

the Loan shall require a corresponding pro rata voluntary prepayment under the Mezzanine Loan.

All reasonable third party costs and expenses incurred by Lender or Borrower or Sponsor in connection with Borrower's or Sponsor's complying with requests made under this Section 9.7.3 shall be paid by Borrower and Sponsor.

9.7.4 Payment of Agent's and Co-Lender's Expenses, Indemnity, etc.

Borrower and Sponsor shall:

(a) whether or not the transactions contemplated in this Section 9.7 are consummated, pay all reasonable out-of-pocket costs and expenses (A) of Agent's counsel fees and expenses relating to the negotiation, preparation, execution and delivery of the Note, this Agreement, the Security Instrument, and the other Loan Documents and the documents and instruments referred to therein, the creation, perfection or protection of Lender's and Co-Lender's liens on the Property (including, without limitation, fees and expenses for title insurance, property inspections, appraisals, if required for Syndication, surveys, lien searches, filing and recording fees, and escrow fees and expenses), and any amendment, waiver or consent relating to any of the Loan Documents including releases (but the Co-Lenders shall pay their own respective counsel fees) and (B) of Agent and Co-Lenders in connection with the preservation of rights under, any amendment, waiver or consent relating to, and enforcement of, the Loan Documents and the documents and instruments referred to therein or in connection with any restructuring or rescheduling of the Obligations (including, without limitation, the reasonable fees and disbursements of counsel for Agent)(but the Co-Lenders shall pay their own respective counsel fees);

(b) pay, and hold Agent and each Co-Lender harmless from and against, any and all present and future stamp, excise and other similar taxes with respect to the foregoing matters and hold Agent and each Co-Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to Agent or such Co-Lender) to pay such taxes; and

(c) indemnify Agent, (in its capacity as Lender and as Agent), and each Co-Lender, its officers, directors, employees, representatives and agents and any persons or entities owned or Controlled by, owning or Controlling, or under common Control or Affiliated with Agent, Agent, or each Co-Lender (each an "Indemnitee") from, and hold each of them harmless against, any and all liabilities, claims, damages (but not special, consequential or punitive damages), losses (other than diminution in value), expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitee in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may at any time (including, without limitation, at any time following the payment of the Obligations) be imposed on, asserted against or incurred by any Indemnitee as a result of, or arising in any manner out of, or in any way

related to or by reason of, (i) the execution, delivery or performance of any Loan Document by Borrower, (ii) the breach of any of Borrower's representations and warranties or of any of Borrower's Obligations, (iii) a default under Section 5.2.8 hereof, including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA, the Code, any State statute or other similar law that may be required, and (iv) the exercise by Agent and the Co-Lenders of their rights and remedies (including, without limitation, foreclosure) under any Loan Documents, but excluding, as to any Indemnitee, any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements to the extent incurred by reason of the gross negligence or willful misconduct of such Indemnitee as finally determined by a court of competent jurisdiction (collectively, "Indemnified Liabilities"). Borrower and Sponsor further agree that, without Agent's or the Co-Lenders' prior written consent, it will not enter into any settlement of a lawsuit, claim or other proceeding arising or relating to any Indemnified Liability unless such settlement includes an explicit and unconditional release from the party bringing such lawsuit, claim or other proceeding of each Indemnitee. Borrower's and Sponsor's obligations under this Section shall survive the termination of this Agreement and the payment of the Obligations. Borrower and Sponsor shall have the right to undertake, conduct and control through counsel of its own choosing (which counsel shall be acceptable to the Indemnitee acting reasonably), the conduct and settlement of the Indemnified Liabilities, and the Indemnitee shall cooperate with Borrower and Sponsor in connection therewith; provided that Borrower and Sponsor shall permit the Indemnitee to participate in such conduct and settlement through counsel chosen by the Indemnitee, but reasonable fees and expenses of such counsel shall be borne by the Indemnitee. Notwithstanding the foregoing, the Indemnitee shall have the right to employ its own counsel, and the reasonable fees and expenses of such counsel shall be at Borrower's and Sponsor's cost and expense if the Indemnitee reasonably determines that (i) Borrower's and Sponsor's counsel is not adequately defending any claim or proceeding in a manner reasonably acceptable to Indemnitee or (ii) the interests of Borrower and the Indemnitee have become adverse in any such claim or course of action; provided, however Borrower, in such event, shall only be liable for the reasonable legal expenses of one counsel for all such Indemnitees. None of Borrower, Sponsor nor any Indemnitee shall be liable for any settlement of any Indemnified Liability effected without its prior written consent, such consent not to be unreasonably withheld. No Indemnitee shall be liable for any indirect damages, consequential damages, punitive damages or damages based on diminution in value or lost revenues, in connection with its activities related to the Loan, the Securitization or the Syndication.

9.7.5 Limitation of Liability.

No claim may be made by Borrower, or any other Person against Agent, or any Co-Lenders or the Affiliates, directors, officers, employees, attorneys or agent of any of such Persons for any special, indirect, consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any act, omission or event occurring in connection therewith;

and Borrower hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

9.7.6 No Joint Venture.

Notwithstanding anything to the contrary herein contained, neither Agent, nor any Co-Lender by entering into this Agreement or by taking any action pursuant hereto, will be deemed a partner or joint venturer with Borrower.

9.7.7 Voting Rights of Co-Lenders.

Borrower acknowledges that the Co-Lending Agreement may contain provisions which require that amendments, waivers, extensions, modifications, and other decisions with respect to the Loan Documents shall require the approval of all or a number of the Co-Lenders holding in the aggregate a specified percentage of the Loan or any one or more Co-Lenders that are specifically affected by such amendment, waiver, extension, modification or other decision.

Section 9.8 Reallocation of Loan Amounts.

Lender, without in any way limiting its other rights hereunder, in its sole and absolute discretion, shall have the right, at any time prior to a Securitization or a Syndication, to reallocate the amount of the Loan and the Mezzanine Loan and/or adjust the interest rate rates thereon provided that (i) the aggregate principal amount of the Loan and the Mezzanine Loan immediately following such reallocation shall equal the outstanding principal balance of the Loan and the Mezzanine Loan immediately prior to such reallocation, (ii) the initial weighted average interest rate of the Note and the Mezzanine Note immediately following such reallocation shall equal the weighted average interest rate which was applicable to the Note and the Mezzanine Note immediately prior to such reallocation and (iii) Mezzanine Lender has agreed to the allocation as required by Lender; provided, however, that nothing in this subsection shall limit Lender's right to apply (i) mandatory or involuntary prepayments to the Debt in such order as Lender determines in its sole discretion and (ii) payments to the Debt in such order as Lender determines in its sole discretion during the continuance of an Event of Default, it being agreed that the weighted average interest rate spreads described above may subsequently change only as a result of a payment or application of principal made (x) in connection with a mandatory or involuntary prepayment and/or (y) during the continuance of an Event of Default. Borrower shall cooperate with all reasonable requests of Lender in order to reallocate the amount of the Loan and the Mezzanine Loan and shall execute and deliver such documents as shall reasonably be required by Lender in connection therewith, including, without limitation, amendments to the Loan Documents and the Mezzanine Loan Documents, and endorsements to the Title Policy and the UCC title insurance policy, all in form and substance reasonably satisfactory to Lender, and Borrower shall pay all costs and expenses in connection such reallocation pursuant to this Section, including, without limitation, any additional title insurance and UCC insurance premiums and any additional 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 amendments of the Loan Documents or the Mezzanine Loan Documents in

connection with the reallocation, provided that such costs and expenses shall not exceed \$50,000.00 in the aggregate.

