most recent form previously delivered by it to Borrower, and such other extensions or renewals thereof as may reasonably be requested by Borrower, certifying in the case of a Form W-8BEN, W-8IMY or W-8ECI that such entity is entitled to receive payments under the Note without deduction or withholding of any United States federal income taxes, unless in any such case an event (including, without limitation, any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such entity from duly completing and delivering any such form with respect to it and such entity advises Borrower that it is not capable of receiving payments without any deduction or withholding of United States federal income tax.

(c) In the event that Lender or any Co-Lender or any successor and/or assign of Lender or any Co-Lender is not a Non-U.S. Entity, each such Lender or Co-Lender agrees that, prior to the first date on which any payment is due such entity hereunder, it will deliver to Borrower two duly completed copies of United States Internal Revenue Service Form W-9 or successor applicable form establishing that such Lender or Co-Lender is not subject to United States backup withholding tax.

(d) The Lender and each Co-Lender shall use reasonable efforts (including reasonable efforts to change its applicable lending office) to avoid the imposition of any non-excluded Indemnified Taxes for which Borrower is required to pay additional amounts pursuant to paragraph (a) above; provided, however, that such efforts shall not require the Lender or such Co-Lender to incur additional costs or legal or regulatory burdens that the Lender or such Co-Lender considers in its good faith reasonable judgment to be material.

Section 2.3 Prepayments.

2.3.1 Voluntary Prepayments.

Except as otherwise provided herein, Borrower shall not have the right to prepay the Loan in whole or in part prior to June 9, 2008 (the "Lockout Period"). On any Payment Date

occurring after the expiration of the Lockout Period, Borrower may, at its option, prepay the Loan in whole but not in part, upon satisfaction of the following conditions:

(a) Borrower shall provide prior written notice (the "Prepayment Notice") to Lender (which notice shall be irrevocable) specifying the date (the "Prepayment Date") upon which the prepayment is to be made, which notice shall be delivered to Lender not less than fifteen (15) Business Days prior to such payment; provided, however, Borrower shall have the one-time right to send a written notice to Lender revoking its notice of prepayment at least five (5) Business Days prior to the Payment Date occurring in the calendar month of the proposed prepayment date set forth in the original prepayment notice, provided Borrower pays to Lender at the time of its notice of revocation, all costs and expenses (including, but not limited to, any Breakage Costs) incurred by Lender in anticipation of the repayment including, but not limited to, reasonable attorney's fees and expenses and any fees and expenses of any servicer;

(b) Borrower shall pay to Lender, simultaneously with such prepayment, (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid through and including the Prepayment Date, (ii) in addition to the payments required in clause (i) above, if such prepayment is not made on a Payment Date, all interest on the principal amount being prepaid which would have accrued from the date of prepayment through and including the immediately succeeding Payment Date, calculated at (1) the Applicable Interest Rate if such prepayment occurs on or after the LIBOR Determination Date for the Interest Period in which such prepayment occurs or (2) the Assumed Note Rate if such prepayment occurs before the LIBOR Determination Date for the Interest Period in which the prepayment occurs (the "Interest Shortfall"), (iii) Breakage Costs, if any, without duplication of any sums paid pursuant to the preceding clauses (i) and (ii); (iv) [intentionally omitted] and (v) all other sums then due under this Agreement, the Note or the other Loan Documents;

(c) each prepayment shall be in an aggregate principal amount of \$1,000,000.00 or any integral multiple of \$100,000.00 in excess thereof (or the entire principal amount of the Loan outstanding); and

(d) Mezzanine Borrower shall have simultaneously with such prepayment prepaid the Mezzanine Loan in whole.

If the Interest Shortfall was calculated based upon the Assumed Note Rate, upon determination of LIBOR on the LIBOR Determination Date for the Interest Period in which such prepayment occurs, (i) if the Applicable Interest Rate for such Interest Period is less than the Assumed Note Rate, Lender shall promptly refund to Borrower the amount of the Interest Shortfall paid, calculated at a rate equal to the difference between the Assumed Note Rate and the Applicable Interest Rate, or (ii) if the Applicable Interest Rate is greater than the Assumed Note Rate, Borrower shall promptly (and in no event later than the ninth (9th) day of the following month) pay Lender the amount of such additional Interest Shortfall calculated at a rate equal to the excess of the Applicable Interest Rate over the Assumed Note Rate.

If a notice of prepayment is given by Borrower to Lender pursuant to this Section 2.3.1, the amount designated for prepayment and all other sums required under this Section 2.3.1 shall be due and payable on the Prepayment Date unless the applicable Prepayment Notice has been revoked in accordance with Section 2.3.1(a) above.

2.3.2 Mandatory Prepayments.

On the next occurring Payment Date following the date on which Borrower actually receives any Net Proceeds, if and to the extent Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property (or, pursuant to the Master Disbursement Agreement or Master REA, for Restoration of the shell of the Building), Borrower shall prepay (without any Prepayment Premium, Spread Maintenance Premium or Breakage Costs) the outstanding principal balance of the Note in an amount equal to one hundred percent (100%) of such Net Proceeds. Such prepayment shall be applied, first, to interest on the outstanding principal balance of the Loan that would have accrued at the Applicable Interest Rate on the amount prepaid through the end of the Interest Period in which such prepayment occurs, notwithstanding that such Interest Period extends beyond the date of prepayment, and then to all other amounts then due to Lender under this Agreement or any of the other Loan Documents and then to the outstanding principal balance of the Loan.