Section 9.9 Intentionally Omitted.

Section 9.10 Intercreditor Agreement.

Lender and Mezzanine Lender are parties to a certain intercreditor agreement dated as of the date hereof (the "Intercreditor Agreement") memorializing their relative rights and obligations with respect to the Loan, the Mezzanine Loan, Borrower, the Mezzanine Borrower and the Property. Borrower and each Mezzanine Borrower hereby acknowledge and agree that (i) such Intercreditor Agreement is intended solely for the benefit of Lender and Mezzanine Lender and (ii) Borrower and Mezzanine Borrower are not intended third-party beneficiaries of any of the provisions therein and shall not be entitled to rely on any of the provisions contained therein. Lender and Mezzanine Lender shall have no obligation to disclose to Borrower the contents of the Intercreditor Agreement. Borrower's obligations hereunder are independent of such Intercreditor Agreement and remain unmodified by the terms and provisions thereof.

X. CASH MANAGEMENT

Section 10.1 Establishment of Accounts.

(a) Not less than ten (10) Business Days prior to Borrower's receipt of any Rents or other Gross Income from Operations in the form of Cash, (i) establish, and hereby covenants to maintain, an account (the "Property Account") with Property Account Bank into which Borrower shall deposit, or cause to be deposited, all Gross Income from Operations and forfeited Security Deposits, and (ii) execute an agreement with Lender and the Property Account Bank providing for the control of the Property Account by Lender in form and substance reasonably acceptable to Lender (the "Property Account Agreement").

(b) In connection with the establishment of the Property Account, Lender shall establish an account with the Lockbox Account Bank (the "Lockbox Account") into which Borrower shall deposit or cause to be deposited all sums or deposits in the Property Account in accordance with Section 10.2 hereof and Lender shall cause the Lockbox Bank to establish the following Accounts (which may be book entry sub-accounts) into which amounts in the Property Account shall be deposited or allocated:

(i) An account with Lockbox Bank into which Borrower shall deposit, or cause to be deposited, the Monthly Tax Deposit (the "Tax Account");

(ii) An account with Lockbox Bank into which Borrower shall deposit, or cause to be deposited, the Monthly Insurance Premium Deposit (the "Insurance Premium Account");

(iii) An account with Lockbox Bank into which Borrower shall deposit, or cause to be deposited, the Monthly Debt Service Payment Amount (the "Debt Service Account");

(iv) Reserved;

(v) An account with Lockbox Bank into which Borrower shall deposit, or cause to be deposited, the Monthly Mezzanine Debt Service Payment Amount (the "Mezzanine Loan Account").

(c) In the event Lender waives the requirement for Borrower to maintain the Property Account and the Lockbox Account, Lender hereby consents to the Mezzanine Borrower establishing and maintaining a Property Account and Lockbox Account with Mezzanine Lender that would operate as provided in this Article 10.

Section 10.2 Deposits into Lockbox Account.

(a) Borrower represents, warrants and covenants that (i) Borrower shall, or shall cause any Manager to, immediately deposit all Gross Income from Operations and forfeited Security Deposits into the Property Account, (ii) Borrower shall send a notice, substantially in the form of Exhibit F, to all tenants now (if any) or hereafter occupying space at the Property directing them to pay all Rents (including, without limitation, all Lease Termination Payments) and other sums due under the Lease to which they are a party into the Property Account, (iii) other than the Accounts, there shall be no other accounts maintained by Borrower or any other Person into which revenues from the ownership and operation of the Property is deposited, and (iv) neither Borrower nor any other Person shall open any other such account with respect to the deposit of income in connection with the Property. Until deposited into the Property Account, any Gross Income from Operations from the Property and forfeited Security Deposits held by Borrower shall be deemed to be Collateral and shall be held in trust by it for the benefit, and as the property, of Lender and shall not be commingled with any other funds or property of Borrower.

(b) Borrower, or Lender on behalf of Borrower, shall direct the Property Account Bank to transfer, on each Business Day, all funds on deposit in the Property Account to the Lockbox Account.

(c) Borrower warrants and covenants that it shall not rescind, withdraw or change any notices or instructions required to be sent by it pursuant to this Section 10.2 without Lender's prior written consent.

Section 10.3 Account Name.

(a) Subject to subsection (b) below, the Accounts (other than the Property Account) shall each be in the name of Lender.

(b) In the event Lender transfers or assigns the Loan, Borrower acknowledges that the Property Account Bank and Lockbox Bank, at Lender's request, shall change the name of each Account to the name of the transferee or assignee. In the event Lender retains a servicer to service the Loan, Borrower acknowledges that the Property Account Bank and Lockbox Bank, at Lender's request, shall change the name of each account to the name of the servicer, as agent for Lender.

Section 10.4 Eligible Accounts.

Each Account shall at all times be maintained as an Eligible Account.

Section 10.5 Permitted Investments.

Sums on deposit in any Account other than the Property Account may be invested in Permitted Investments provided (i) such investments are then regularly offered by Lockbox Bank for accounts of this size, category and type, (ii) such investments are permitted by Applicable Law, (iii) the maturity date of the Permitted Investment is not later than the date on which sums in the applicable Account are anticipated by Lender to be required for payment of an obligation for which such Account was created, and (iv) no Event of Default shall have occurred and be continuing. Except as may be provided otherwise in Article 7 hereof, all income earned from Permitted Investments shall be the property of Borrower. Borrower hereby irrevocably authorizes and directs Lockbox Bank, to hold any income earned from Permitted Investments as part of the Accounts. Borrower shall be responsible for payment of any federal, State or local income or other tax applicable to income earned from Permitted Investments. No other investments of the sums on deposit in the Accounts shall be permitted except as set forth in this Section 10.5. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds or of any funds deposited in the related Accounts.

Section 10.6 The Initial Deposits.

Lender shall determine, in its reasonable discretion, the initial deposit amounts (the "Initial Deposits"), if any, required to be deposited in each of the Tax Account and the Insurance Premium Account, and Borrower shall cause to be deposited the respective Initial Deposits into each such Account.

Section 10.7 Transfer To and Disbursements from the Lockbox Account.

(a) Bank shall withdraw all funds on deposit in the Lockbox Account on the date immediately preceding each Payment Date (and if such day is not a Business Day then the preceding day which is a Business Day),

(b) Lockbox Bank shall disburse the funds in the Lockbox Account in the following order of priority:

(i) Intentionally omitted;

(ii) First, funds sufficient to pay the Monthly Tax Deposit shall be deposited in the Tax Account;

(iii) Second, funds sufficient to pay the Monthly Insurance Premium Deposit shall be deposited in the Insurance Premium Account;

(iv) Third, funds sufficient to pay the Monthly Debt Service Payment Amount shall be deposited into the Debt Service Account to be applied to the payment of accrued and unpaid interest computed at the Applicable Interest Rate;

- (v) Fourth, funds sufficient to pay any interest accruing at the Default Rate, and late payment charges, if any, shall be deposited in the Debt Service Account;
- (vi) Fifth, to the payment of Lockbox Bank for fees and expenses incurred in connection with this Agreement and the accounts established hereunder;
- (vii) Sixth, to the payment of the Servicing Fee (if such Servicing Fee is due); and
- (viii) Seventh, to the extent available, funds sufficient to pay (A) the Monthly Mezzanine Debt Service Payment Amount and (B) any Net Liquidation Proceeds After Debt Service, shall be deposited into the Mezzanine Loan Account to be applied in accordance with the Mezzanine Loan Agreement; and
- (ix) Eighth, provided no Event of Default shall exist under the Loan Documents, all amounts remaining in the Lockbox Account after deposits for items (i) through (viii) for the current month and all prior months shall be disbursed (A) if Lender has received written notice from Mezzanine Lender that a Mezzanine Default has occurred and is continuing, to an account designated by Mezzanine Lender or (B) to Borrower.

Section 10.8 Withdrawals From the Tax Account and the Insurance Premium Account.

So long as no Event of Default then exists and further provided (except during any period of time in which Lender in good faith has reason to believe that the Borrower or the Property may be involved in a bankruptcy, insolvency or similar proceeding affecting creditors' rights) Lender and/or Lockbox Bank is not prohibited from doing so by applicable laws, rules or regulations, Lender or Lockbox Bank shall withdraw funds from time to time (i) from the Tax Account to pay Taxes on or before the date such Taxes are due and payable and (ii) from the Insurance Premium Account from time to time to pay Insurance Premiums on or before the date Insurance Premiums are due and payable. Lockbox Bank shall disburse funds from the Tax Account and the Insurance Premium Account in accordance with Lender's written request therefor on the Business Day following Lockbox Bank's receipt of such written request.

Section 10.9 Withdrawals from the Debt Service Account.

Lender shall have the right to withdraw funds from the Debt Service Account to pay the Monthly Debt Service Payment Amount on or after the date when due, together with any late payment charges or interest accruing at the Default Rate; provided, however, provided the Debt Service Account contains sufficient funds and provided Lender is not prohibited from doing so by applicable laws, rules or regulations, it shall not be an Event of Default (and no late charge or default interest shall be due in connection therewith) in the event Lender fails to withdraw such funds on or prior to the date any Monthly Debt Service Payment Amount is due.

Section 10.10 Withdrawals from the Mezzanine Account.

Lender shall withdraw funds from the Mezzanine Loan Account to pay the Monthly Mezzanine Debt Service Payment Amount by the date and time when due, together with any late payment charges or interest accruing pursuant to the Mezzanine Loan Documents.

Section 10.11 Sole Dominion and Control.

Borrower acknowledges and agrees that the Accounts are subject to the sole dominion, control and discretion of Lender, its authorized agents or designees, including Property Account Bank and Lockbox Bank, subject to the terms hereof; and Borrower shall have no right of withdrawal with respect to any Account except with the prior written consent of Lender or as otherwise provided herein.

Section 10.12 Security Interest.

Borrower hereby grants to Lender a first priority security interest in each of the Accounts and the Account Collateral as additional security for the Debt.

Section 10.13 Rights on Default.

Notwithstanding anything to the contrary in this Article 10, upon the occurrence and during the continuance of an Event of Default, Lender shall promptly notify Property Account Bank and Lockbox Bank in writing of such Event of Default and, without notice from Property Account Bank, Lockbox Bank or Lender, (a) Borrower shall have no further right (to the extent Borrower had such right under the Loan Documents) to instruct Lockbox Bank and/or Property Account Bank to make any transfer from, make any decisions with respect to or otherwise exercise any control of) the Accounts during the continuance of such Event of Default(s), (b) Lender may direct Lockbox Account to liquidate and transfer any amounts then invested in Permitted Investments to the Accounts or reinvest such amounts in other Permitted Investments as Lender may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or pursuant to the other Loan Documents or to enable Lockbox Bank, as agent for Lender, or Lender to exercise and enforce Lender's rights and remedies hereunder or under any other Loan Document with respect to any Account or any Account Collateral, and (c) Lender shall have all rights and remedies with respect to the Accounts and the amounts on deposit therein and the Account Collateral as described in this Agreement and in the Security Instrument, in addition to all of the rights and remedies available to a secured party under the UCC, and, notwithstanding anything to the contrary contained in this Agreement or in the Security Instrument, Lender may apply the amounts of such Accounts as Lender determines in its sole discretion including, but not limited to, payment of the Debt.

Section 10.14 Financing Statement; Further Assurances.

Borrower hereby authorizes Lender to file, and upon Lender's request, shall deliver to Lender for filing, a financing statement or statements under the UCC in connection with any of the Accounts and the Account Collateral with respect thereto in the form required to properly perfect Lender's security interest therein. Borrower agrees that at any time and from time to time, at the reasonable expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Lender may request, in order to perfect and protect any security interest granted

or purported to be granted hereby (including, without limitation, any security interest in and to any Permitted Investments) or to enable Lockbox Bank or Lender to exercise and enforce its rights and remedies hereunder with respect to any Account or Account Collateral.

Section 10.15 Borrower's Obligation Not Affected.

The insufficiency of funds on deposit in the Accounts shall not absolve Borrower of the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

Section 10.16 Payments Received Under this Agreement.

Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the monthly payment of Debt Service and amounts due for the Tax and Insurance Escrow Fund and any other payment reserves established pursuant to this Agreement or any other Loan Document shall (provided Lender is not prohibited from withdrawing or applying any funds in the Accounts by Applicable Law or otherwise) be deemed satisfied to the extent sufficient amounts are deposited in the Lockbox Account established pursuant to this Agreement to satisfy such obligations on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

Section 10.17 Deposit Accounts.

(a) This Agreement and the Property Account Agreement when executed would create valid and continuing security interests (as defined in the UCC) in the Property Account and the Lockbox Account in favor of Lender, which security interests would be prior to all other Liens and are enforceable as such against creditors of and purchasers from Borrower;

(b) Borrower and Lender agree that the Property Account is and shall be maintained (i) as a "deposit account" (as such term is defined in Section 9-102(a)(29) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 9-104(a)(2) of the UCC) over the Property Account and (iii) such that neither Borrower nor any Manager shall have any right of withdrawal from the Property Account and no Account Collateral shall be released to Borrower or any Manager from the Property Account. Without limiting Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Property Account with a financial institution that has executed an agreement substantially in the form of the Property Account Agreement or in such other form reasonably acceptable to Lender.

(c) Borrower and Lender agree that each Account other than the Property Account is and shall be maintained (i) as a "securities account" (as such term is defined in Section 8-501(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 8-106(d)(2) of the UCC) over each such Account, (iii) such that neither Borrower nor any Manager shall have any right of withdrawal from such Accounts and, except as provided herein, no Account Collateral shall be released to

Borrower from such Accounts, (iv) in such a manner that the Lockbox Bank shall agree to treat all property credited to such Account as "financial assets" and (v) such that all securities or other property underlying any financial assets credited to such Accounts shall be registered in the name of Lockbox Bank, indorsed to Lockbox Bank or in blank or credited to another securities account maintained in the name of Lockbox Bank and in no case will any financial asset credited to any such Accounts be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower except to the extent the foregoing have been specially indorsed to Lockbox Bank or in blank;

(d) Borrower owns and has good and marketable title to the Property Account and the Lockbox Account free and clear of any Lien or claim of any Person except the Lien and claims of Lender created under the Loan Documents, the Property Account Agreement and the agreements described in clause (e) below in connection with the Loan;

(e) Borrower has delivered to Lender fully executed agreements pursuant to which the banks maintaining the Property Account and the Lockbox Account have agreed to comply with all instructions originated by Lender directing disposition of the funds in such accounts without further consent by Borrower;

(f) Other than the security interest granted to Lender pursuant to this Agreement, the other Loan Documents, the Property Account Agreement and the agreements described in clause (e) above, Borrower has not pledged, assigned, or sold, granted a security interest in, or otherwise conveyed any of the Property Account or the Lockbox Account; and

(g) The Property Account and the Lockbox Account are not in the name of any Person other than Borrower or Lender. Borrower has not consented to the banks maintaining the Lockbox Account or the Property Account, to comply with instructions of any Person other than Lender.