2.3.3 Prepayments After Default.

If, following an Event of Default, Borrower tenders payment of all or any part of the Debt, or if all or any portion of the Debt is recovered by Lender after such Event of Default such tender or recovery shall be deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment of the Loan prior to the expiration of the Lockout Period and Borrower shall pay, in addition to the debt, (i) all accrued and unpaid interest calculated at the Applicable Interest Rate on the amount of principal being prepaid through and including the Prepayment Date together with an amount equal to the interest that would have accrued at the Applicable Interest Rate on the amount of principal being prepaid through the end of the Interest Period in which such prepayment occurs, notwithstanding that such Interest Period extends beyond the date of prepayment, (ii) the Interest Shortfall, if applicable, with respect to the amount prepaid, (iii) Breakage Costs, if any, without duplication of any sums paid pursuant to the preceding clause (ii); (iv) if such payment occurs prior to the expiration of the Lockout Period, an amount equal to the greater of the Prepayment Premium or the applicable Spread Maintenance Premium, (v) [intentionally omitted] and (vi) all other sums due under this Agreement, the Note or the other Loan Documents in connection with a partial or total prepayment.

2.3.4 Making of Payments.

Each payment by Borrower hereunder or under the Note shall be made in funds settled through the New York Clearing House Interbank Payments System or other funds immediately available to Lender by 12:00 p.m., New York City time, on or prior to the date such payment is due, to Lender by deposit to such account as Lender may designate by written notice to Borrower. Whenever any payment hereunder or under the Note shall be stated to be due on a

day which is not a Business Day, such payment shall be made on the first Business Day succeeding such scheduled due date.

2.3.5 Application of Prepayments.

All prepayments received pursuant to this Section 2.3 and Section 2.5 shall be applied first, to interest on the outstanding principal balance being prepaid that accrued through and including the Prepayment Date, second, to interest on the outstanding principal balance being prepaid that would have accrued through the end of the Interest Period in which the prepayment occurred and third, to the payments of principal due under the Loan.

Section 2.4 Interest Rate Cap Agreement.

(a) Upon the earlier to occur of (i) thirty (30) days after the Closing Date and (ii) five (5) Business Days notice from Lender that the same is required in connection with a Securitization or Syndication, Borrower shall obtain, or cause to be obtained, and shall thereafter maintain in effect, an Interest Rate Cap Agreement with an Acceptable Counterparty, which shall be coterminous with the Loan and have a notional amount which shall not at any time be less than the outstanding principal balance of the Loan and which shall at all times have a strike rate equal to (or at Borrower's election, less than) the Strike Rate. The Counterparty shall be obligated under the Interest Rate Cap Agreement to make monthly payments equal to the excess of one (1) month LIBOR over the Strike Rate, calculated on the notional amount. The notional amount of the Interest Rate Cap Agreement may be reduced from time to time in amounts equal to any prepayment of the principal of the Loan in accordance with Section 2.3 hereof.

(b) Simultaneously with entering into an Interest Rate Cap Agreement, Borrower shall collaterally assign to Lender pursuant to an Assignment of Interest Rate Cap Agreement substantially in the form annexed hereto as Exhibit B, all of its right, title and interest to receive any and all payments under the Interest Rate Cap Agreement (and any related guarantee, if any) and shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement and notify the Counterparty of such collateral assignment (either in such Interest Rate Cap Agreement or by separate instrument). The Counterparty shall agree in writing to make all payments it is required to make under the Interest Rate Cap Agreement into the Lockbox Account or if the Lockbox Account is not then required to be in effect, into such account as specified by Lender in writing (with a copy of such notice to Borrower within a reasonable period of time thereafter). At such time as the Loan is repaid in full, all of Lender's right, title and interest in the Interest Rate Cap Agreement shall terminate and Lender shall promptly execute and deliver at Borrower's sole cost and expense, such documents as may be required to evidence Lender's release of the Interest Rate Cap Agreement and to notify the Counterparty of such release.

(c) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement shall be deposited immediately into the Lockbox Account or if the Lockbox Account is not then required to be in effect, into such account

as specified by Lender in writing (with a copy of such notice to Borrower within a reasonable period of time thereafter). Borrower shall take all actions reasonably requested by Lender to enforce Lender's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty and shall not waive, amend or otherwise modify any of its rights thereunder.

(d) In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty below "A+" (or the equivalent) by the Rating Agencies, Borrower shall replace the Interest Rate Cap Agreement with a Replacement Interest Rate Cap Agreement with an Acceptable Counterparty not later than ten (10) Business Days following receipt of notice from Lender or Servicer of such downgrade, withdrawal or qualification. Notwithstanding the foregoing, in the event Lehman Brothers Holdings Inc. or any Affiliate thereof is the Counterparty, any reference in this subsection to a rating of "A+" shall be deemed to refer to a rating of "A".

(e) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement or any Replacement Interest Rate Cap Agreement as and when required hereunder, Lender may purchase such Interest Rate Cap Agreement and the cost incurred by Lender in purchasing such Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is paid by Borrower to Lender.

(f) Each Interest Rate Cap Agreement shall contain the following language or its equivalent: "In the event of any downgrade, withdrawal or qualification of the rating of the Counterparty below "Aa3" by Moody's or "A+" by S&P (or in each case, the equivalent by any other Rating Agency), the Counterparty must, within 30 days, either (x) post collateral on terms acceptable to each Rating Agency or (y) find a replacement Acceptable Counterparty, at the Counterparty's sole cost and expense, acceptable to each Rating Agency (notwithstanding the foregoing, if the Counterparty's rating is downgraded to "A" or lower, only the option described in clause (y) will be acceptable); provided that, notwithstanding such a downgrade, withdrawal or qualification, unless and until the Counterparty transfers the Interest Rate Cap Agreement to a replacement Acceptable Counterparty pursuant to the foregoing clause (y), the Counterparty will continue to perform its obligations under the Interest Rate Cap Agreement. Failure to satisfy the foregoing shall constitute an Additional Termination Event as defined by Section 5(b)(v) of the ISDA Master Agreement, with the Counterparty as the Affected Party." Notwithstanding the foregoing, in the event Lehman Brothers Holdings Inc. or any Affiliate thereof is the Counterparty, any reference in this subsection to a rating of "A+" shall be deemed to refer to a rating of "A".

(g) In connection with an Interest Rate Cap Agreement, Borrower shall obtain and deliver to Lender an opinion of counsel from counsel for the Counterparty (upon which Lender and its successors and assigns may rely) which shall provide, in relevant part, that:

(1) the Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the

organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Agreement;

(2) the execution and delivery of the Interest Rate Cap Agreement by the Counterparty, and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property;

(3) all consents, authorizations and approvals required for the execution and delivery by the Counterparty of the Interest Rate Cap Agreement, and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance; and

(4) the Interest Rate Cap Agreement, and any other agreement which the Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by the Counterparty and constitutes the legal, valid and binding obligation of the Counterparty, enforceable against the Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Such opinion shall be subject to customary assumptions and qualifications for interest rate cap opinions delivered in connection with loans of this type.

Section 2.5 Release on Payment in Full.

Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Loan Agreement, release the Lien of the Security Instrument on the Property and remit any remaining Reserve Funds to Mezzanine Lender if the Mezzanine Loan is still outstanding or Borrower if the Mezzanine Loan has been paid in full.

III. CONSTRUCTION LOAN ADMINISTRATION

Section 3.1 Closing Conditions and Conditions to Initial Advance.

The obligation of Lender to close and make the Initial Advance is subject to the accuracy and validity of all representations, warranties and covenants set forth in Articles 4 and 5 hereof, and to the satisfaction of the following conditions:

(a) Master Disbursement Agreement. Borrower, Lender and the other parties thereto shall have entered into the Master Disbursement Agreement, satisfactory in all respects to Lender, and Lender shall have received a fully executed copy of the Master Disbursement Agreement. All conditions precedent (without duplication of those contained in this Section 3.1) set forth in Section 3.1 of the Master Disbursement Agreement shall have been satisfied or waived in accordance with the terms thereof.

(b) Opinion of Counsel. Borrower shall have delivered to Lender an opinion letter, in form and substance reasonably acceptable to Lender, from (i) an attorney who is licensed to practice in the State of Nevada and is otherwise acceptable to Lender and (ii) an attorney who is licensed to practice in the State of New York and is otherwise acceptable to Lender. In addition Borrower shall have delivered to Lender a non-consolidation opinion in form and substance satisfactory to Lender.

(c) No Defaults. Borrower and each Guarantor shall be in compliance with all the material terms and provisions set forth herein (including all representations and warranties set forth herein), in the other Loan Documents on its or their part to be observed or performed, and with all requirements (including all construction and plan approval schedules) on its or their part to be observed or performed, and no Event of Default or Default shall have occurred and be continuing.

(d) Intentionally Omitted.

(e) Compliance with Laws. Borrower shall have delivered to Lender reasonably acceptable evidence that the Property, the Project and the intended uses thereof are in compliance with all applicable encumbrances and restrictions (whether of record or otherwise) and all Applicable Laws, including the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12-101, et seq.), the Federal Architectural Barriers Act, as amended (42 U.S.C. § 4151, et seq.), the Fair Housing Amendments Act of 1988, as amended (42 U.S.C. § 3601, et seq.), the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794, et seq.) and all state laws addressing the same subject matter. Such evidence may include letters, licenses, permits, certificates and other correspondence from the appropriate Governmental Authorities, opinions of the Borrower's counsel or other counsel, and opinions or certifications from Architect, Engineer or General Contractor. The evidence submitted as to zoning should include the zoning designation for the Property and Future Improvements, the permitted uses of the Property and Future Improvements under such zoning designation and zoning requirements as to parking, lot size, ingress, egress and building setbacks. Further, for those actions or proceedings disclosed to Lender in writing for which the failure to secure a favorable ruling would have a material adverse effect on the Property or the Project, there shall be no actions or proceedings pending before any Governmental Authority relating to the Loan, the Property, the Project or Borrower's use or proposed use of the Property, and all appeal periods for any such prior proceedings must have expired without any appeal having been filed.

(f) Taxes. Borrower shall have delivered to Lender evidence that all taxes due and payable in connection with the Property and the Project have been paid. Lender

shall also be satisfied that all periodic escrow payments for real property taxes and assessments required to be made under the Loan Documents have been properly funded.

(g) Concrete, Soil and Other Tests. To the extent required by Lender, Borrower shall have delivered to Lender a report as to soil borings made at the Property by a soil testing firm which is reasonably satisfactory to Lender, Construction Consultant, Engineer and Architect. Said testing firm shall not be associated with, or selected by, General Contractor. The number and location of such borings shall be in accordance with the recommendations of the soil testing firm and must also be satisfactory to Lender, Construction Consultant, Engineer and Architect. The report shall address the ability of the soil to support the Project, and shall include the recommendations of the soil testing firm as to the preparation of the soil and the type and design of the foundation needed in order to adequately support the Future Improvements.

(h) Leases. If any Leases are then in existence, Borrower shall have delivered to Lender reasonably satisfactory evidence as to the status of all executed Leases.

(i) Tenant Estoppel Certificates/Subordination Agreements. If any Leases are then in existence, Borrower shall have delivered to Lender estoppel certificates and/or nondisturbance, subordination and attornment agreements, in form and substance reasonably satisfactory to Lender, from such Lease tenants as Lender may require.

(j) Taxpayer Identification Number. Borrower shall have delivered to Lender the Borrower's and each Guarantor's federal taxpayer identification number of Borrower and each Guarantor that is not a natural person.