Section 10.18 Intentionally Omitted.

Section 10.19 Lender Reliance.

Lender shall have no duty to confirm, inquire or determine whether a Mezzanine Default has occurred. Lender may rely on any notice it believes in good faith to be genuine and given by Mezzanine Lender.

Section 10.20 Borrower Distributions.

All transfers of Borrower's funds from the Lockbox Account or other sources to or for the benefit of the Mezzanine Lender pursuant to this Agreement or any of the other Loan Documents are intended by Borrower to constitute and shall constitute distributions from the Borrower to the Mezzanine Borrower, and must comply with the requirements as to distributions of the Delaware Limited Liability Company Act. No provision of the Loan Documents shall create a debtor-creditor relationship between the Borrower and the Mezzanine Lender.

XI. MISCELLANEOUS

Section 11.1 Survival.

This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 11.2 Lender's Discretion.

Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 11.3 Governing Law.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS), PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS AGREEMENT, THE SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

(b) WITH RESPECT TO ANY CLAIM OR ACTION ARISING HEREUNDER OR UNDER THIS AGREEMENT, THE NOTE, OR THE OTHER LOAN DOCUMENTS, EACH PARTY HERETO (A) IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK, NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF, AND (B) IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING ON VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS BROUGHT IN ANY SUCH COURT, IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH

SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING IN THIS AGREEMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS INSTRUMENT WILL BE DEEMED TO PRECLUDE LENDER FROM BRINGING AN ACTION OR PROCEEDING WITH RESPECT HERETO IN ANY OTHER JURISDICTION.

Section 11.4 Modification, Waiver in Writing.

No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 11.5 Delay Not a Waiver.

Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 11.6 Notices.

All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U. S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: Fontainebleau Las Vegas Retail, LLC
 . 2827 Paradise Rd.
 Las Vegas, NV 89109
 Attention: Jim Freeman
 Phone: (702) 495-8220
 Fax: (702) 495-8011

With a copy to: Fontainebleau Las Vegas Retail, LLC
19950 West Country Club Drive
Aventura, FL 33180
Attn: Eric Salzinger
Phone: (305) 682-4204
Fax: (305) 682-4205

With an additional copy to: Fontainebleau Las Vegas Retail, LLC
2827 Paradise Rd.
Las Vegas, NV 89109
Attn: General Counsel
Phone: (702) 495-8108
Fax: (702) 495-8112

If to Lender / Agent: Lehman Brothers Holdings Inc.
c/o Lehman Brothers Holdings
399 Park Avenue
New York, New York 10022
Attention: Josh Freedman
Facsimile No.: (212) 713-1278

With a copy to: Lehman Brothers Holdings Inc.
c/o Lehman Brothers Holdings
399 Park Avenue
New York, New York 10022
Attention: Gary Taylor
Facsimile No.: (646) 758-2256

and

Thacher Proffitt & Wood
Two World Financial Center
New York, New York 10281
Attention: Mitchell G. Williams, Esq.
Facsimile No.: (212) 912-7751

or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

Section 11.7 Trial by Jury.

EACH PARTY HERETO HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR

HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

Section 11.8 Headings.

The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 11.9 Severability.

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

Section 11.10 Preferences.

Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, State or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 11.11 Waiver of Notice.

Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 11.12 Remedies of Borrower.

In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 11.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender within five (5) Business Days of receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date (after the expiration of all applicable notice, grace and cure periods, if any,) including, without limitation, confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement (after the expiration of all applicable notice, grace and cure periods, if any); (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan to the extent Lender is entitled to do so hereunder; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (after the expiration of all applicable notice, grace and cure periods, if any) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender (after the expiration of all applicable notice, grace and cure periods, if any) may be paid from any amounts in the Lockbox Account.

(b) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, damages (but not special, consequential or punitive damages), losses (other than diminution in value), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that are imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "Additional Indemnified Liabilities"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under Applicable Law to the payment and satisfaction of all Additional Indemnified Liabilities incurred by Lender.

(c) Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Lender and the Indemnified Parties from and against any and all losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA, the Code, any State statute or other similar law that may be reasonably required) that Lender may incur, directly or indirectly, as a result of a default under Sections 4.1.8 or 5.2.8 hereof.

(d) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, (i) any fees and expenses incurred by any Rating Agency in connection with any Rating Agency review of the Loan, the Loan Documents or any transaction contemplated thereby or (ii) any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 11.14 Schedules and Exhibits Incorporated.

The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 11.15 Offsets, Counterclaims and Defenses.

Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such

documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 11.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 11.17 Publicity.

All news releases, publicity or advertising by Borrower or their Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, Lehman, or any of their Affiliates shall be subject to the prior written approval of Lender, which shall not be unreasonably withheld. Notwithstanding the foregoing, disclosure required by any federal or State securities laws, rules or regulations, as determined by Borrower's counsel, shall not be subject to the prior written approval of Lender.

Section 11.18 Waiver of Marshalling of Assets.

To the fullest extent permitted by Applicable Law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, or to a sale in inverse order of alienation in the event of foreclosure of all or part of the Security Instrument, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or

of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 11.19 Waiver of Counterclaim.

Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 11.20 Conflict: Construction of Documents; Reliance.

In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents (including, but not limited to, the Master Disbursement Agreement), the provisions of this Agreement shall control unless otherwise expressly provided herein. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 11.21 Brokers and Financial Advisors.

Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 11.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 11.22 Nature of Inspection and Approvals.

Upon reasonable prior notice, Lender shall at its option have the right to make inspection of the Project, and to approve, among other things the Plans and Specifications, the Survey, and the Construction Documents. No right of inspection or approval contained herein shall be deemed to impose upon Lender any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by Lender shall be deemed to impose upon Lender any duty or obligation whatsoever to correct any defects in the Future

Improvements or to notify any person with respect thereto, and provided further that no liability shall be imposed upon Lender, and no warranties construed to arise by reason of any inspection of the Project or approval by Lender, its agents, employees or representatives, any such inspections and approvals being made solely for the benefit of Lender. All conditions precedent to the obligation of Lender to make any disbursement are imposed hereby solely for the benefit of Lender, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lender will refuse to make any disbursement in the absence of strict compliance with such conditions precedent. Any requirement of this Agreement obligating Borrower or any of its Affiliates may be waived, in whole or in part, in a specific written waiver intended for the purpose and signed by Lender. Lender shall have the right to approve and verify the periodic progress, costs incurred by Borrower, and the estimated costs remaining to be incurred, after consultation with the Construction Consultant. No disbursement shall constitute an approval or acceptance by Lender of any construction work, a waiver of any condition precedent to any further disbursement, or preclude Lender from thereafter declaring the failure of Borrower to satisfy such condition precedent to be an Event of Default. No waiver by Lender of any condition precedent or obligation to funding a disbursement of the Loan proceeds shall preclude Lender from requiring such condition or obligation to be met prior to making any future disbursement.

Section 11.23 Prior Agreements.

This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, between Borrower and/or its Affiliates and Lender are superseded by the terms of this Agreement and the other Loan Documents.