(k) Intellectual Property and Trademarks. Borrower shall have delivered to Lender an assignment of Borrower's license to use the name "Fontainebleau" and any related trademarks and other intellectual property of (or licensed to) Borrower in connection with the Property which assignment shall be acknowledged by any applicable licensor and otherwise in form and substance reasonably satisfactory to Lender.

(l) Appraisals. To the extent not delivered to and approved by Lender prior to the date hereof, Lender shall have obtained a current written appraisal of the Property prepared at Borrower's expense by a qualified appraiser designated by, engaged or contracted by and satisfactory to Lender. Such appraisal must be satisfactory in form and substance to Lender and shall contain an "as-is" appraised value of the Property (based upon the present value of the "as-stabilized" appraised value) in amount of not less than \$454,000,000.

(m) UCC Letter. Borrower shall have delivered to Lender a UCC search letter (or other evidence satisfactory to Lender) showing no prior security interests in any part of the Project.

(n) No Flood Hazard Area. Borrower shall have delivered evidence, satisfactory to Lender, that the Property is not situated in a special flood hazard area as designated by federal Governmental Authorities.

(o) Damage, Condemnation or Similar Proceedings. Lender shall be satisfied that since the date of the last inspection of the Property or the Project by Lender, no portion thereof has been damaged and not repaired to Lender's satisfaction, or has been taken in condemnation or other similar proceedings (and no such proceedings shall be pending).

(p) Resort Loan Documents. Lender shall have received fully executed copies of the Resort Loan Agreement, and the Guarantee and Collateral Agreement, the Guarantees, the Completion Guarantees and the Deed of Trust (in each case as defined in the Resort Loan Agreement) and such other documents requested by Lender.

(q) Net Worth and Liquidity of Guarantor. Borrower shall have delivered to Lender evidence that Guarantor has (1) a Net Worth (exclusive of any direct or indirect interest in the Property) at least equal to \$400,000,000 and (2) Liquidity (exclusive of any direct or indirect interest in the Property) at least equal to \$100,000,000.

(r) Retail Intercreditor Agreement. Lender shall have entered into the Retail Intercreditor Agreement, which shall be satisfactory in all respects to Lender. Lender shall have received a fully executed copy of the Retail Intercreditor Agreement.

(s) Reserved.

(t) Loan-to-Cost. Borrower shall have delivered to Lender evidence that the total of budgeted construction costs (including, soft costs, hard cost, interest expense, etc.) plus allocable air rights acquisition value plus the value of any rights conferred by the Master REA for the Property, shall be no less than \$454,000,000

(u) Air Rights Lease. Borrower shall have delivered to Lender a fully executed copy of the Air Rights Lease.

(v) Intercreditor Agreement. Lender shall have entered into the Intercreditor Agreement, satisfactory in all respects to Lender. Lender shall have received a fully executed copy of the Intercreditor Agreement.

(w) Miscellaneous. Borrower shall have delivered to Lender all other documents and items, in form and substance satisfactory to Lender, that are reasonably requested by Lender or are otherwise customarily provided in loan transactions similar to the Loan.

For purposes of determining compliance with the conditions specified in this Section 3.1, Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders if Lender has made the requested Initial Advance hereunder.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations.

Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization.

Borrower is duly organized and is validly existing and in good standing in the jurisdiction in which it is organized, with requisite power and authority to own and lease the Property, as applicable, and to transact the businesses in which it is now engaged. Borrower 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 the Property, its businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own and lease the Property, as applicable, and to transact the businesses in which it is now engaged. Attached hereto as Schedule I is an organizational chart of Borrower.

4.1.2 Proceedings.

Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts.

The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower 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, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement, or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Borrower or any of the Property or any of Borrower's other assets, or any license or other approval required to operate the Property, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents have been obtained and is in full force and effect.

4.1.4 Litigation.

To Borrower's knowledge after due inquiry, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or threatened against or affecting Borrower or the Property, which actions, suits or proceedings, if determined against Borrower or the Property, could reasonably be expected to materially

adversely affect the condition (financial or otherwise) or business of Borrower or the condition or ownership of the Property, except as disclosed on Schedule II hereto.

4.1.5 Agreements.

Borrower is not a party to any agreement or instrument or subject to any restriction which would be reasonably expected to materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property; (b) obligations under the Loan Documents, and (c) obligations under the Approved Affiliate Agreements.

4.1.6 Solvency.

Borrower (a) has not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition under the Bankruptcy Code or similar state bankruptcy or insolvency law has been filed against Borrower or any constituent Person in the last seven (7) years, and neither Borrower nor any constituent Person in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any of its constituent Persons are contemplating either the filing of a petition by it under the Bankruptcy Code or similar state bankruptcy or insolvency law or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.7 Full and Accurate Disclosure.

No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact

necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed to Lender which materially and adversely affects, or could reasonably be expected to materially and adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.8 No Plan Assets.

Borrower is not a Plan and none of the assets of Borrower constitute or will constitute, by virtue of the application of 29 C.F.R. §2510.3-101(f) as modified by section 3(42) of ERISA, "Plan Assets" of one or more Plans. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to State statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.9 Compliance.

Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, all Environmental Laws, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.10 Financial Information.

All financial data, including, without limitation, any statements of cash flow and income and operating expense, that have been delivered to Lender in respect of Borrower and the Property in respect of prior periods (i) are true, complete and correct in all material respects, (ii) accurately represent, in all material respects, the financial condition of Borrower and the Property, as applicable, as of the date of such reports, and (iii) have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof as retail shopping centers except as referred to or reflected in said financial statements. Since the date of any such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower from that set forth in said financial statements.

4.1.11 Condemnation.

No Condemnation or other similar proceeding has been commenced or, to the best of Borrower's knowledge, is threatened or contemplated with respect to all or any portion of the Real Property or for the relocation of roadways providing access to the Real Property.

4.1.12 Federal Reserve Regulations.

No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.13 Public Access.

The Real Property has rights of access to public ways.

4.1.14 Not a Foreign Person.

Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

4.1.15 Intentionally Omitted.

4.1.16 Assessments.

The Real Property, together with the Resort Property, is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property, other than the Resort Property. To Borrower's knowledge after due inquiry, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Real Property, nor are there any contemplated improvements to the Real Property that may result in such special or other assessments.

4.1.17 Enforceability.

The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, including the defense of usury, and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.18 No Prior Assignment.

As of the Closing Date, there are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

4.1.19 Insurance.

Borrower has obtained and has delivered to Lender certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any such policy. Within ninety (90) days of the date hereof, Borrower shall deliver to Lender copies of all insurance policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement.

4.1.20 Use of Property.

The Property is intended, upon completion of the Future Improvements, to be used for retail and ancillary purposes (including, but not limited to, the operation of restaurants).

4.1.21 Licenses; Permits.

All certificates, permits, licenses and other authorizations of Governmental Authorities which are necessary for the continued use and operation of the Future Improvements to be constructed by Borrower in accordance with the terms and provisions of the Loan Documents (collectively, the "Licenses"), have been or will have been duly obtained by or on behalf of Borrower prior to when needed and shall at all times thereafter remain in full force and effect.

4.1.22 Flood Zone.

None of the Improvements on the Real Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to Section 6.1(a)(vii) is in full force and effect.

4.1.23 Construction Documents.

As of the Closing Date, the Borrower is not a party to any Construction Contract, Architect's Contract, Engineer's Contract or other material contract (other than the Master REA, the Master Disbursement Agreement and the Affiliate Lease) concerning the construction, design or engineering of the Future Improvements or the Project Future Improvements.

4.1.24 Boundaries.

Other than Permitted Encumbrances, no improvements on adjoining properties encroach upon the Real Property, and no easements or other encumbrances upon the Real Property encroach upon any of the Improvements.

4.1.25 Leases.

The Property is not subject to any Leases other than the Air Rights Lease, the Affiliate Lease and, after Closing Date, Leases entered into from time to time in accordance with Section 5.1.17.

4.1.26 Survey.

To Borrower's knowledge, the Survey for the Property delivered to Lender in connection with this Agreement does not fail to reflect any material matter affecting the Real Property or the title thereto.

4.1.27 Loan to Value.

As of the Closing Date, the maximum principal amount of the Loan does not exceed one hundred twenty-five percent (125%) of the aggregate fair market value of the Property.

4.1.28 Filing and Recording Taxes.

As of the Closing Date, all transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes, if any, required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid or will be paid simultaneously with the closing of the Loan or funds therefor will be provided in escrow to the Title Company with instructions for timely application. As of the Closing Date, all mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or will be paid simultaneously with the closing of the Loan or funds therefor will be provided in escrow to the Title Company with instructions for timely application.

4.1.29 Development Agreement. The Borrower is not a party to any Development Agreement. The Property is being developed by Fontainebleau Las Vegas, LLC, an Affiliate of Borrower. No Development Agreement exists and no party is (and shall be for so long as such Property is being developed by an Affiliate) entitled to receive any development fees.

4.1.30 Management Agreement.

As of the Closing Date, a fully executed, true and complete copy of the Approved Management Agreement, which shall be in full force and effect, shall have been delivered to Lender.

4.1.31 Illegal Activity.

No portion of the Property has been or will be purchased with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to any controlled substances at the Property.

4.1.32 No Change in Facts or Circumstances; Disclosure.

All information submitted by Borrower to Lender and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations or the financial condition of Borrower. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any information described in this Section 4.1.32 or any representation or warranty made herein to be materially misleading.

4.1.33 Investment Company Act.

Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) 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 (c) to the best of its knowledge, subject to any other federal or State law or regulation which purports to restrict or regulate its ability to borrow money, in contravention of this Agreement or any other Loan Document.

4.1.34 Principal Place of Business; State of Organization.

Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower is organized under the laws of the State of Delaware and its organizational identification number is DE 4338959.

4.1.35 Single Purpose Entity.

Borrower represents and warrants that it has not, and covenants and agrees that its organizational documents shall provide that it shall not:

(a) engage in any business or activity other than the acquisition, development, ownership, operation, leasing, managing and maintenance of the Property, and entering into the Loan, and activities incidental thereto;

(b) acquire or own any material assets other than (i) the Real Property, and (ii) such incidental Personal Property as may be necessary for the operation of the Real Property;

(c) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(d) (i) fail to observe its organizational formalities or preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the State where the Property is located, if applicable, or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of its LLC Agreement, Articles of Organization or similar organizational documents;

(e) own any subsidiary or make any investment in (provided that, for the avoidance of doubt, Lender acknowledges that the payment by Borrower of Shared Costs does not constitute an investment in the Resort Borrower), any Person without the prior written consent of Lender;

(f) commingle its assets with the assets of any of its members, general partners, Affiliates, principals or of any other Person (provided that, for the avoidance of doubt, Lender acknowledges that the payment by Borrower of Shared Costs does not constitute a commingling of assets with the Resort Borrower), participate in a cash

management system with any other Person or fail to use its own separate stationery, telephone number, invoices and checks;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, except for trade payables in the ordinary course of its business of owning and operating the Property, provided that such debt (i) is not evidenced by a note, (ii) is paid within sixty (60) days of the date incurred, (iii) does not exceed, in the aggregate, three percent (3%) of the outstanding principal balance of the Note and (iv) is payable to trade creditors and in amounts as are normal and reasonable under the circumstances;