[NO FURTHER TEXT ON THIS PAGE]

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

FOUNTAINBLEAU LAS VEGAS RETAIL, LLC, a Delaware limited liability company

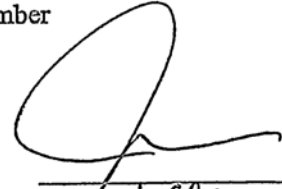
By: Fontainebleau Las Vegas Retail Mezzanine, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Las Vegas Retail Parent, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Resort Holdings, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Resorts, LLC, a Delaware limited liability company, its managing member

By:




Name: *Jeffrey Soffer*
Title: *Executive Chairman*

LOAN AGREEMENT

WITH RESPECT TO SECTIONS 9.1, 9.2,
9.7.3 and 9.7.4 and 9.9 ONLY

FONTAINEBLEAU RESORTS, LLC, a
Delaware limited liability company

By:



Name: Jeffrey Soffer
Title: Executive Chairman

LOAN AGREEMENT

LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation, individually as a Co-Lender and as Agent for one or more Co-Lenders

By: 

Name: Charlene Thomas
Title: Authorized Signatory

LOAN AGREEMENT

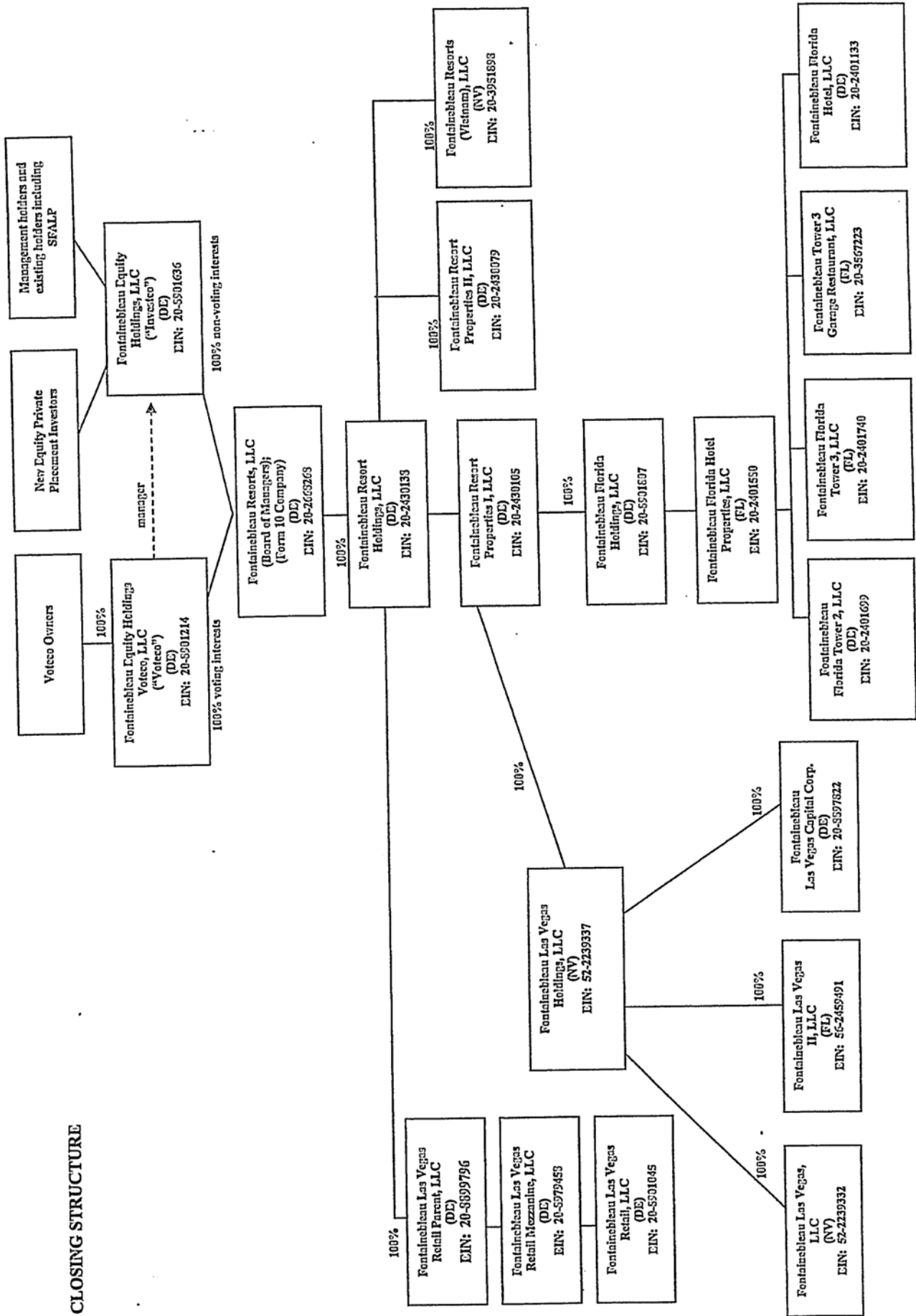
SCHEDULE I

ORGANIZATIONAL CHART

A-155

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CLOSING STRUCTURE



#4123651-v2

SCHEDULE II
LITIGATION

A-156

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Schedule II
to Loan Agreement

Schedule II

Litigation

Certain Affiliates of Borrower are defendants, among others, in litigation in District Court, Clark County, Nevada, comprised of 35 identical cases in which the plaintiffs allege that the Fontainebleau Las Vegas II, LLC, certain other Affiliates of Borrower and certain other defendants wrongfully terminated the plaintiffs' purchase agreements for condominium units in a condominium development to be located on the Site (as defined in the Disbursement Agreement) which may affect the Real Property. The plaintiffs claim an equitable interest in the property and monetary damages. The cases are in the discovery stage and no substantive rulings have been issued.

Certain Affiliates of Borrower are defendants, among others, in litigation in an action in District Court, Clark County, Nevada brought by Horizon Commercial, LLC et al. claiming that the plaintiff commercial real estate brokers are owed commissions for providing prospective retail and real estate tenants for the defendants' planned condominium development.

SD\587395.2

SCHEDULE III
CONSTRUCTION BUDGET

A-157

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Schedule III
to Loan Agreement

Schedule III

Construction Budget

Leasing Commissions	\$6,000,000
Affiliate Lease Tenant Allowances and Tenant Improvements	\$29,234,085
Other Tenant Allowances and Tenant Improvements	<u>\$26,765,915</u>
Total Construction Budget	\$62,000,000

SD587395.2

EXHIBIT A

ADVANCE REQUEST FORM

(attached hereto)

A-158

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FORM OF ADVANCE REQUEST

FONTAINEBLEAU LAS VEGAS RETAIL, LLC
2827 Paradise Rd.
Las Vegas, NV 89109
Phone: (702) 495-8108
Fax: (702) 495-8112

_____, 20____

Lehman Brothers Holdings Inc.
c/o Lehman Brothers Holdings
399 Park Avenue
New York, New York 10022
Attention: Josh Freedman
Facsimile No.: (212) 713-1278

Ladies and Gentlemen:

We refer to that certain Loan Agreement dated as of June 6, 2007 between us and you (the "Loan Agreement"). This request is delivered to you pursuant to Section 2.1.2(d) of the Loan Agreement as one of the inducements for an advance in the amount of \$ _____, which will bring the total unpaid principal balance of the Loan to \$ _____. All capitalized terms used herein shall have the same meanings herein as they have in the Loan Agreement.

In order to induce you to make this advance, we hereby represent and certify as follows:

1. No Event of Default has occurred and is continuing under the Loan Agreement, or would result from the proposed advance or would result from the application of the proceeds therefrom.

2. The conditions set forth in Sections 2.1.2(d) and (e) of the Loan Agreement will be satisfied after giving effect to the advance hereby requested.