(h) become insolvent and fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due;

(i) (i) fail to maintain its records (including financial statements), books of account and bank accounts separate and apart from its Affiliates and any other Person, (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of an Affiliate of Borrower, provided that (1) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower from such Affiliate and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (2) such assets shall also be listed on Borrower's own separate balance sheet, or (iii) include the assets or liabilities of any other Person on its financial statements;

(j) other than the Approved Affiliate Agreements, enter into any contract or agreement with any member, general partner, principal or Affiliate of Borrower, Guarantor or any member, general partner, principal or Affiliate thereof (other than a business management services agreement with an Affiliate of Borrower, provided that (i) such agreement is reasonably acceptable to Lender, (ii) the manager, or equivalent thereof, under such agreement holds itself out as an agent of Borrower and (iii) the agreement meets the standards set forth in this subsection (j) following this parenthetical), except upon terms and conditions that are commercially reasonable, intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or Affiliate of Borrower, Guarantor, or any member, general partner, principal or Affiliate thereof;

(k) seek the dissolution or winding up in whole, or in part, of Borrower;

(l) fail to correct any known misunderstandings regarding the separate identity of Borrower or any member, general partner, principal or Affiliate thereof or any other Person;

(m) guarantee or become obligated for the debts of any other Person or hold itself out to be responsible for the debts of another Person;

(n) make any loans or advances to any third party, including any member, general partner, principal or Affiliate of Borrower, or any member, general partner, principal or Affiliate thereof, and shall not acquire obligations or securities of any member, general partner, principal or Affiliate of Borrower, or any member, general partner, or Affiliate thereof (provided that, for the avoidance of doubt, Lender acknowledges that the payment by Borrower of Shared Costs does not constitute a loan or advance);

(o) fail to file its own tax returns or be included on the tax returns of any other Person except as required by Applicable Law;

(p) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or a name franchised or licensed to it by an entity other than an Affiliate of Borrower (provided that Lender acknowledges that the foregoing shall not preclude Borrower from using the "Fontainebleau" name in connection with the name of the retail center at the Property), and not as a division or part of any other entity in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any member, general partner, principal or Affiliate of Borrower, or any member, general partner, principal or Affiliate thereof);

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

(r) share any common logo with (provided that Lender acknowledges that the foregoing shall not preclude Borrower from using the "Fontainebleau" logo in connection with the operations of the Property) or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or Affiliate of Borrower, (ii) any Affiliate of a general partner, principal or member of Borrower, or (iii) any other Person;

(s) fail to allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;

(t) pledge its assets for the benefit of any other Person other than with respect to the Loan;

(u) fail to maintain a sufficient number of employees in light of its contemplated business operations;

(v) fail to provide in its LLC Agreement, Articles of Organization or similar organizational documents, that for so long as the Loan is outstanding pursuant to the Note, this Agreement and the other Loan Documents, it shall not file or consent to the

filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors without the affirmative vote of each Independent Manager and of all other general partners/managing members/directors;

(w) fail to hold its assets in its own name;

(x) if Borrower is a corporation, fail to consider the interests of its creditors in connection with all corporate actions to the extent permitted by Applicable Law;

(y) have any of its obligations guaranteed by an Affiliate except the Guarantor in connection with the Loan;

(z) violate or cause to be violated the assumptions made with respect to Borrower in the Insolvency Opinion;

(aa) fail at any time to have at least one independent director or manager (or, at the request of Lender, two independent directors or managers, within thirty (30) days of such request) (each an "Independent Manager") that is not and has not been for at least five (5) years: (a) a stockholder, director, officer, employee, partner, member, attorney or counsel of Borrower or any Affiliate of either of them; (b) a customer, supplier or other Person who derives its purchases or revenues (other than any fee paid to such director or manager as compensation for such director or manager to serve as an Independent Manager) from its activities with Borrower or any Affiliate of Borrower (a "Business Party"); (c) a Person or controlling or under common control with any such stockholder, partner, member, director, officer, attorney, counsel or Business Party; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, attorney, counsel or Business Party; or

(bb) permit its board of directors to take any action which, under the terms of any certificate of incorporation, by-laws, voting trust agreement with respect to any common stock or other applicable organizational documents, requires the unanimous vote of one hundred percent (100%) of the members of the board without the vote of each Independent Manager.

(cc) Fail to have the limited liability company agreement of Borrower (the "LLC Agreement") provide that (A) upon the occurrence of any event that causes the last remaining member (or sole member to the extent Borrower only has one member) of Borrower ("Member") to cease to be the member of Borrower (other than (1) upon an assignment by Member of all of its limited liability company interest in Borrower and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (2) the resignation of Member and the admission of an additional member of Borrower in accordance with the terms of the Loan Documents and the LLC Agreement), any Person acting as Independent Manager of Borrower shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower, automatically be admitted to Borrower ("Special Member") and shall continue Borrower without dissolution and (B) Special Member may not resign

from Borrower or transfer its rights as Special Member unless (1) a successor Special Member has been admitted to Borrower as Special Member in accordance with requirements of Delaware law and (2) such successor Special Member has also accepted its appointment as an Independent Manager. The LLC Agreement shall further provide that (v) Special Member shall automatically cease to be a member of Borrower upon the admission to Borrower of a substitute Member, (w) Special Member shall be a member of Borrower that has no interest in the profits, losses and capital of Borrower and has no right to receive any distributions of Borrower assets, (x) pursuant to Section 18-301 of the Delaware Limited Liability Company Act, Special Member shall not be required to make any capital contributions to Borrower and shall not receive a limited liability company interest in Borrower, (y) Special Member, in its capacity as Special Member, may not bind Borrower and (z) except as required by any mandatory provision of the Delaware Limited Liability Company Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower, including, without limitation, the merger, consolidation or conversion of Borrower; provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Manager, to vote on such matters required by the LLC Agreement. In order to implement the admission to Borrower of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower as Special Member, Special Member shall not be a member of Borrower.