The undersigned hereby notifies you (a) that the date of the Advance shall be _____ [NOTE: Advance request shall be no less than five (5) Business Days prior to a Payment Date, unless Lender otherwise consents]; and (b) the proceeds of the Advance shall be utilized for the purpose of the payment of Monthly Debt Service Payment Amounts (as defined in the Loan Agreement) in the event of a shortfall between revenue and expenses at the Property for a specific month.

FONTAINEBLEAU LAS VEGAS RETAIL, LLC, a
Delaware limited liability company

By: Fontainebleau Las Vegas Retail Mezzanine, LLC,
its managing member

By: Fontainebleau Las Vegas Retail Parent,
LLC, its managing member

By: Fontainebleau Resort Holdings,
LLC, its managing member

By: Fontainebleau Resorts, LLC,
its managing member

By: _____
Name:
Title:

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EXHIBIT B

FORM OF ASSIGNMENT OF INTEREST RATE CAP

**ASSIGNMENT OF INTEREST RATE CAP AGREEMENT
AND SECURITY AGREEMENT**

THIS ASSIGNMENT OF INTEREST RATE CAP AGREEMENT AND SECURITY AGREEMENT ("Assignment") is made as of the ___ day of _____, 200_, by _____, a _____, having an address at _____ ("Borrower") to LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation, having an address at 399 Park Avenue, 8th Floor, New York, New York 10022, individually and as Agent for one or more Co-Lenders ("Lender").

RECITALS:

A. Lender has agreed to make a loan to Borrower in the maximum principal sum of _____ DOLLARS (\$ _____) (the "Loan") to be advanced from time to time pursuant to that certain Loan Agreement dated as of June __, 2007 between Borrower and Lender (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "Loan Agreement"). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

B. The Loan is secured by, among other things the "Security Instrument" which grants Lender a first lien on the property encumbered thereby (the "Property") and is further evidenced by the Note. The Note, the Loan Agreement, the Security Instrument, this Assignment and any of the other documents evidencing or securing the Loan or executed or delivered in connection therewith are collectively referred to as the "Loan Documents."

C. Lender requires that Borrower assign to Lender as additional security for the payment of the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Loan Agreement, the Note, the Security Instrument and the other Loan Documents on the part of Borrower to be observed and performed, all of Borrower's right, title and interest in and to all payments to be made to Borrower pursuant to that certain [Rate Cap Transaction Agreement/Confirmation] in the notional amount of \$ _____ dated _____, 200_ (the "Cap Agreement") between [_____] (the "Cap Seller") and Borrower.

AGREEMENT:

For good and valuable consideration the parties hereto agree as follows:

1. Assignment of the Cap Agreement.

(a) As additional collateral security for the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Loan Agreement, the

Note, the Security Instrument and the other Loan Documents on the part of Borrower to be observed or performed, Borrower hereby transfers, sets over and assigns to Lender all of Borrower's right, title and interest in and to all payments to be made to Borrower from the Cap Seller pursuant to the Cap Agreement ("Cap Agreement Payments"). Lender shall use such Cap Agreement Payments only for the payment of monthly interest payments due under the Note, provided, however, that upon the occurrence and during the continuation of an Event of Default, Lender, in its sole and absolute discretion, may use such Cap Agreement Payments for any purpose, including but not limited to (i) payment of monthly interest payments due under the Note, (ii) repayment of any indebtedness secured by the Security Instrument, including but not limited to principal prepayments and the prepayment consideration due upon a full or partial prepayment (as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any Event of Default or default thereunder; (iii) reimbursement of Lender for all losses or expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default or default hereunder; or (iv) payment of any amount expended in exercising any and all rights and remedies available to Lender at law or in equity or under this Agreement or under the Loan Agreement, the Note, the Security Instrument or any of the other Loan Documents.

(b) (i) The Cap Seller shall be entitled to conclusively, without liability, rely, without investigation, on any notice or instructions (including, without limitation, with respect to the Cap Agreement Payments) received by the Cap Seller from Lender, or Lender's successors and/or assigns, (ii) without limitation on the immediately preceding clause, in the event of any inconsistency between any notice or instructions from Lender and any notice or instructions from Borrower, the Cap Seller shall be entitled to conclusively rely (without any independent investigation) on those from Lender and (iii) the Cap Seller shall be held harmless and shall be fully indemnified by Borrower from and against any and all claims, other than those ultimately determined to be proximately caused by the gross negligence or willful misconduct of the Cap Seller, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred by the Cap Seller as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any actions taken or omitted to be taken by the Cap Seller in reliance upon any such instructions or notice provided by Lender. The Cap Seller shall be entitled to rely on the provisions of this paragraph.

2. Borrower's Covenants. Borrower hereby covenants with Lender that during the term of this Assignment: (a) Borrower shall fulfill and perform each and every term, covenant and provision of the Cap Agreement to be fulfilled or performed by Borrower thereunder, if any, (b) Borrower shall, in the manner provided for in this Assignment, give prompt notice to Lender of any notice received by Borrower under the Cap Agreement, together with a complete copy of any such notice, and (c) Borrower shall not terminate or amend any of the terms or provisions of the Cap Agreement, except as may be expressly permitted pursuant to the terms of the Cap Agreement, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

3. Governing Law. This Assignment shall be deemed to be governed, construed, applied and enforced in accordance with the laws of the State of New York and the applicable laws of the United States of America.

4. Notices. All notices or other written communications hereunder shall be deemed to have been properly given and become effective as provided in the Loan Agreement.

Notices to the Cap Seller shall be sent as follows:

Attention: _____
Facsimile No.: _____

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

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

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

8. Headings, etc. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

9. Duplicate Originals; Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

10. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Secondary Market. Lender may sell, transfer and deliver the Note and assign the Security Instrument, this Assignment and the other Loan Documents in the secondary mortgage market whether or not in connection with such sale, Lender may retain or assign responsibility for servicing the Loan, including the Note, the Security Instrument, this Assignment and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer,

on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

12. Miscellaneous.

(a) Wherever pursuant to this Assignment (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees and disbursements of Lender, in connection with retained firms.

(c) Nothing herein is intended, and nothing herein shall be construed, to impose upon Lender any liability or obligation of Borrower under the Cap Agreement.

13. Right to Cure Defaults. In addition to, and in no way limiting other remedies available to Lender under this Assignment, the Loan Agreement, the Note, the Security Instrument, or the other Loan Documents, if Borrower shall default in the performance or observance of any term, covenant or condition of the Cap Agreement on the part of Borrower to be performed or observed, then, without limiting the generality of the other provisions of this Assignment or the Loan Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Cap Agreement on the part of Borrower to be performed or observed or to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under the Cap Agreement shall be kept unimpaired and free from default. If Lender shall make any payment or perform any act or take action in accordance with the preceding sentence, Lender will notify Borrower of the making of any such payment, the performance of any such act, or the taking of any such action and Borrower shall within ten (10) days after request by Lender, reimburse Lender for same. Any such payment made or sums expended by Lender on behalf of Borrower shall be added to the Debt.

14. Remedies Cumulative. None of the rights and remedies herein conferred upon or reserved to Lender under this Assignment are intended to be exclusive of any other rights, and each and every right shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary by Lender. In addition, Lender may exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code.

15. Further Assurances. Borrower shall, at its sole expense, give, execute, deliver, file and/or record any financing statement, continuation statement, notice, instrument, document, agreement or other papers that may be necessary or desirable to create, preserve,

perfect or validate the security interest granted pursuant hereto or to enable Lender to exercise and enforce its rights hereunder with respect to such security interest.

16. Security Agreement. This Assignment is a "security agreement" within the meaning of the Uniform Commercial Code.

17. Cap Seller Notification Letter. Borrower represents, warrants and covenants that concurrently with the execution of this Assignment, Borrower shall send a notice, in the form of Exhibit A attached hereto, to Cap Seller.

18. Borrower Representations and Warranties.

(a) Borrower represents and warrants to Lender that (i) a true and correct copy of the Cap Agreement has been delivered to Lender and the Cap Agreement has not been amended or modified in any respect, (ii) Borrower has all necessary right, power and authority to enter into the Cap Agreement and perform its obligations thereunder, (iii) Borrower is in compliance with all of the terms and conditions of the Cap Agreement and has performed all of its obligations thereunder, (iv) Borrower has all necessary right, power and authority to make the assignment and grant the security interest herein provided for, (v) Borrower's interest in the Cap Agreement and Cap Agreement Payments is free and clear of any liens or claims in favor of any other person, firm or corporation and (vi) Borrower's only place of business and the only location where Borrower maintains records relating to accounts or the Cap Agreement is 2827 Paradise Road, Las Vegas, Nevada 89109.

(b) Borrower represents and warrants to Lender that (i) it will not without Lender's prior written consent, request or direct the Cap Seller to pay any Cap Agreement Payments to an account other than such account directed by Lender and (ii) it will not assign, transfer or grant any lien on the Cap Agreement or Cap Agreement Payments.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF the undersigned have executed this Assignment as of the date first written above.

FONTAINEBLEAU LAS VEGAS RETAIL, LLC, a Delaware limited liability company

By: Fontainebleau Las Vegas Retail Mezzanine, LLC, its managing member

By: Fontainebleau Las Vegas Retail Parent, LLC, its managing member

By: Fontainebleau Resort Holdings, LLC, its managing member

By: Fontainebleau Resorts, LLC, its managing member

By: _____
Name:
Title:

LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation

By: _____
Name:
Title:

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EXHIBIT A

[CAP SELLER]

Re: [Rate Cap Transaction Agreement/Confirmation] in the notional amount of \$ _____ dated as of _____, 200_ (the "Cap Agreement") between [_____] , as cap seller ("Cap Seller") and _____ ("Borrower").

Gentlemen:

On _____, 200_, LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation, as lender ("Lender") funded a first mortgage loan (the "Loan") to Borrower, as borrower, encumbering _____. This letter shall constitute notice to Cap Seller that (a) Borrower has granted a security interest in the Cap Agreement in favor of Lender, to secure certain of Borrower's obligations under the Loan and (b) Borrower has agreed not to terminate or amend any of the terms or provisions of the Cap Agreement, except as may be expressly permitted pursuant to the terms of the Cap Agreement, without the prior written consent of Lender.

Borrower hereby authorizes and directs Cap Seller as of the date hereof to make all payments due Borrower under the Cap Agreement by wire transfer to the following account:

[Bank's Address]

Account No. _____

Attention: _____

ABA No.: _____

The instructions set forth herein are not subject to modification or amendment except by written notice executed by Lender only.

Sincerely,

[BORROWER]

ACKNOWLEDGMENT AND AGREEMENT

Cap Seller acknowledges notice of the security interest of Lender and hereby confirms that it will honor the above instructions. Furthermore, the Cap Seller hereby agrees that it shall not amend, modify, or terminate the Cap Agreement, except as may be expressly permitted pursuant to the terms of the Cap Agreement, without the prior written consent of Lender.

[CAP SELLER]

By: _____
Name:
Title:

Dated as of: _____, 200_

EXHIBIT C

ASSIGNMENT OF DEVELOPMENT AGREEMENT

CONDITIONAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS CONDITIONAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made as of the ___th day of _____, 200_, by FONTAINEBLEAU LAS VEGAS RETAIL, LLC, a Delaware limited liability company, having its principal place of business at 2827 Paradise Road, Las Vegas, Nevada 89109 ("Borrower") to LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation, having an address at 399 Park Avenue, 8th Floor, New York, New York 10022, individually and as Agent for one or more Co-Lenders ("Lender"), and is acknowledged and consented to by _____, having its principal place of business at _____ ("Developer").

RECITALS:

A. Lender has made a loan to Borrower in the maximum principal sum of THREE HUNDRED FIFTEEN MILLION AND 00/100 DOLLARS (\$315,000,000.00 (the "Loan") pursuant to that certain Loan Agreement, dated June __, 2007 (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by the Note (as defined in the Loan Agreement).

B. The Loan is secured by, among other things, the Security Instrument (as defined in the Loan Agreement) which grants Lender a first lien on the Property encumbered thereby (as defined in the Loan Agreement) and is further evidenced by the Note (as defined in the Loan Agreement).

C. Pursuant to that certain Development Agreement dated as of the date hereof (a true and correct copy of which Development Agreement is attached hereto as Exhibit A), Borrower employed Developer exclusively to develop the Property and Developer is entitled to certain development fees (the "Development Fees") thereunder.

D. Lender requires as a condition to the making of the Loan that Borrower assign the Development Agreement and that Developer subordinate its interest under the Development Agreement in lien and payment to the Note, the Loan Agreement, the Security Instrument and the other Loan Documents as set forth below.

E. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

AGREEMENT:

For good and valuable consideration the parties hereto agree as follows:

1. Assignment of Development Agreement. As additional collateral security for the Loan, Borrower hereby conditionally transfers, sets over and assigns to Lender all of Borrower's right, title and interest in and to the Development Agreement, said transfer and assignment to automatically become a present, unconditional assignment, at Lender's option, upon the occurrence of an Event of Default under the Note, the Loan Agreement, any Security Instrument or any of the other Loan Documents, including but not limited to escrow agreements, and the failure of Borrower to cure such default within any applicable grace period.

2. Borrower's Covenants. Borrower and Developer hereby covenant with Lender that during the term of this Assignment, except as specifically provided in the Loan Agreement: (a) neither Borrower nor Developer shall transfer the responsibility for the development of any the Property to any other person or entity without prior written notification to Lender and the prior written consent of Lender, which consent may not be unreasonably withheld, conditioned or delayed by Lender; (b) neither Borrower nor Developer shall terminate or amend any of the material terms or provisions of the Development Agreement without the prior written consent of Lender, which consent may be withheld in accordance with the terms of the Loan Agreement; and (c) Borrower or Developer, as the case may be, shall, in the manner provided for in this Assignment, give notice to Lender of any notice or information that Borrower or Developer, as the case may be, receives which indicates that the other party is terminating the Development Agreement or that Developer is otherwise discontinuing its development of the Property.

3. Termination. At such time as the Loan is paid in full and the Security Instrument is released or assigned of record, this Assignment and all of Lender's right, title and interest hereunder with respect to the Development Agreement shall terminate.

4. Estoppel. Developer represents and warrants that (a) the Development Agreement is in full force and effect and has not been modified, amended or assigned other than pursuant to this Assignment, (b) neither Developer nor Borrower is in default under any of the terms, covenants or provisions of the Development Agreement and Developer knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the Development Agreement, (c) neither Developer nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Development Agreement and (d) the Development Fees and all other sums due and payable to Developer under the Development Agreement as of the date hereof have been paid in full.

5. Agreement by Borrower and Developer; Lender's Right to Replace Developer. Borrower and Developer hereby agree that if (a) Developer shall become insolvent or a debtor in any bankruptcy or insolvency proceeding, (b) there exists an Event of Default, or (c) there exists a material default by Developer under the Development Agreement during the term of this Assignment beyond any applicable notice, grace and cure periods set forth therein, then in any such event, at the option of Lender exercised by written notice to Borrower and Developer, Lender may exercise its rights under this Assignment and may immediately terminate the Development Agreement and require Developer to transfer its responsibility for the Development of the applicable Property to a Qualified Developer pursuant to a Replacement Development Agreement.