Upon the occurrence of any event that causes Member to cease to be a member of Borrower, to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower, agree in writing (A) to continue Borrower and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of Member of Borrower in Borrower. Any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower.

4.1.36 Business Purposes.

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

4.1.37 Taxes.

Borrower has filed all federal, State, county, municipal, and city income and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it, except to the

extent being contested by Borrower in good faith in accordance with the terms of Section 5.1.2 of this Agreement. Borrower knows of no basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

4.1.38 Forfeiture.

Neither Borrower nor any other Person in occupancy of or involved with the operation or use of the Real Property has committed any act or omission affording the federal government or any State or local government the right of forfeiture as against the Real Property or any part thereof or any monies paid in performance of Borrower's obligations under the Note, this Agreement or the other Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

4.1.39 Environmental Representations and Warranties.

Borrower represents and warrants, to the best of its knowledge after due inquiry, except as disclosed in the written reports resulting from the environmental site assessments of the Property delivered to and approved by Lender prior to the Closing Date (the "Environmental Report") and information that Borrower knows, that: (a) there are no Hazardous Materials or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with current Environmental Laws and with permits issued pursuant thereto (if such permits are required), and (ii) either (A) in amounts not in excess of that necessary to operate, clean, repair and maintain the Property or each tenant's respective business at the Real Property as set forth in their respective Leases, or (B) held by a tenant for sale to the public in its ordinary course of business; (b) there are no past, present or threatened Releases of Hazardous Materials in violation of any Environmental Law and which would require remediation by a Governmental Authority in, on, under or from the Property; (c) there is no threat of any Release of Hazardous Materials migrating to the Property; (d) there is no past or present non-compliance with current Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Reports; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including but not limited to a Governmental Authority) relating to a Release of Hazardous Materials in, on, under or from the Property; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property actually known to Borrower or contained in Borrower's files and records, including but not limited to any reports relating to a Release of Hazardous Materials in, on, under or migrating to or from the Property and/or to the environmental condition of the Property.

4.1.40 Taxpayer Identification Number.

Borrower's United States taxpayer identification number is 20-8901045.

4.1.41 OFAC.

Borrower represents and warrants that neither Borrower, Guarantor, or any of their respective Affiliates is a Prohibited Person, and Borrower, Guarantor, and their respective Affiliates are in full compliance with all applicable orders, rules, regulations and

recommendations of The Office of Foreign Assets Control of the U.S. Department of the Treasury. . . .

4.1.42 Air Rights Lease Representations.

(a) (i) The Air Rights Lease, a true and complete copy of which has been delivered to Lender, is in full force and effect and has not been modified or amended in any manner whatsoever, (ii) there are no defaults under the Air Rights Lease by Borrower, or, to the best of Borrower's knowledge, Fee Owner as landlord thereunder, and, to the best of Borrower's knowledge, no event has occurred which but for the passage of time, or notice, or both would constitute a default under the Air Rights Lease, (iii) all Air Rights Rent have been paid in full, (iv) neither Borrower nor the landlord under the Air Rights Lease has commenced any action or given or received any notice for the purpose of terminating the Air Rights Lease other than by taking measures to create the New Estate which shall take effect upon satisfaction of the Fee Transfer Conditions, (v) neither Fee Owner, as debtor in possession, nor a trustee for such Fee Owner, has given any notice of, and Borrower has not consented to, any attempt to transfer the Fee Estate free and clear of the Air Rights Lease under section 363(f) of the Bankruptcy Code, and (vi) Fee Owner is not subject to any voluntary or involuntary bankruptcy, reorganization or insolvency proceeding and the Fee Estate is not an asset in any voluntary or involuntary bankruptcy, reorganization or insolvency proceeding.

(b) All existing and future mortgages on the Property and on the Fee Estate are or shall be subordinate to the Air Rights Lease and the Lien of the Security Instrument;

(c) The Air Rights Lease or a memorandum thereof has been duly recorded, the Air Rights Lease permits the interest of the lessee thereunder to be encumbered by the Security Instrument, and there has not been any change in the terms of the Air Rights Lease since its recordation;

(d) Other than Permitted Encumbrances, Borrower's interest in the Air Rights Lease is not subject to any Liens superior to, or of equal priority with, the Security Instrument;

(e) Borrower's interest in the Air Rights Lease is assignable to Lender upon notice to, but without the consent of, the lessor thereunder and, in the event that it is so assigned, it is further assignable upon notice to, but without the need to obtain the consent of, such lessor;

(f) The Air Rights Lease requires the lessor thereunder to give notice of any default by Borrower to Lender and the Air Rights Lease further provides that notice of termination given under the Air Rights Lease is not effective against Lender unless a copy of the notice has been delivered to Lender in the manner described in the Air Rights Lease;

(g) Lender is permitted an opportunity (including, where necessary, time to gain possession of the interest of Borrower under the Air Rights Lease) to cure any

default under the Air Rights Lease, which is curable after the receipt of notice of any default before the lessor thereunder may terminate the Air Rights Lease;

(h) The Air Rights Lease has a term which extends not less than twenty (20) years beyond the Maturity Date;

(i) The Air Rights Lease requires the lessor to enter into a new lease upon termination of the Air Rights Lease to the extent specified therein, including as a result of the rejection of the Air Rights Lease in a bankruptcy proceeding;