6. Subordination of Development Agreement. To the extent permitted by Applicable Laws and subject to Article 7 below, the Development Agreement and any and all liens, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialmen's liens under applicable law) owed, claimed or held, by Developer in and to the Property, are and shall be in all respects subordinate and inferior to the liens and security interests created or to be created for the benefit of Lender, and securing the repayment of the Note and the obligations under the Loan Agreement including, without limitation, those created under the Security Instrument covering, among other things, the Property, and filed or to

be filed of record in the public records maintained for the recording of mortgages in the jurisdiction where such Individual Property is located, and all renewals, extensions, increases, supplements, amendments, modifications or replacements thereof.

7. Subordination of Development Fees. Borrower and Developer hereby agree that Developer shall not be entitled to receive any fee, commission or other amount payable to Developer under the Development Agreement for and during any period of time that any Event of Default exists (except to the extent the same may be permitted to be paid under the Loan Agreement); provided, however, (a) that Developer shall not be obligated to return or refund to Lender any fee, commission or other amount already received by Developer, and to which Developer was entitled under this Assignment, (b) Developer shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by Developer in performance of the services contemplated by the Development Agreement at all times, and (c) shall be permitted to terminate the Development Agreement upon failure of Borrower to pay Developer any fee, commission or other amount due or payable to Developer in accordance with the terms of the Development Agreement during any period of time that any Event of Default exists. Subject to the foregoing provisions of this Section 7 and provided further that Developer shall not exercise any action for the enforcement of the same during the continuance of an Event of Default, Developer shall retain any and all rights against Borrower under the Development Agreement for non-payment of any such fees, commissions or other amounts due Developer under the Development Agreement during the continuance of an Event of Default.

8. Consent and Agreement by Developer. Developer hereby acknowledges and consents to this Assignment and the terms and provisions of Section 5.1.18 of the Loan Agreement. Developer agrees that it will act in conformity with the provisions of this Assignment and Section 5.1.18 of the Loan Agreement and Lender's rights hereunder or otherwise related to the Development Agreement. In the event that the responsibility for the development of the Property is transferred from Developer in accordance with the provisions hereof, Developer shall, and hereby agrees to, fully cooperate (at Borrower's expense) in transferring its responsibility to a new Qualified Developer and effectuate such transfer no later than thirty (30) days from the date the Development Agreement is terminated. Further, Developer hereby agrees (a) not to contest or impede the exercise by Lender of any right it has under or in connection with this Assignment; and (b) that it shall, in the manner provided for in this Assignment, give at least thirty (30) days prior written notice to Lender of its intention to terminate the Development Agreement or otherwise discontinue its acting as developer of the Property.

9. Further Assurances. Developer further agrees to (a) execute such affidavits and certificates as Lender shall reasonably require to further evidence the agreements herein contained, (b) on request from Lender, furnish Lender with copies of such information as Borrower is entitled to receive under the Development Agreement and (c) cooperate with Lender's representative in any inspection of all or any portion of the Property (provided that any such inspection shall be in accordance with the terms of the Loan Agreement).

10. Assignment of Proceeds. Developer acknowledges that, as further security for the Note, (a) Borrower has executed and delivered to Lender certain Loan Documents, assigning to Lender, among other things, all of Borrower's right, title and interest in

and to all of the revenues of the Property and (b) pursuant to the terms of the Loan Agreement, Borrower has agreed that any Rents and other income and proceeds from the Property are to be deposited directly into an account of Lender (or an account of Borrower in which Lender has a first priority perfected security interest) established pursuant to the Loan Agreement.

11. Intentionally Omitted.

12. Governing Law. This Assignment shall be governed, construed, applied and enforced in accordance with Section 10.3 of the Loan Agreement.

13. Notices. All notices required or permitted hereunder shall be given and shall become effective as provided in Section 10.6 of the Loan Agreement.

All notices to Developer shall be addressed as follows:

Attention: _____
Facsimile No.: _____

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

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

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

17. Headings, etc. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. Duplicate Originals; Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

19. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

20. Secondary Market. Lender may sell, transfer and deliver the Note and assign the Loan Agreement, the Security Instrument, this Assignment and the other Loan Documents to one or more Investors in the secondary mortgage market. In connection with such sale, Lender may retain or assign responsibility for servicing the Loan, including the Note, the Loan Agreement, the Security Instrument, this Assignment and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

21. Miscellaneous. (a) Wherever pursuant to this Assignment (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF the undersigned have executed this Assignment as of the date and year first written above.

FONTAINEBLEAU LAS VEGAS RETAIL, LLC, a Delaware limited liability company

By: Fontainebleau Las Vegas Retail Mezzanine, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Las Vegas Retail Parent, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Resort Holdings, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Resorts, LLC, a Delaware limited liability company, its managing member

By: _____
Name:
Title:

LEHMAN BROTHERS HOLDINGS INC., a
Delaware corporation

By: _____
Name:
Title:

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By: _____
Name:
Title:

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EXHIBIT A
DEVELOPMENT AGREEMENT

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EXHIBIT D

ASSIGNMENT OF MANAGEMENT AGREEMENT

(attached hereto)

CONDITIONAL ASSIGNMENT OF MANAGEMENT AGREEMENT

THIS CONDITIONAL ASSIGNMENT OF MANAGEMENT AGREEMENT (this "Assignment") is made as of the 6th day of June, 2007, by **FONTAINEBLEAU LAS VEGAS RETAIL, LLC**, a Delaware limited liability company, having its principal place of business at 2827 Paradise Road, Las Vegas, Nevada 89109 ("Borrower") to **LEHMAN BROTHERS HOLDINGS INC.**, a Delaware corporation, having an address at 399 Park Avenue, 8th Floor, New York, New York 10022, individually and as Agent for one or more Co-Lenders ("Lender"), and is acknowledged and consented to by **TB REALTY, INC.**, a Nevada corporation, having its principal place of business at 19501 Biscayne Blvd., Suite 400, Aventura, Florida 33180 ("Manager").

RECITALS:

A. Lender has made a loan to Borrower in the maximum principal sum of **THREE HUNDRED FIFTEEN MILLION AND 00/100 DOLLARS (\$315,000,000.00** (the "Loan") pursuant to that certain Loan Agreement, dated as of the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by the Note (as defined in the Loan Agreement).

B. The Loan is secured by, among other things, the Security Instrument (as defined in the Loan Agreement) which grants Lender a first lien on the Property encumbered thereby (as defined in the Loan Agreement) and is further evidenced by the Note (as defined in the Loan Agreement).

C. Pursuant to that certain Management Agreement dated as of the date hereof (a true and correct copy of which Management Agreement is attached hereto as Exhibit A), Borrower employed Manager exclusively to operate and manage the Property and Manager is entitled to certain management fees (the "Management Fees") thereunder.

D. Lender requires as a condition to the making of the Loan that Borrower assign the Management Agreement and that Manager subordinate its interest under the Management Agreement in lien and payment to the Note, the Loan Agreement, the Security Instrument and the other Loan Documents as set forth below.

E. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

AGREEMENT:

For good and valuable consideration the parties hereto agree as follows:

1. Assignment of Management Agreement. As additional collateral security for the Loan, Borrower hereby conditionally transfers, sets over and assigns to Lender all of Borrower's right, title and interest in and to the Management Agreement, said transfer and assignment to automatically become a present, unconditional assignment, at Lender's option, upon the occurrence of an Event of Default under the Note, the Loan Agreement, any Security