(j) Under the terms of the Air Rights Lease, the Master REA and the Loan Documents, taken together, any Net Proceeds will be applied either to the Restoration of all or part of the Property, with Lender or a trustee appointed (or previously approved) by Lender having the right to hold and disburse such Net Proceeds as the Restoration progresses, or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon;

(k) The mortgagee on the related fee interest in the Property has agreed that such lender's mortgage (and the related Lien upon such fee interest) shall terminate and be removed of record upon the occurrence of a Fee Transfer;

(l) The Air Rights Lease does not impose restrictions on subletting except that subleases must be in accordance with the Master REA; and

(m) Pursuant to the Air Rights Lease, (i) Resort Borrower and Borrower acknowledged that, immediately prior to entering into the Air Rights Lease, the membership interests in Borrower were owned by Resort Borrower, (ii) Resort Borrower agreed to contribute certain interests in the Air Rights Parcel (as defined in the Air Rights Lease) to the capital of Borrower (described in the Air Rights Lease), (iii) for business and practical reasons, Resort Borrower and Borrower intend that the transfer of the ownership of the Air Rights Parcel shall be effected by the Air Rights Lease by providing a term of 99 years at a nominal rent, with an obligation for Resort Borrower to convey fee title to Borrower upon the satisfaction of certain specified events (all as set forth in the Air Rights Lease), (iv) Resort Borrower and Borrower intend, immediately following the execution and delivery of the Air Rights Lease, that the membership interests in Borrower will be distributed as a return of capital by Resort Borrower through Resort Borrower's upstream intermediate parent entities to Fontainebleau Resort Holdings, LLC, which thereafter will contribute the membership interests in Borrower downstream through Fontainebleau Las Vegas Retail Parent, LLC to the capital of Mezzanine Borrower and, as a result of those transfers, Borrower will constitute a wholly owned subsidiary of Mezzanine Borrower and (v) Resort Borrower and Borrower acknowledge that the foregoing transfers will be recorded and accounted for as so described.

4.1.43 Embargoed Person.

As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned,

directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law ("Embargoed Person"); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.1.44 Labor and Material.

Borrower shall advise Lender in writing immediately if Borrower receives any notice, written or oral, from any laborer, contractor, subcontractor or material furnisher to the effect that said laborer, contractor, subcontractor or material furnisher has not been paid for any labor or materials furnished to or in the Real Property, and Borrower shall deliver to Lender on demand, any contracts, bills of sale, statements, receipted vouchers or agreements, under which Borrower claims title to any materials, fixtures or articles used in the construction of the Future Improvements.

4.1.45 Master Disbursement Agreement Representations. Borrower has reviewed the representations and warranties made by, and covenants of, the Project Entities (as defined in the Master Disbursement Agreement) contained in the Master Disbursement Agreement and such representations and warranties are true, correct and complete.

4.1.46 Reciprocal Easement Agreements.

(a) To the best of Borrower's knowledge, neither Borrower, nor any other party is currently in default (nor has any notice been given or except as previously disclosed to Lender in writing, received with respect to an alleged or current default) in any material respect under any of the terms and conditions of the REA, and the REA remains unmodified and in full force and effect.

(b) To the best of Borrower's knowledge, all sums due and owing by Borrower to the other parties to the REA (or by the other parties to the REA to the Borrower) pursuant to the terms of the REA, including without limitation, all sums, charges, fees, assessments, costs, and expenses in connection with any taxes, site preparation and construction, non-shareholder contributions, and common area and other property management activities have been paid, are current, and no lien has attached on the Property (or threat thereof been made) for failure to pay any of the foregoing.

(c) The terms, conditions, covenants, uses and restrictions contained in the REA do not conflict in any material respect with any terms, conditions, covenants, uses and restrictions contained in any Lease or in any agreement between Borrower and

occupant of any peripheral parcel, including without limitation, conditions and restrictions with respect to kiosk placement, tenant restrictions (type, location or exclusivity), sale of certain goods or services, and/or other use restrictions.

(d) The terms, conditions, covenants, uses and restrictions contained in any Lease do not conflict in any material respect with any terms, conditions, covenants, uses and restrictions contained in the REA, any other Lease or in any agreement between Borrower and occupant of any peripheral parcel, including without limitation, conditions and restrictions with respect to kiosk placement, tenant restrictions (type, location or exclusivity), sale of certain goods or services, and/or other use restrictions.

Section 4.2 Survival of Representations.

Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive (but shall not be deemed to be remade unless expressly stated elsewhere in the Loan Documents) for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

V. BORROWER COVENANTS

Section 5.1 Affirmative Covenants.

From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Security Instrument encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence: Compliance with Legal Requirements.

(a) Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises, and comply with all Legal Requirements applicable to it, the Plans and Specifications and the Property, except to the extent any failure with respect to the foregoing could not be reasonably expected to have a Material Adverse Effect. There shall never be committed by Borrower or any Affiliate, nor shall Borrower knowingly permit any other Person in occupancy of or involved with the operation or use of the Real Property, any act or omission affording the federal government or any State or local government the right of forfeiture against the Real Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times use commercially reasonable efforts to maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and

shall keep the Real Property in reasonably good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Real Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Applicable Laws; (iii) neither the Property nor any part thereof or interest therein will have a reasonable likelihood of being sold, forfeited, terminated, cancelled or lost as a result of such contest; (iv) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding (or if no such security is required by the proceeding, such security as may be requested by Lender) to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security or part thereof, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in imminent danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges.

(a) Subject to Section 7.2 hereof, Borrower shall pay (or cause to be paid) all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable. Borrower shall furnish to Lender receipts, or other evidence for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. Notwithstanding the foregoing or any other provision of any Loan Document, after prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted